

**OFFICIAL SENSITIVE
CPA09, STAFFORDSHIRE AND WEST MIDLANDS, BIDDER 837
FINAL**

AMENDED AND RESTATED SERVICES AGREEMENT

2014

SECRETARY OF STATE FOR JUSTICE

and

**THE STAFFORDSHIRE AND WEST MIDLANDS
COMMUNITY REHABILITATION COMPANY LIMITED**

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Signatories

THIS AGREEMENT is made on 2014

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** acting as part of the Crown of 102 Petty France, London SW1H 9AJ (**Authority**); and
- (2) **THE STAFFORDSHIRE AND WEST MIDLANDS COMMUNITY REHABILITATION COMPANY LIMITED** (registered in England under number 08802529), whose registered office is at 5 St. Philips Place, Birmingham, England, B3 2PW (**Contractor**),

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

BACKGROUND:

- (A) In May 2013, the Government published the Response to Consultation ‘Transforming Rehabilitation: A Strategy for Reform’ setting out how the Government will transform the way offenders are rehabilitated to make progress in driving down reoffending rates.
- (B) On 19th September 2013, the Secretary of State for Justice published Contract Notice “3190-2-Reducing Reoffending – MC – CN” in the Official Journal of European Union.
- (C) Following that invitation to negotiate, the Authority has appointed the Contractor pursuant to Section 3(2) of the Offender Management Act 2007 as a provider of the Services on the terms set out in the Services Agreement (as defined in Schedule 1 (Definitions and Interpretation)).
- (D) The parties have entered into this Agreement to amend and restate the Services Agreement on the terms of this Agreement.
- (E) The Services entail services of general economic interest. The compensation arrangements in this Agreement comply with the European Commission Decision.

IT IS AGREED as follows:

1. COMMENCEMENT AND DURATION

1.1 Commencement and Duration

Subject to Clause 1.3, this Agreement and the rights and obligations of the parties to this Agreement shall take effect on the Amendment Date and terminate on the Termination Date. For the purposes of this Agreement, the Amendment Date means the date on which Completion of the Sale and Purchase Agreement takes place (as defined in the Sale and Purchase Agreement). If Completion of the Sale and Purchase Agreement does not take place on or before the Long-stop Date (as defined in the Sale and Purchase Agreement), all the provisions of this Agreement shall lapse and the Services Agreement shall continue in force.

1.2 Amendment and Restatement

The parties agree that the Services Agreement has been amended and restated on the terms of this Agreement in accordance with Clause 42.8.

1.3 Delayed Commencement

- (a) The parties agree that Clause 1.1, this Clause 1.3 and Clauses 36.4, 41 and 42 shall take effect on the date of this Agreement.
- (b) If the Amendment Date will be on a date that is after 1 February 2015:
 - (i) the following provisions of Schedule 11 (Payment Mechanism) shall be amended in accordance with the principles set out in paragraphs 7.10 to 7.12 and 7.17 to 7.26 of Volume 3, Annex 5 of the Invitation to Negotiate published on 18 August 2014:
 - (A) the Predicted WAV figures for the First Contract Year and Contract Year 2 set out in paragraph 2.7 of Schedule 11 (Payment Mechanism);
 - (B) the figures in each row of the Upper Volume Boundary column, the Mid-Point Volume column, the Lower Volume Boundary column and the Fixed FFS column in each table in Appendix 3 provided that this Clause 1.3(b)(i)(B) shall not apply if Clause 1.3(c)(ii) applies;
 - (C) the figures in each column in each of the Unpaid Work and Accredited programme - Non SOTP rows of the table in Part 1 of Appendix 7;
 - (D) the figures in the Termination Compensation Amount column of the table in Appendix 8;
 - (ii) the Projected FFU for the First Contract Year set out in paragraph 12.5 of Schedule 11 (Payment Mechanism) and the Projected JAC Staff Amount for the First Contract Year set out in paragraph 2.20 of Schedule 11 (Payment Mechanism) shall each be amended as notified by the Authority to the Contractor in writing;
- (c) If the Amendment Date will be on a date that is on or after 1 April 2015:
 - (i) the provisions referred to in Clause 1.3(b) shall be amended in accordance with that Clause.
 - (ii) the figures in each row of the Upper Volume Boundary column, the Mid-Point Volume column, the Lower Volume Boundary column and the Fixed FFS column in each table in Appendix 3 of Schedule 11 (Payment Mechanism) shall be amended:
 - (A) in accordance with the principles set out in paragraphs 7.10 to 7.12 and 7.17 to 7.26 of Volume 3, Annex 5 of the Invitation to Negotiate published on 18 August 2014,
 - (B) to reflect that, consistent with paragraph 7.27 of Volume 3, Annex 5 of the Invitation to Negotiate published on 18 August 2014, the amount set out in lines 110 to 134 of tab 4.2 "Schedule of Forecasts B" of the MCV7 Financial Response Template provided to the Bidder on 18 August 2014 will not be available to the Contractor; and
 - (C) (as a direct result of that amount referred to in Clause 1.3(c)(ii)(B) not being available) to take into account that (notwithstanding any maximum amount placed on any Fixed FFS figure in the Financial Response Template) any additional transition costs (including any additional financing costs required

to cover those additional transition costs) incurred by the Contractor as evidenced and showing all appropriate reconciliation in writing by the Bidder will need to be recovered by the Contractor in equal instalments during the period between the Amendment Date and the Termination Date;

- (iii) the following provisions of Schedule 11 (Payment Mechanism) shall be amended in accordance with the principles set out in paragraphs 7.10 to 7.12 and 7.17 to 7.26 of Volume 3, Annex 5 of the Invitation to Negotiate published on 18 August 2014:
 - (A) the figures in each row of each of the Projected PbR Starts and the Base PbR Amount columns in the table in Appendix 5 of Schedule 11 (Payment Mechanism); and
 - (B) the figures in each row of the Upper Boundary and Lower Boundary columns of both tables in Appendix 4 of Schedule 11 (Payment Mechanism);
- (iv) Clause 10.4(c)(i) and (ii) shall not apply and Clause 10.4(c)(iv) shall only apply to the provision of the Annual Service Plan for the First Contract Year,

and the parties shall agree the terms of any amendments to this Agreement required to incorporate the requirements of this Clause 1.3 (a), (b) and (c) together with all other changes to this Agreement reasonably required to put the parties in the same position that they would have been in had the Amendment Date been 1 February, 2015 pursuant to Clause 42.8 within five Business Days after the date on which the Authority notifies the Contractor that the Amendment Date will be after 1 February 2015.

2. RELATED DOCUMENTS

2.1 The Contractor shall, on or as soon as reasonably practicable after the Amendment Date but in any event within six months after the Amendment Date, enter into the Subcontracts with the subcontractors specified in Schedule 6 (Permitted Subcontractors).

2.2 The Schedules and Appendices form part of this Agreement.

3. SERVICES AND SERVICE COMMENCEMENT

3.1 Obligations to provide Services

- (a) Subject to Clause 3.5, the Contractor shall, from the Amendment Date:
 - (i) deliver that part of the sentence of the court to be served in the community (including any Post Sentence Supervision Period) and the services set out in the Services Output Specification, to each Allocated Person allocated to it;
 - (ii) provide the services set out in the Services Output Specification and the Services Delivery Proposals with respect to each Designated Retained Person as the Contractor is required to provide with respect to an Allocated Person and regardless of the “offender type” specified in the Services Output Specification, as requested by the Authority from time to time; and
 - (iii) provide the Resettlement Services and (as appropriate) Additional Rehabilitation Services with respect to each Resettlement Person,

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in each case to the Authority in a manner which satisfies the Services Output Specification and the Services Delivery Proposals and in accordance with this Agreement including:

- (A) the services referred to in this Clause 3;
- (B) the Elective Services which the Contractor is required to provide from time to time under this Agreement; and
- (C) the Exit Services,

(together **Services**).

- (b) The Contractor agrees that it shall provide the Services with respect to each Applicable Person allocated to it by the Authority from the time of allocation (regardless of when the allocation takes place) or for whom the Services are required and until:
 - (i) a decision is made by the Authority:
 - (A) in accordance with Schedule 10 (Interfaces) to transfer an Allocated Person back to the Authority; or
 - (B) in accordance with Schedule 10 (Interfaces) to terminate the Services with respect to a Designated Retained Person; or
 - (ii) the Services with respect to an Applicable Person are completed or no longer required,

in each case in accordance with this Agreement. Subject to Clause 3.1(c), the Authority shall determine each person to be an Allocated Person of the Contractor in its absolute discretion.

- (c) The Authority shall:
 - (i) allocate a person as an Allocated Person to the Contractor if that person resides, or is intending to reside, in the Contract Package Area of the Contractor or is closely associated with that Contract Package Area unless the Authority (acting reasonably taking into account all the circumstances of the allocation and all relevant considerations) determines that the most appropriate Contract Package Area for the person is a Contract Package Area of another Community Rehabilitation Company;
 - (ii) be entitled to reallocate a person who has been sentenced to a Community Order or a Suspended Sentence Order from the Contractor to another Community Rehabilitation Company or to itself (in its provision of the National Probation Service) or from another Community Rehabilitation Company or itself (in its provision of the National Probation Service) to the Contractor, in each case within 10 Business Days after the date on which that person was first allocated to the Contractor, that other Community Rehabilitation Company or the Authority, as the case may be; and
 - (iii) if and to the extent they are made to the Authority within five Business Days after the date on which that person was first allocated, consider representations made by the Contractor that a particular person should be allocated to the Contractor, another Community Rehabilitation Company or the Authority (in its provision of the National Probation Service).

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- (d) The Contractor agrees that:
 - (i) it has not been given any volume guarantees in relation to the Services under this Agreement; and
 - (ii) subject to Clause 18.1 (a), (b) and (c), the Authority shall have no liability to the Contractor or any Contractor Related Party under or in connection with this Agreement (whether arising in tort (including negligence) for breach of contract or otherwise) in connection with the allocation of a person to the Contractor, another Community Rehabilitation Company or to the Authority (in its provision of the National Probation Service).
- (e) The Contractor shall no longer be required to provide the Services with respect to an Allocated Person if that Allocated Person transfers to a Contract Package Area of another Community Rehabilitation Company in accordance with Schedule 10 (Interfaces).
- (f) The Contractor shall at all times ensure that the Services comply with, and meet all the requirements of, and perform all its other obligations arising under or in connection with, this Agreement, in accordance with each of this Agreement, the Services Output Specification, the Services Delivery Proposals, Good Industry Practice, the Directions, the Mandatory Probation Instructions, the Mandatory Prison Service Instructions and all Applicable Law with effect from the Amendment Date.
- (g) The Contractor shall:
 - (i) provide the Services to each Commissioning Body within the Contract Package Area of the Contractor as requested in writing by the Authority from time to time;
 - (ii) provide the Services to each Commissioning Body outside the Contract Package Area of the Contractor as agreed between the parties in accordance with the Change Protocol;
 - (iii) cease to provide those Services to a Commissioning Body as directed by the Authority; and
 - (iv) provide the Authority with a written report within 20 Business Days after the end of each quarter (the first quarter ending at the end of the third complete month after the Amendment Date) setting out the details of the Services provided to each Commissioning Body during that quarter, the total Charges paid or payable for those Services and the period during which those Services have been, and are to be, provided.
- (h) The Authority shall procure that each relevant Commissioning Body shall pay the Charges for the Services to the Contractor as set out in Schedule 11 (Payment Mechanism).

3.2 Statutory obligations

- (a) The Contractor acknowledges and agrees that:
 - (i) the Authority has made this Agreement for the making of probation provision pursuant to Section 3(2) of the OMA;

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- (ii) it is a provider of probation services within the meaning of Section 3(6) of the OMA for the purposes of all Applicable Law;
 - (iii) it is a relevant partner for the purposes of Sections 10 and 25 of the Children Act 2004, Section 6 of the Care Act (England) 2014 and Section 134 of the Social Services and Well-being Act (Wales) 2014;
 - (iv) it is a board partner for each local authority within its Contract Package Area for the purposes of Section 13 of the Children Act 2004;
 - (v) it is a responsible authority for the purposes of Sections 5 and 6 of the Crime and Disorder Act 1998;
 - (vi) this Agreement constitutes arrangements relating to the identity of the Responsible Officer for the purposes of section 197 of the CJA; and
 - (vii) in making this Agreement, the Authority has complied with its duty under Section 149 of the Equality Act 2010 in particular as it relates to female offenders pursuant to Section 3(6A) of the OMA and that paragraph 5.1 of the Services Output Specification and section 2.9 of the Services Delivery Proposals are intended to meet the particular needs of female offenders.
- (b) The parties agree that the Services shall not comprise restricted probation provision within the meaning of Section 4(2) of the OMA.
- (c) The Contractor shall co-operate with MAPPA for the purposes of Section 325 of the CJA including as provided in Sections 325(3) to (6) of the CJA. The Contractor shall not be required to act as the responsible authority for the purposes of Section 325 of the CJA and agrees that the Authority will fulfil that role. The Authority shall co-operate with the Contractor as if it had been named as one of the persons referred to in Section 325(6) of the CJA.
- (d) The Contractor shall provide the Services in a manner to promote confidence in, and promote the effectiveness of, the criminal justice system having regard, where appropriate, to the following aims:
- (i) the protection of the public;
 - (ii) the reduction of re-offending;
 - (iii) the proper punishment of offenders;
 - (iv) ensuring offenders' awareness of the effect of crimes on the victims of crimes and the public; and
 - (v) the rehabilitation of offenders.
- (e) Without prejudice to Clause 3.2(d)(i), the Contractor shall ensure that, in the provision of the Services, it shall, in accordance with Good Industry Practice, have full regard to the safeguarding of the public including the careful identification and management of risk of Serious Harm, as more particularly described in the Services Output Specification.

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- (f) The Contractor shall, and shall ensure that each Subcontractor shall:
- (i) ensure that each Applicable Person is treated and managed fairly and decently;
 - (ii) have due regard to an Applicable Person's ability and fitness to undertake any activity he is required to complete; and
 - (iii) take all reasonable steps, which might include mentoring, to create a supportive and rehabilitative environment and culture that ought to motivate and enable each Applicable Person to make positive changes in his life.
- (g) In relation to those Services set out in sections OSR 5 to OSR 10 of the Services Output Specification, the Contractor shall, and shall ensure that each Subcontractor shall, ensure that with respect to an Unpaid Work Requirement to be made available by the Contractor:
- (i) the purpose of the work is both demanding and rehabilitative;
 - (ii) the nature of the work assists the Applicable Person in reintegrating into society (such as instilling a work ethic and routine, which will be of use in future employment);
 - (iii) there is an emphasis on rehabilitation over profit and the Contractor does not profit directly from the work done by an Applicable Person;
 - (iv) the work does not directly replace paid employment with proposed work projects but shall add value to local communities by working on tasks which would not otherwise be undertaken, for example, by additional graffiti removal or the clearance of litter and overgrown areas;
 - (v) each Applicable Person is appropriately assessed for his ability and suitability to undertake the work;
 - (vi) the work complies with the Code of Practice for Work in Prisons with respect to unpaid work issued by the Authority in writing from time to time which can be found on the Authority Website; and
 - (vii) the Authority can have, at all reasonable times, oversight of all elements of the work in the manner which the Authority specifies from time to time,

in each case, as more particularly described in the Services Output Specification.

- (h) The Contractor shall, and shall ensure that each Subcontractor shall:
- (i) maximise opportunities to generate income through the provision of Unpaid Work to contribute towards the cost of delivering sentences, and possibly to benefit victims of crime and local communities;
 - (ii) disclose to the Authority details of all income referred to in Clause 3.2(h)(i) that exceeds the cost of providing the Services, reinvest that income in the provision of the Services and improvements in the provision of the Services and demonstrate to the Authority in writing how it has reinvested that income;

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- (iii) disclose to the Authority the amount of income it generates, or accrues in kind, by outsourcing the provision of Unpaid Work to a Subcontractor;
- (iv) clearly demonstrate that it will not profit directly from the activity carried out by an Applicable Person in the provision of Unpaid Work and disclose to the Authority its delivery models, the amount of income generated directly or in kind, and any changes to the models during the lifetime of this Agreement; and
- (v) treat and manage each Applicable Person fairly and with due regard to risk, safety, diversity issues and the Applicable Person's ability and fitness to undertake any activity he is required to undertake,

in each case ensuring that the arrangements pursuant to this Clause 3.2(h) comply with relevant legal obligations including, among others, the State Aid Regulations and the European Convention on Human Rights.

- (i) The Contractor shall, and shall ensure that each Subcontractor shall, with respect to an Applicable Person, have regard to the needs of victims and commissioning victims services in its Contract Package Area including contact from victims not required by the Domestic Violence Crime and Victims Act 2004, and the assessment, suitability, consent, safety and management of those victims participating in interventions delivered to an Applicable Person as more particularly described in the Services Output Specification.

3.3 Meaning of Allocated Person

- (a) For the purposes of this Agreement, **Allocated Person** means, subject to Clauses 3.3(b) and (c), an adult who has been:
 - (i) allocated to the Contractor by the Authority pursuant to Schedule 10 (Interfaces) of this Agreement or a Community Rehabilitation Company under a Probation Services Agreement, as the case may be, at any time following:
 - (A) the imposition of a sentence of the court;
 - (B) a transfer from a Youth Offending Team; or
 - (C) a transfer into England or Wales from Scotland, Northern Ireland or other jurisdiction; or
 - (ii) transferred from another Community Rehabilitation Company or the Contractor (as the case may be) to the Contractor or that Community Rehabilitation Company (as the case may be);and
- (iii) convicted by a court (including a service court as defined in section 178(b) of the Armed Forces Act 2006) and:
 - (A) has been sentenced to a Community Order;
 - (B) has been sentenced to a Suspended Sentence Order; or

- (C) has been or will be released (whether or not on Licence, Home Detention Curfew or Post Sentence Supervision Period) following a custodial sentence of greater than one day,

in each case for a criminal offence.

- (b) An Allocated Person shall also include:
 - (i) a person who has been given an Enforcement Order; and
 - (ii) a person who is aged 18 or over and has been given an Attendance Centre Order.
- (c) An Allocated Person shall not include:
 - (i) a person who has been sentenced to a Community Order or a Suspended Sentence Order which consists only of an electronically monitored Curfew Requirement;
 - (ii) a person who has been sentenced to a Community Order or a Suspended Sentence Order which consists only of an electronically monitored exclusion requirement (as defined in section 205 of the CJA 2003);
 - (iii) a person who has been sentenced to a Community Order or a Suspended Sentence Order which consists only of an Electronic Monitoring Requirement;
 - (iv) a person who has been sentenced to a Community Order or a Suspended Sentence Order which consists only of any combination of any or all of the requirements set out in Clause 3.3(c)(i),(ii) and (iii); or
 - (v) an adult who was a juvenile at the time of sentencing unless the Authority has determined that the relevant person should be an Allocated Person.

3.4 Meaning of Retained Person

For the purposes of this Agreement, **Retained Person** means a person:

- (a) who:
 - (i) is not an Allocated Person and has not been allocated to a Community Rehabilitation Company; or
 - (ii) was an Allocated Person but has been transferred back to the Authority under this Agreement; and
- (b) in respect of whom the Authority is responsible in its provision of the National Probation Service including:
 - (i) a person who is subject to a Deferred Sentence;
 - (ii) a person whose case is to be managed under MAPPA; and
 - (iii) a person who is deemed, in the reasonable opinion of the Authority, to pose a high risk of Serious Harm to the public.

3.5 Transition Plan and Transformation Plan

The Contractor shall comply with its obligations under Schedule 27 (Transition and Transformation Plan) in respect of both the Transition Plan and the Transformation Plan.

3.6 Prison Inspector and Probation Inspector

- (a) The Contractor shall:
- (i) send to the Authority, for the Authority's approval, its response in writing to each recommendation made by the Prison Inspector or the Probation Inspector, within one month after the relevant recommendation is made or earlier if requested by the Authority;
 - (ii) provide the Prison Inspector and the Probation Inspector with full access to the records and information specified in Schedule 15 (Audit) on the terms of that Schedule;
 - (iii) provide the Prison Inspector and the Probation Inspector with all reasonable assistance and facilities including office space and access to systems and communications;
 - (iv) use reasonable endeavours to make all persons in respect of whom it is providing the Services available to the Prison Inspector or the Probation Inspector during normal business hours and at reasonable notice as the relevant one of the Prison Inspector or the Probation Inspector requires;
 - (v) procure that sufficient of the Contractor Personnel with the relevant skill and experience are made available to the Probation Inspector during normal business hours and on reasonable notice to act as local assessors and assist with inspections for the duration of those inspections which the Probation Inspector carries out from time to time in the Contract Package Area of the Contractor; and
 - (vi) negotiate with the Authority in good faith for certain of the Contractor Personnel with the relevant skill and experience to be made available to the Probation Inspector on a secondment basis for a period of up to two years on reasonable notice.
- (b) The Contractor shall provide access, facilities and availability referred to in Clause 3.6(a) to the Prison Inspector or the Probation Inspector or both on reasonable notice by the relevant one of the Prison Inspector or the Probation Inspector and during normal business hours.
- (c) If the Authority does not agree with the Contractor's response sent to it under Clause 3.6(a)(i), it shall notify the Contractor together with details of its concerns. The Contractor shall, as soon as practicable after receipt of that notification, amend its response to address the Authority's concerns and send it to the Authority for further approval. If, following receipt of the amended response, the Authority does not agree with the Contractor's response, the matter shall be resolved through the Dispute Resolution Procedure.

3.7 Prisons and Probation Ombudsman

The Contractor shall:

- (a) co-operate with each of the Prisons and Probation Ombudsman and the Parliamentary and Health Services Ombudsman on the request of the Authority, the Prisons and Probation Ombudsman or the Parliamentary and Health Services Ombudsman with respect to any investigation which the Prisons and Probation Ombudsman or the Parliamentary and Health Services Ombudsman, as the case may be, is carrying out and provide the Prisons and Probation Ombudsman and the Parliamentary and Health Services Ombudsman with all information which it reasonably requires in connection with that investigation;
- (b) review each recommendation which the Prisons and Probation Ombudsman and the Parliamentary and Health Services Ombudsman makes which relates to the Services or the manner in which they are delivered and deliver to the Authority details in writing of how it will respond to, and address, those recommendations; and
- (c) provide the Authority with all information and assistance which it reasonably requires to enable it to meet its obligations to the Prisons and Probation Ombudsman and the Parliamentary and Health Services Ombudsman from time to time.

3.8 Accredited Programmes

- (a) Where the sentence of the court with respect to an Applicable Person requires that the Applicable Person participates in an Accredited Programme, the Contractor shall use an Accredited Programme which:
 - (i) meets the risk and needs of that Applicable Person; and
 - (ii) is set out in the Accredited Programme Requirements Document for its Contract Package Area.
- (b) The Contractor agrees that the Intellectual Property Rights in each Accredited Programme and Accredited Programme Manual are owned by the Authority or, where notified to the Contractor, a Third Party.
- (c) Without prejudice to Clause 38, the Contractor shall comply with the Crown Copyright Licensing Procedures and Clause 3.8(g) for the use of an Accredited Programme comprised within the Authority IPRs. Where the Intellectual Property Rights in an Accredited Programme are owned by a Third Party, the Contractor shall obtain a licence to use the Accredited Programme from that Third Party (if required) for the purposes of this Clause 3.8.
- (d) The Contractor shall comply with each Accredited Programme Manual in the provision of the Services.
- (e) Without prejudice to Clause 20.1(d)(iii), the Contractor shall ensure that each Contractor Personnel who will be delivering Accredited Programmes as part of the Services is recruited, assessed and trained in compliance, and complies, and shall itself comply, with the standards set by CSAAP in the delivery of the Services (as incorporated in the Accredited Programme Manual) for the purposes of delivering Accredited Programmes as part of the Services.

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- (f) Subject to the provisions of Clause 3.8(g), the Contractor shall be entitled to obtain from the Authority to the extent available, and on the terms specified by the Authority from time to time:
 - (i) training for each Contractor Personnel delivering an Accredited Programme;
 - (ii) a Clinical Assurance Service to meet accreditation standards which will be free of charge;
 - (iii) support via email and telephone support service; and
 - (iv) visits to the Contractor Premises in addition to those provided as part of the Clinical Assurance Service referred to in this Clause 3.8(f)(ii).
- (g) The Contractor shall pay to the Authority:
 - (i) the rates set out in the NOMS Rate Card for the licence to use the Authority IPRs in the Accredited Programmes and each of the services set out in Clause 3.8(f)(i) and (iv); and
 - (ii) the rates set out in the NOMS Subscription Service for the services set out in Clause 3.8(f)(iii).

For the purposes of this Clause 3.8(g), the “**NOMS Rate Card**” and the “**NOMS Subscription Service**” shall be the rates and subscriptions published by NOMS from time to time. The Authority shall ensure that each change to the rates and subscriptions made from time to time is reasonable, having regard to the nature of the relevant Accredited Programme and the reasons for the change.

3.9 Out of Hours Support

The Contractor shall, at all times outside normal business hours on each calendar day, have in place arrangements to enable a duty manager or other equivalent Contractor Personnel to deal with any event or circumstance arising out of or relating to the Services or this Agreement which requires an immediate action or response:

- (i) to mitigate risk of Serious Harm;
- (ii) to safeguard data; or
- (iii) to respond effectively to an emergency or contingency event.

3.10 Other services, functions and responsibilities

From the Amendment Date, the Contractor shall provide, with no change to the Charges, all other services, functions and responsibilities not specifically described in this Agreement which are:

- (i) an inherent, customary or a necessary part of, or are incidental to the provision of, or would ordinarily be performed by a person performing the Services, or are required for the proper performance of the Contractor's obligations arising under or in connection with this Agreement;
- (ii) services, functions and responsibilities reflected in the Services Delivery Proposals;

- (iii) set out in the “NOMS Health & Safety Policy Statement” and the “NPS National Health & Safety Policy” (in each case as provided to the Contractor by the Authority from time to time) for the purposes of enabling the Authority in its provision of the National Probation Service to meet its requirements as imposed by Applicable Law relating to occupational health and safety and fire, in relation to each Authority Related Party; or
- (iv) related to the Services and are required to be performed for the Authority and each Authority Related Party to meet requirements imposed by Applicable Law,

as if those services, functions and/or responsibilities were specifically described in this Agreement.

3.11 Interfaces with the Authority in its Provision of the National Probation Service and prisons

- (a) The Contractor shall:
 - (i) with respect to a Designated Retained Person, perform interventions and other services for the Authority in its provision of the National Probation Service as set out in Schedule 7 (Services Output Specification);
 - (ii) transfer cases to the Authority to be dealt with by the Authority in the provision of the National Probation Service if the Authority determines that risk has increased to high in a particular case and refer cases to the Authority where there is evidence that risk of Serious Harm to the public may have increased from low/medium to high, in each case in accordance with the processes specified in Schedule 10 (Interfaces);
 - (iii) prepare Breach Information for the Authority for the purposes of the National Probation Service as set out in Schedule 10 (Interfaces); and
 - (iv) cooperate with and provide information to the Authority for the purposes of enabling the Authority to provide the National Probation Service including making a determination under Clause 3.11(a)(ii), providing the information under paragraph 6 of Schedule 10 (Interfaces) and providing advice to the courts.
- (b) The Contractor shall agree with the Authority, as soon as practicable after the Amendment Date, a protocol for the operational arrangements between (i) the Contractor and that part of the Authority providing the National Probation Service in the Contract Package Area of the Contractor and (ii) the Contractor and the relevant governors of the Resettlement Prisons designated to the Contractor, in each case for the purposes of implementing the provisions of this Agreement. The parties agree that the provisions set out in this Clause 3, Schedule 14 (Governance) and Schedule 10 (Interfaces) shall take precedence over that protocol.
- (c) With effect from the Amendment Date, the Contractor shall, on not less than two months’ written notice from the Authority to the Contractor, provide:
 - (i) a Facility in the Contractor Premises in the Contract Package Area of the Contractor for not less than three Authority Personnel for each NPS Local Delivery Unit; and
 - (ii) any other facilities and support that the parties may agree in writing.

The Contractor shall be entitled to provide each Facility at any Contractor Premises within the Contract Package Area of the Contractor and not by reference to the geographical location of the NPS Local Delivery Units.

- (d) For the purposes of Clause 3.11(c), “**Facility**” means office space with facilities typically provided in office space including a desk, a chair, a computer with access to Authority ICT systems or internet access for use by a laptop with internet capability to access the Authority ICT and a telephone.
- (e) The Authority shall, for the purposes of Clause 3.11(c), ensure that the relevant Authority Personnel shall comply with Clause 36.4 and all policies that an employee of the Contractor is expected to comply with from time to time at the relevant Contractor Premises to the extent that such policies have been notified to the Authority Personnel.
- (f) The Contractor agrees that Clause 3.11(c) is without prejudice to, and shall not limit, any other obligations of the Contractor and rights of the Authority under this Agreement including Clauses 4, 10, 14, 23, 27, 29, 36, 39, Schedule 14 (Governance), Schedule 15 (Audit) and Schedule 20 (Management Information). The exercise by the Authority of its rights under Clause 3.11(c) shall not constitute a waiver of any right or remedy arising from a breach of this Agreement by the Contractor.

3.12 Interfaces with Community Rehabilitation Company

- (a) The Contractor shall participate in both industry led and Government led forums which have as their objectives the sharing of best practice in the promotion of effective and efficient provision of probation services and the reduction of reoffending.
- (b) Where an Allocated Person of the Contractor is being released from a Resettlement Prison which is not one of the Contractor’s designated Resettlement Prisons, the Contractor may obtain, from the relevant Lead Host CRC or Host CRC responsible for the delivery of services within that Resettlement Prison, Home Resettlement Services or Additional Rehabilitation Services as set out in the respective CRC Rate Cards of that Lead Host CRC or Host CRC. The Contractor shall negotiate in good faith with that Lead Host CRC or Host CRC, as the case may be, the terms on which the Lead Host CRC or Host CRC will provide the Home Resettlement Services or Additional Rehabilitation Services, as the case may be, on behalf of the Contractor.
- (c) Where an Allocated Person of a Home CRC is to be released from a Resettlement Prison designated to the Contractor in its capacity as a Lead Host CRC or a Host CRC, as the case may be, and the Home CRC wishes to provide Home Resettlement Services or Additional Rehabilitation Services with respect to that Allocated Person, the Home CRC may obtain them from the Contractor as the Lead Host CRC or a Host CRC, as the case may be, as set out in the CRC Rate Card of the Contractor in its capacity as a Lead Host CRC or Host CRC. The Contractor shall negotiate in good faith with that Home CRC the terms on which the Contractor will provide those Home Resettlement Services or Additional Rehabilitation Services, as the case may be, on behalf of the Home CRC.
- (d) Where the Contractor’s Allocated Person is being released from a prison which is not a Resettlement Prison and the Contractor wishes to provide rehabilitation services with respect to that Allocated Person, it must agree the access to that Allocated Person to provide them with, or obtain them from, the relevant governor of that prison and the Authority shall not be required to ensure that access or provision.

- (e) The Contractor agrees that the Authority shall have no liability to the Contractor with respect to the provision or receipt of Home Resettlement Services or Additional Rehabilitation Services and shall indemnify the Authority on demand from and against all Losses suffered or incurred by the Authority arising out of or connected to the provision or receipt of Home Resettlement Services or Additional Rehabilitation Services.

3.13 Interfaces with statutory partnerships

The Contractor shall carry out the provision of probation services in the capacity set out in Clause 3.2(c) including as described in Clause 3.2 and Schedule 10 (Interfaces).

3.14 Interfaces with non-statutory partnerships

- (a) The Contractor shall engage with entities operating both nationally and within its Contract Package Area including by entering into Subcontracts in accordance with Clause 4.1, partnership and/or co-commissioning agreements or other arrangements:
 - (i) to identify and pursue opportunities to provide an integrated service with the overall objective of implementing measures to rehabilitate offenders, to ensure their resettlement back into the relevant community and to reduce the level of offending in that Contract Package Area;
 - (ii) with a view to ensuring the protection of the public from Serious Harm; and
 - (iii) with a view to safeguarding the interests of vulnerable adults and victims or potential victims of domestic violence.
- (b) The Contractor shall ensure that it is aware of the local needs in its Contract Package Area and put in place arrangements, and make changes to existing arrangements, to develop strong functional relationships to target shared local priorities to meet those local needs.
- (c) The Contractor shall be deemed to have complied with its obligation under this Clause 3.14 if it has complied with the arrangements relating to the local needs in its Contract Package Area set out in paragraphs 2.13.2, 2.7.11-2.7.13, 2.4.15, 2.4.16 and 2.10.32 of Schedule 8 (Services Delivery Proposals).
- (d) The Contractor shall (if applicable) recognise and work together with the structures put in place from time to time by the Welsh Government.

3.15 Interfaces with other persons

- (a) If the Authority obtains any services from a Third Party which is concerned with the prevention or reduction of crime, with giving assistance to the victims of crime or otherwise has an interrelationship with, or facilitates the provision of, the Services, the Contractor shall co-operate and liaise in good faith with the Authority and that Third Party. The Contractor shall use all reasonable endeavours to co-operate with the Third Party to ensure that the provision of the Services and the services of the Third Party to the Authority are provided efficiently and with a minimum of disruption to the Authority's systems and business and comply with all reasonable instructions of the Authority in relation to the resolution of any disputes between the Third Party and the Authority.

- (b) The Contractor shall use its best endeavours to ensure that the Services are sufficiently flexible to interface with and capable of interworking with new technology and systems that are or may be employed during the Contract Period by the Authority and Third Parties who provide other services to the Authority.
- (c) Without prejudice to Clause 3.15(a) or Schedule 10 (Interfaces), the Contractor shall work collaboratively with the EM Provider for its Contract Package Area in accordance with Schedule 10 (Interfaces).
- (d) Where the Contractor incurs additional costs in complying with Clause 3.15(b) or (c), it shall be entitled to recover those costs from the Authority in accordance with Clause 3.15(e) provided that it obtains the prior written consent of the Authority before incurring those costs.
- (e) Subject to Clause 42.10(b), the Authority shall compensate the Contractor for the actual costs incurred by the Contractor in accordance with Clause 3.15(d) in excess of £10,000 (so that only the excess of that amount is recoverable) and within 20 Business Days after receipt of a written demand by the Contractor supported by reasonably detailed evidence in writing that the costs have in fact been incurred.
- (f) The Contractor shall issue invoices for the relevant amounts payable under Clause 3.15(d) to the Authority in accordance with paragraph 16 of Schedule 11 (Payment Mechanism).

3.16 European Social Fund

- (a) If the Authority identifies that obligations of the Contractor under this Agreement are supported directly or indirectly by the European Social Fund, the Contractor shall comply, and ensure that its Subcontractors comply, with the terms of this Clause 3.16 in relation to those obligations.
- (b) The Contractor shall comply, and ensure that its Subcontractors comply, with Articles 8 and 9 of the European Commission Regulation number 1828/2006 (**ESF Regulation**). In complying with Articles 8 and 9 of the ESF Regulation, the Contractor shall refer to the Authority in addition to all references it makes to the European Social Fund.
- (c) The statement to be used by the Contractor or Subcontractor in compliance with Article 9(c) of the ESF Regulation shall be “Investing in jobs and skills”.
- (d) The Contractor shall, and shall ensure that its Subcontractors shall, maintain financial records and supporting documents to comply with the standards described in Article 15 of the ESF Regulation for a period of not less than twelve years from the date of the final payment of all sums due under this Agreement, or such longer period as may be agreed between the parties.
- (e) The Contractor shall, and shall ensure that its Subcontractors shall, co-operate with the Authority and other bodies as requested by the Authority in connection with audits conducted pursuant to Article 16 of the ESF Regulation.
- (f) The Contractor shall, and shall ensure that its Subcontractors shall, provide all information (i) requested by the Authority to allow it to comply with Article 7.2 (d) of the ESF Regulation and (ii) as specified by the Authority and in the format required by the Authority, in relation to any activity undertaken by offenders who are eligible to

match European Social Fund funding, in each case within 10 Business Days after the date of request from the Authority.

- (g) The Contractor shall, and shall ensure that its Subcontractors shall, take into consideration the Guidance for providers and sub-contractors for publicity requirements for NOMS/ESF Funded Projects on the Authority Website from time to time.
- (h) The Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs expenses and any other liabilities which may arise out of, or in consequence of, the Contractor's failure to comply with this Clause 3.16.

3.17 Welsh Language

- (a) The Contractor shall, at all times, comply with the Welsh Language Act 1993 and the Authority's Welsh Language Scheme (as amended from time to time) as if it were the Authority to the extent that the same relate to the provision of the Services.
- (b) The Contractor shall be responsible for promoting the delivery of the services in Welsh or English to the service user and shall use all reasonable steps to achieve this.
- (c) For the purposes of this Clause 3.17, the "Welsh Language Scheme" means the scheme issued in writing by the Authority from time to time which can be found on the Authority Website.

3.18 Attendance Centres

- (a) The Contractor shall provide or ensure that it has available to it in accordance with Good Industry Practice a sufficient number of Attendance Centres to meet its obligations under this Agreement.
- (b) The Contractor shall provide to the Authority, an Authority Related Party or a Local Authority, as applicable, (i) a sufficient number of appropriately qualified Contractor Personnel and (ii) access to, and the right to use, the assets and premises used prior to the Amendment Date for Junior Attendance Centres and that the Contractor has access to for the purposes of meeting its obligations under this Agreement, in each case, to enable the Authority, Authority Related Party or Local Authority (as applicable) to comply with its obligation to provide Junior Attendance Centres and shall, in relation to those Contractor Personnel, in compliance with Clause 20.1(b)(iii), permit those Contractor Personnel to attend training applicable to the provision of Junior Attendance Centres.
- (c) In consideration for the obligations set out in Clause 3.18(b), the Authority shall pay the Contractor in accordance with paragraphs 2.16 to 2.24 of Schedule 11.
- (d) Either party shall be entitled to terminate, on not less than six months' written notice to the other party, its rights and obligations in relation to Clause 3.18(b).
- (e) If any Losses are incurred or awarded against the Contractor in connection with any claim against the Contractor by any Third Party (a **JAC Claim**) arising directly out of the use by the Authority of the Contractor Personnel in accordance with Clause 3.18(b), the Authority shall, subject to Clause 42.10(b), reimburse the Contractor for those Losses provided that the Contractor is not in breach of Clause 3.18(b).

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- (f) The Contractor agrees that:
 - (i) it shall notify the Authority in writing as soon as reasonably practicable of any JAC Claim of which the Contractor has notice including details of the issue of proceedings;
 - (ii) the Authority shall have a right (in its absolute discretion) to notify the Contractor at any time that it has (in its opinion) an interest in the JAC Claim and, if the Authority makes that notification, the Contractor shall notify the Authority promptly of all material developments in the JAC Claim;
 - (iii) the Authority shall upon notification in accordance with Clause 3.18(f)(i) assume exclusive conduct of the JAC Claim (which shall include the exclusive right to conduct any proceedings or action, negotiate the settlement of the JAC Claim and conduct all discussions and dispute resolution efforts in connection with the JAC Claim);
 - (iv) once the Authority has assumed conduct of the JAC Claim in accordance with Clause 3.18(f)(iii), the Contractor shall not admit any liability or agree to any settlement or compromise of the JAC Claim without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed;
 - (v) the Contractor shall, at the Authority's request, cost and expense, give the Authority all reasonable assistance in connection with the conduct of the JAC Claim including access to its personnel and the provision of documents; and
 - (vi) unless or until the Authority assumes exclusive conduct of the JAC Claim in accordance with Clause 3.18(f)(iii), the Contractor shall take all proper action to deal with the JAC Claim to minimise the extent of any amount payable under that JAC Claim and, if the Authority notifies the Contractor that it has an interest in the JAC Claim in accordance with Clause 3.18(f)(ii), the Contractor shall not agree any settlement of the JAC Claim without the prior written consent of the Authority.
- (g) If the Authority assumes exclusive conduct of the JAC Claim in accordance with Clause 3.18(f)(iii), it shall keep the Contractor informed as to the progress of that JAC Claim and the Contractor may make representations to the Authority with regard to the appropriate action to take in relation to that JAC Claim.
- (h) The Authority shall not be entitled to assume conduct of a JAC Claim where the relevant claim is for Losses which are the subject of a Required Insurance and Clause 3.18(f)(ii), (iii), (iv) and (v) shall not apply to such JAC Claim.
- (i) Without prejudice to the Authority's rights under this Clause 3.18, the Contractor shall, and shall procure that each Contractor Related Party shall, at the Authority's request, co-operate with the Authority in any request or application by the Authority to become a party to the JAC Claim, whether pursuant to CPR 19.4 or otherwise, that co-operation to include the provision of a witness statement in support of any such request or application.

4. PARTNERING ARRANGEMENTS

4.1 Material Subcontracts

- (a) The Contractor shall not subcontract the provision of a material part of the Services under this Agreement (**Material Subcontract**) to a Subcontractor (of any tier) (**Material Subcontractor**) without the Authority's prior written consent, which shall not be unreasonably withheld or delayed, but may be made subject to conditions. The Authority shall be deemed to have given that consent with respect to the Subcontractors identified in Schedule 6 (Permitted Subcontractors) (in relation to the elements of the Services identified in respect of each Material Subcontractor). The Authority shall be entitled to reasonably withhold its consent pursuant to this Clause 4.1(a) including in circumstances where the Authority reasonably believes:
- (i) the appointment of a proposed Material Subcontractor or the entering into a Material Subcontract may, in the opinion of the Authority (acting reasonably), prejudice the provision of the Services or be contrary to the interests of the Authority;
 - (ii) the proposed Material Subcontractor is unreliable and/or has, to the extent that they are substantially similar to the Services, not provided reasonable services to its other customers;
 - (iii) the proposed Material Subcontractor employs unfit persons that, for the avoidance of doubt, would not include the employment of ex-offenders in a mentoring role;
 - (iv) the appointment of a proposed Material Subcontractor or the entering into a Material Subcontract would, or would be likely to, result in the Authority being in breach of statutory duty;
 - (v) the appointment of a proposed Material Subcontractor or the entering into of a Material Subcontract would, or would be likely to, result in a genuine and sufficiently serious threat to the security interests of the community within which the Contractor operates in the United Kingdom; or
 - (vi) where the Authority reasonably believes there is a serious risk that the Contractor will be in breach of this Agreement which materially and adversely affects the performance of the Services, in each case as a result, directly or indirectly, of an act or omission of the relevant Material Subcontractor.
- (b) The Contractor shall provide the Authority with a copy of each Subcontract (with a Subcontractor of any tier) as soon as reasonably practicable after it has been entered into (which, for the avoidance of doubt, shall include a Subcontract relating to any of the Services and not only a Material Subcontract) together with each amendment to that Subcontract as soon as reasonably practicable after that amendment has been made.
- (c) The Contractor shall in relation to this Agreement:
- (i) be responsible for all acts and omissions of each of its subcontractors (including each of the Subcontractors) as fully as if they were the acts and omissions of the Contractor or its employees or agents; and
 - (ii) be the Authority's sole point of contact for the performance of the Contractor's obligations under this Agreement.

4.2 Contractor's Warranty

The Contractor represents, warrants and undertakes that it did not and will not, at any time during the Contract Period, enter into any, and has no, agreement or other arrangements with, any Registered Provider (of any tier) or other Third Party for the provision of any services the same as or similar to the Services on the condition that the Registered Provider or other Third Party did not and will not enter into any other agreement or arrangement with another Community Rehabilitation Company for any of those services but is the exclusive supplier to the Contractor.

4.3 Subcontract Terms

- (a) The Contractor is authorised to make contractual or other arrangements with subcontractors for purposes connected with the Services.
- (b) The Contractor shall, and shall procure that each Subcontractor shall, perform its obligations under and observe all the terms of each Subcontract.
- (c) The Contractor shall:
 - (i) ensure that none of the terms and conditions of a Subcontract shall contradict any term or condition of this Agreement;
 - (ii) in the case of a Material Subcontract, prohibit the further subcontracting of any of the services under that Material Subcontract which comprise a material part of the Services under this Agreement without the Authority's prior written consent which shall not be unreasonably withheld or delayed;
 - (iii) not make any material changes to a Material Subcontract including any material commitments to volumes without the Authority's prior written consent which shall not be unreasonably withheld or delayed;
 - (iv) prior to entering into a Subcontract, complete together with the Subcontractor, a Pre-Subcontract Questionnaire in which it shall identify all risks to be assumed by the Subcontractor under the relevant Subcontract, quantify those risks and describe the impact on the business of the Subcontractor of those risks;
 - (v) describe to the Authority in reasonable detail, the risks to be assumed by the Subcontractor and confirm to the Authority in writing that those risks have been addressed reasonably;
 - (vi) not enter into a Subcontract which allocates to the Subcontractor a risk which, if it were to materialise, would have a material adverse effect on the business or profitability of the Subcontractor or which it would not be reasonably able to control to a material degree;
 - (vii) without prejudice to Clause 4.3(c)(vi), provide for the level of risk to be allocated to the Subcontractor to be proportionate to the types of services which are the subject of the Subcontract, the fees payable for those services and the extent to which payment depends on a reduction in reoffending by the Allocated Persons which are the subject of the Subcontract;

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- (viii) ensure that a Subcontractor is rewarded and recognised for good performance and share good practice and effectiveness in the provision of the services amongst all of its Subcontractors;
 - (ix) ensure that all of the Dependencies are included in a Subcontract as matters on which the Subcontractor can depend insofar as they are relevant to the provision of the services under the relevant Subcontract;
 - (x) meet its commitments with respect to all proposed Subcontractors set out in the Services Delivery Proposals; and
 - (xi) in the case of a Material Subcontract, comply with all conditions imposed by the Authority as a condition of its consent to that Material Subcontract.
- (d) The Contractor:
- (i) shall ensure that the terms of a Subcontract with a Registered Provider subject to Clause 4.3(d)(ii), are at all times substantially in the same form as the Industry Standard Partnering Agreement and shall in any event include Clauses 1.1, 2.5, 2.6, 3, 4, 5, 6.1, 6.2, 6.3, 6.4, 6.6, 6.7, 7.1, 7.2, 7.4, 8.1, 8.2, 9, 11, 12.1, 12.2, 14, 15.1, 15.2, 16(a), 16(f), 16(g), 16(i), 16(k), 18, 19, 20, 21, 22 (with the exception of Clauses 22.1(b), 22.1(c) and 22.2(c)(viii)), 23 (with the exception of Clause 23(e)), 24.4, 24.5, 24.6, 24.7, 24.8 (with the exception of Clause 24.8(a)), 24.9, 24.10 and 24.13 of the Industry Standard Partnering Agreement, Clauses 6.5, 15.3, 15.4 and 22.1(b), 22.1(c), 22.2(c)(viii) and 24.8(a) of the Industry Standard Partnering Agreement if the Subcontract is a Material Subcontract and Clause 24.12 if the Subcontract relates to the provision of services in Wales;
 - (ii) shall ensure that the terms of a Subcontract with a Registered Provider do not contain any terms which conflict with the terms of the Industry Standard Partnering Agreement; and
 - (iii) agrees that the Authority shall have no liability to the Contractor with respect to the use of the Industry Standard Partnering Agreement and shall indemnify the Authority on demand from and against all Losses suffered or incurred by the Authority arising out of or connected to the use by the Contractor of the Industry Standard Partnering Agreement.
- (e) The Contractor shall ensure that the terms of each relevant Subcontract contain the provisions required in Schedule 22 (Pensions).
- (f) Subject to Clause 4.3(g), the Contractor shall comply, ensure that each subcontractor including a Subcontractor complies, and ensure that the terms of each Subcontract, is compliant at all times with the Market Stewardship Principles and Good Industry Practice.
- (g) In relation to a subcontract including a Subcontract to which the Contractor is a party prior to the Amendment Date, the Contractor shall ensure that the terms of that subcontract complies with the Market Stewardship Principles and Good Industry Practice from the first date on which that subcontract can be amended (without cost to the Contractor), extended or renewed and the Contractor shall apply the Market Stewardship Principles and Good Industry Practice to that subcontract to the fullest extent possible prior to that date.

4.4 Authority's use of Subcontractors

Nothing in this Agreement shall prohibit or prevent any subcontractor employed by the Contractor (or any other contractor of services to the Authority) from being employed by the Authority at any establishments of the Authority.

4.5 Replacement of Subcontractors

The Contractor shall ensure that a Subcontractor ceases to provide the Services which are provided under a Subcontract within 40 Business Days after receiving written notice from the Authority requiring it to do so (provided that this shall only apply to a Subcontract entered into prior to the Amendment Date to the extent that the Subcontract has a right for the Contractor to do so under the terms of that Subcontract) and the Contractor shall ensure that it has the right to do so under the terms of each Subcontract entered into on or after the Amendment Date. The Authority shall only exercise its rights with respect to a Subcontractor under this Clause 4.5 when any of the circumstances set out in Clause 4.1(a)(i) to (iv) apply.

4.6 Contractor's use of Grant Agreements

The Contractor shall determine, in accordance with Good Industry Practice, if it is appropriate to provide a grant to a Third Party in consideration for that Third Party agreeing to comply with certain obligations (**Grant Agreement**). It shall consider a Grant Agreement as an alternative to entering into a Subcontract where that Third Party provides services that the Contractor reasonably considers will assist the Contractor in complying with Clause 3.2(d) and any Third Party who enters into a Grant Agreement shall not be a Subcontractor for the purposes of this Agreement.

4.7 Exclusions

- (a) Subject to Clause 4.7(b), other than Clause 4.1(c), Clause 4.3(b), Clause 4.3(c)(i), Clause 4.3(f) and Clause 4.3(g), this Clause 4 shall not apply to the subcontracting of the provision of equipment, software, services or facilities necessary for the general discharge of the Contractor's business.
- (b) The Contractor shall not subcontract the provision of any equipment, software, services or facilities required for the provision of the Services to any subcontractor in any of the circumstances specified in Clause 4.1(a)(i) to (vi).

5. CHANGE IN SERVICES

5.1 Elective Services

- (a) The Contractor shall provide to any or all of the Authority or a Commissioning Body (whether or not it operates in the same Contract Package Area as the Contractor) one or more Elective Services on the terms of this Agreement in accordance with this Clause 5.1.
- (b) Subject to Clauses 5.1(c) and (d), where the Authority requires an Elective Service, it shall request the Elective Service through the Change Protocol and specify in the relevant Change Notice whether it is the Authority or a Commissioning Body which requires the Elective Service and the date on which it or the relevant Commissioning Body wishes to start receiving that Elective Service. The Contractor shall provide the Elective Service to the Authority or the relevant Commissioning Body with effect from

the date specified in the Change Notice which shall be a reasonable period after the date of that Change Notice, on the terms of this Agreement.

- (c) The Contractor shall:
 - (i) not provide an Elective Service to a Commissioning Body without the Authority's prior written consent and written confirmation from the Authority that the relevant Commissioning Body has entered into a commissioning arrangement with the Authority;
 - (ii) cease to provide an Elective Service to a Commissioning Body as directed by the Authority; and
 - (iii) include details of all Elective Services provided to each Commissioning Body in each Annual Service Plan.
- (d) The parties agree that the price for an Elective Service shall be in accordance with the principles on which the existing Charges are calculated and, in particular, to the extent that for any element of an Elective Service there is an equivalent element in any of the existing Services, the price for that element of the Elective Service shall be based on the price for the equivalent element of the existing Services.
- (e) For the purposes of this Clause 5.1, "**Elective Services**" means service specified by the Authority which support and enhance the Services with respect to an Applicable Person.

5.2 Change Protocol

- (a) The parties shall follow the Change Protocol set out in Schedule 12 (Change Protocol).
- (b) Without prejudice to Clause 5.2(a), the Contractor shall not make any change to the way in which the Contractor provides the Services which would, either on its own or in combination with other changes that it makes:
 - (i) make any change to the Services Delivery Proposals;
 - (ii) increase the risk or reduce the operational controls available to the Contractor or the Authority in the provision or receipt, as the case may be, of the Services; or
 - (iii) in the Authority's reasonable opinion, increase the cost to the Authority or reduce any benefit to the Authority in receiving the Services,

without agreeing those changes with the Authority in accordance with the Change Protocol. All other changes not requiring the Authority's approval under the Change Protocol shall be notified to the Authority from time to time.

5.3 Changes to the Services Delivery Proposals

- (a) Where the Contractor wishes to make a Change to the Services Delivery Proposals that is designed to improve outcomes in relation to reoffending rates, that Change shall be subject to the Change Protocol but the Authority shall co-operate with the Contractor in agreeing that Change and shall not unreasonably withhold its consent to that Change, provided that the Change is not, in the reasonable opinion of the Authority, likely to:
 - (i) have an adverse effect on the delivery or performance of the Services;

- (ii) increase the likelihood of reoffending;
 - (iii) increase the risk of harm to the public; or
 - (iv) result in any Loss or increased cost to the Authority.
- (b) Where a party wishes to make a Change to the Services Delivery Proposals and that Change results in a costs saving to the Contractor:
- (i) where the Change was initiated by the Authority, the Authority shall be entitled to recover the full extent of those cost savings; and
 - (ii) where the Change was initiated by the Contractor, the Authority and the Contractor shall share the cost savings on an equal basis,

and, where applicable, those cost savings shall be recovered by the Authority as an adjustment to the Fee for Service (as defined in Schedule 11 (Payment Mechanism)).

5.4 Changes to Probation Instruction or a Prison Service Instruction

- (a) Where the Authority (i) issues a new Mandatory Probation Instruction or a Mandatory Prison Service Instruction or (ii) makes a material change to a Mandatory Probation Instruction or a Mandatory Prison Service Instruction and the Contractor incurs additional costs in complying with it in accordance with Clause 3.1(f), subject to Clause 42.10(b), it shall be entitled to recover those costs from the Authority in accordance with Clause 5.4(b).
- (b) Subject to Clause 5.4(a) and Clause 42.10(b), the Authority shall compensate the Contractor for the actual costs incurred by the Contractor in accordance with Clause 5.4(a) in excess of £10,000 (so that only the excess of that amount is recoverable) and within 20 Business Days after receipt of a written demand by the Contractor supported by reasonably detailed evidence in writing that the costs have in fact been incurred.
- (c) Where the Authority (i) withdraws a Mandatory Probation Instruction or a Mandatory Prison Service Instruction or (ii) makes a material change to a Mandatory Probation Instruction or a Mandatory Prison Service Instruction and the Contractor's costs in complying with it in accordance with Clause 3.1(f) are reduced, the Authority shall be entitled to recover an amount equal to the reduction in those costs from the Contractor in accordance with Clause 5.4(d). The Contractor shall provide to the Authority in writing within 20 Business Days after that withdrawal or change reasonably detailed evidence of the costs reduction or that its costs have not reduced or will not reduce.
- (d) The Contractor shall reimburse the Authority an amount equal to the reduction from which the Contractor benefits in accordance with Clause 5.4(c) in excess of £10,000 (so that only the excess of that amount is recoverable) and within 20 Business Days after receipt of a written demand by the Authority.
- (e) The relevant party shall issue invoices for the relevant amounts payable under this Clause 5.4 to the other party in accordance with paragraph 16 of Schedule 11 (Payment Mechanism).

6. PROVISION OF CONTINGENCY SERVICES

6.1 Agreement for Contingency Contract Package Areas

- (a) The Contractor shall, on written notice from the Authority, enter into discussions with the Authority with a view to entering into:
 - (i) a services agreement substantially in the same terms as this Agreement for the provision of services substantially similar to the Services from the date specified in that services agreement for a period not exceeding 18 months for one or more Contingency Contract Package Areas; and
 - (ii) one or more agreements for the transfer of the rights, title and interest of Assets (including any subcontracts that the Community Rehabilitation Company has entered into for the provision of services in that Contingency Contract Package Area) from the Community Rehabilitation Company for the relevant Contingency Contract Package Area to the Contractor.
- (b) During any discussions held in accordance with Clause 6.1, the parties shall work together in good faith to address any key concerns of the parties including inserting clauses within the proposed services agreement to ensure an appropriate transitional period, to include appropriate performance measures and to make any appropriate changes to the payment mechanism for that services agreement.

6.2 Co-operation

Where the Contract Package Area of the Contractor is a Contingency Contract Package Area for the purposes of an equivalent clause to Clause 6.1 in a services agreement substantially on the same terms as this Agreement for the provision of services substantially similar to the Services, the Contractor shall, in connection with the termination of this Agreement, co-operate fully with the transfer of responsibility for the Services (or any of them) to the Community Rehabilitation Company which is to assume responsibility for the provision of the Services in accordance with that equivalent clause and, for the purposes of this Clause 6.2, the term “co-operate” shall have the meaning given to it in Clause 35.3.

7. PERFORMANCE MEASURES

7.1 Performance Measures

- (a) Without limiting Clause 3.1(a), with effect from the Amendment Date, the Contractor shall meet or exceed the Performance Measures in its provision of the Services.
- (b) If, at any time after the Amendment Date, the Contractor fails to provide the Services:
 - (i) in accordance with the Performance Measures, without limiting the Authority's other rights and remedies including those set out in Schedule 9 (Performance Measures and Service Credits), the Contractor shall advise the Authority as soon as reasonably practicable of the failure and of the steps that the Contractor shall take to address the failure for discussion at the following Service Management Group;
 - (ii) to the Improvement Plan Trigger Level, the Authority may require the Contractor to produce an Improvement Plan in accordance with Schedule 9 (Performance Measures and Service Credits); and

- (iii) in accordance with the Performance Measures, the Contractor shall, at no additional cost to the Authority:
 - (A) if applicable, perform or re-perform those elements of the Services in relation to which there was a failure to perform as are necessary to be performed or re-performed (as the case may be) to ensure that the relevant Services are compliant with the relevant Performance Measures;
 - (B) to the extent practicable, rectify all direct operational consequences resulting from that failure to perform the Services in accordance with the relevant Performance Measures; and
 - (C) as soon as practicable, arrange all additional resources as are reasonably necessary to perform its obligations set out in this Agreement and to ensure that the failure does not recur.

7.2 Service Credits

- (a) If the Contractor fails to provide the Services in accordance with the Service Levels, without limiting the Authority's other rights and remedies, the Charges payable in relation to the Services shall be the Charges less an amount equal to the corresponding Service Credit (if any) as determined in accordance with Schedule 9 (Performance Measures and Service Credits).
- (b) The amount of any Service Credits payable by the Contractor under Clause 7.2(a) shall be calculated in accordance with Schedule 9 (Performance Measures and Service Credits). Service Credits will be included in the invoices (and, where applicable, recoverable) in accordance with Schedule 11 (Payment Mechanism).
- (c) The parties agree that Service Credits are a genuine pre-estimate of the minimum level of loss or damage that any of the Authority or an Authority Related Party is likely to suffer as a result of a failure by the Contractor to provide the Services in accordance with Clause 3.1(a). Any deduction made in accordance with Clause 7.2(a) shall not limit the Authority's other rights and remedies for the Contractor's failure to provide the Services in accordance with the Service Levels.
- (d) In calculating amounts paid or payable by the Contractor under Clause 18, all adjustments to Charges to reflect Service Credits shall be disregarded. The Service Credits shall not be treated as liabilities for the purpose of determining whether limitations on liability have been reached under Clause 18 as specified in Clause 18.8(b)(ii).

7.3 Changes to Performance Measures

- (a) The Authority shall be entitled, on giving not less than three months' prior written notice to the Contractor, to require any or all of:
 - (i) a change to the Service Credits applicable to each Service Level;
 - (ii) a change to the Performance Measures applicable to each Service; and
 - (iii) the introduction of new Performance Measures or Service Credits,

provided that the principal purpose of a change to the Performance Measures or Service Credits or a new Performance Measure or Service Credit is to reflect changing industry standards and the fitness for purpose of the Performance Measures or Service Credits. The parties agree that all other changes to the Performance Measures and Service Credits shall be made in accordance with the Change Protocol.

- (b) The Authority shall, no later than the date 12 months after the Amendment Date, commence a review of the Performance Measures and the Service Credits by reference to the data comprised in the Monthly Performance Reports prepared pursuant to Schedule 9 (Performance Measures and Service Credits) for the period of 12 months following the Amendment Date (**Review Date**) and consider, acting reasonably, the extent to which they should be changed pursuant to this Clause 7.3(b) to remain fit for purpose. The Authority shall complete its review and send a report of that review (detailing any required changes to the Performance Measures or Service Credits) to the Contractor within a period of nine months after the Review Date. Prior to its completion, the Authority shall send a draft of its report to the Contractor and provide the Contractor with a reasonable opportunity to make representations to the Authority on the content of the report. If the Authority wishes to make any change to the Performance Measures or the Service Credits following its review in accordance with this Clause 7.3(b), it shall exercise its rights pursuant to Clause 7.3(a).
- (c) If the Contractor incurs additional costs as a result of a change under this Clause 7.3, subject to Clause 42.10(b), it shall be entitled to recover those costs from the Authority in accordance with Clause 7.3(d) provided that it demonstrates to the reasonable satisfaction of the Authority that the change to the Performance Measures or Service Credits or the introduction of new Performance Measures or Service Credits was the direct cause of the additional costs incurred.
- (d) Subject to Clause 7.3(c) and Clause 42.10(b), the Authority shall compensate the Contractor for the actual costs incurred by the Contractor in accordance with Clause 7.3(c) in excess of £10,000 (so that only the excess of that amount is recoverable) and within 20 Business Days after receipt of a written demand by the Contractor supported by reasonably detailed evidence in writing that the costs have in fact been incurred.
- (e) If the Contractor's costs are reduced as a result of a change under this Clause 7.3, the Authority shall be entitled to recover an amount equal to the reduction in those costs from the Contractor in accordance with Clause 7.3(f). The Contractor shall provide to the Authority in writing within 20 Business Days after the change reasonably detailed evidence of the costs reduction or that its costs have not reduced or will not reduce.
- (f) The Contractor shall reimburse the Authority an amount equal to the reduction from which the Contractor benefits in accordance with Clause 7.3(e) in excess of £10,000 (so that only the excess of that amount is recoverable) and within 20 Business Days after receipt of a written demand by the Authority.
- (g) The relevant party shall issue invoices for the relevant amounts payable under this Clause 7.3 to the other party in accordance with paragraph 16 of Schedule 11 (Payment Mechanism).

8. ASSET REGISTER

8.1 Except as otherwise expressly provided in this Agreement, the Contractor shall be responsible for providing the facilities, personnel, equipment, software materials and other resources necessary to provide the Services.

8.2 The Contractor shall, at all times during the Contract Period, keep an asset register containing accurate and up to date details of:

- (a) the Assets and the ownership of them;
- (b) the net book value of the Assets;
- (c) the location of the Assets; and
- (d) the Subcontracts,

in each case, to the extent that they are used in the provision of the Services.

8.3 The Contractor shall provide the Authority with a copy of the asset register within five Business Days of a written request to do so.

9. STAKEHOLDER SATISFACTION

9.1 The Contractor shall, with respect to each Contract Year or otherwise as the Authority requests, undertake, or procure the undertaking of, a satisfaction survey (**Stakeholder Satisfaction Survey**), the purpose of which shall include:

- (a) assessing the level of satisfaction among stakeholders (as specified by the Authority) with the Services (including the way in which the Services are provided and meet their requirements); and
- (b) assisting in the preparation of the Service Report, the Annual Service Plan and the Continuous Improvement Report.

9.2 The Contractor shall ensure that the Contractor Personnel are available during business hours on Business Days at reasonable notice from the Authority to attend meetings of the stakeholders referred to in Clause 9.1(a) arranged by the Authority.

9.3 The Contractor shall undertake (or procure the undertaking of) a survey of Applicable Persons' engagement with the Services including as a minimum the requirements set out in Appendix 1 of Schedule 9 (Performance Measures and Service Credits). The Contractor shall carry out this survey in May of each Contract Year with respect to the period of six months ending 30th April and in November of each Contract Year with respect to the period of six months ending 31st October.

9.4 The Contractor shall comply at all times during the Contract Period with the Complaints Procedure.

10. PLANS AND REVIEWS

10.1 Annual Service Plan

- (a) The Contractor shall, for each Contract Year, prepare a plan which:

- (i) sets out its proposals for that Contract Year for the delivery of the Services including a plan for the interfaces in accordance with Clauses 3.11, 3.12, 3.13, 3.14 and 3.15 (**Annual Service Plan**); and
 - (ii) meets the requirement to publish an annual plan pursuant to the Authority's requirements under Section 8(5) of the OMA.
- (b) The Contractor shall send a copy of the Annual Service Plan to the Authority for its review 40 Business Days prior to the start of the Contract Year to which the Annual Service Plan relates. If, in the reasonable opinion of the Authority any part of the Annual Service Plan does not meet the terms and objectives of this Agreement, the matter shall be resolved in accordance with Clause 41.
- (c) With respect to each period of three calendar months in a Contract Year, the Contractor shall monitor its provision of the Services in accordance with this Agreement against the requirements of the Annual Service Plan and shall notify the Authority in writing:
- (i) within 20 Business Days after the end of that period, of any areas of the Annual Service Plan which it has not met and the steps taken to remedy the failure; and
 - (ii) without prejudice to its obligations under Clause 23, as soon as reasonably practicable after it comes to the Contractor's attention, of any event or circumstance affecting the performance of the Contractor's obligations under this Agreement in accordance with the Annual Service Plan.
- (d) If the Contractor notifies the Authority under Clause 10.1(c), the Authority can, without prejudice to its other rights and remedies, request a risk reduction meeting in accordance with Clause 23.3.

10.2 Service Report

- (a) The Contractor shall for each Contract Year prepare a report of the Contractor's performance in relation to the Services (a **Service Report**). The Contractor shall prepare additional Service Reports at the Authority's request and at the Authority's cost.
- (b) In the Service Report, the Contractor shall and, in each case, reflecting the strategic nature of the Services to the Authority:
- (i) illustrate how it has contributed to the requirements set out in Clause 3.2(d);
 - (ii) report on the Contractor's performance of its obligations under this Agreement and the extent to which it has met the Annual Service Plan for that Contract Year or other period as the Authority requests;
 - (iii) report on its overall performance in meeting the Services Output Specification, the Services Delivery Proposals and the Performance Measures and the amount of any Service Credits that have been payable;
 - (iv) provide an assessment of why Performance Measures failures (if any) have occurred including an analysis of its systems and resources which have caused or contributed to the failures, the remediation steps which it has taken to prevent the failures

reoccurring and evidence illustrating the extent to which those steps have been effective;

- (v) report on the reductions made by the Contractor to the re-offending rate and the re-offending frequency by its Allocated Persons including (A) the Actual Annual Binary Rate, each of the Actual Quarterly Binary Rates and the Actual Frequency Binary Rate for that Contract Year (all as defined in Schedule 11 (Payment Mechanism)) and (B) the information provided under paragraphs 7.11, 8.12 and 9.8 of Schedule 11 (Payment Mechanism) for that Contract Year;
- (vi) report on the number of Serious Further Offence Reviews, identifying the key findings from those reviews, and progress on actions taken to address deficiencies identified by those reviews to reduce the risk of Serious Further Offences, as required by the Authority;
- (vii) report on any delays or failures not relating to the Performance Measures such as failures in the Contractor's systems, equipment or networks;
- (viii) provide details of any loss or corruption of Project Data that have occurred including an analysis of its systems and resources (or that of any Contractor Related Party) which have caused or contributed to the loss or corruption, the remediation steps which it has taken to prevent the loss or corruption reoccurring and evidence illustrating the extent to which those steps have been effective;
- (ix) report on how it has complied with its obligations in Clauses 3.6, 3.7 and 3.8;
- (x) illustrate how it has complied with its obligations contained in Clauses 3.11, 3.12, 3.13, 3.14 and 3.15 in relation to its interfaces set out in those Clauses;
- (xi) report on how it has complied with Clause 3.2(g);
- (xii) report on how it has complied with Clause 3.17;
- (xiii) report on how it has complied with the Market Stewardship Principles, Good Industry Practice and the effectiveness of its arrangements with each Subcontractor and provide an audit of the compliance by each of the Contractor and each Subcontractor of the terms of the relevant Subcontract;
- (xiv) report on its contribution to both industry and Government led forums as required by Clause 3.12;
- (xv) provide evidence that each of the Contractor and each of the Subcontractors has adopted a continuous improvement approach to the provision of the Services pursuant to Clause 10.5 and produce the Continuous Improvement Report for the relevant Contract Review;
- (xvi) provide details of any changes it has made to the Services Delivery Proposals and any cost savings that have resulted from that change;
- (xvii) report on the training and competence of Contractor Personnel and the personnel of each Subcontractor in relation to their work with offenders and any staffing issues which may have, or may be likely to have, a significant impact on the delivery of the Services in accordance with this Agreement;

- (xviii) provide details of each Stakeholder Satisfaction Survey and Offender Survey referred to in Clause 9;
- (xix) report on the trial implementations of the Business Continuity Management System in accordance with Clause 19.3(c);
- (xx) report on the numbers and characteristics of offenders who died whilst under supervision together with details and outcomes of its internal reviews of those deaths; and
- (xxi) report on any other areas of this Agreement, the Contractor's performance and the performance of any Subcontractor that the Authority wishes to discuss with the Contractor, and which the Authority has notified to the Contractor in advance of the Contract Review.

10.3 Continuous Improvement Report

- (a) The Contractor shall adopt a continuous improvement approach to the provision of the Services, and shall work with the Authority to identify opportunities for improving the performance, efficiency and effectiveness of the Services.
- (b) The Contractor shall for each Contract Year produce a report (**Continuous Improvement Report**) which shall identify all activities undertaken by the Contractor to improve the effectiveness of the Services in the previous Contract Year (other than the First Contract Year) and all further opportunities for improvement of this Agreement in the following Contract Year through prospective changes in the Services and/or behaviour or usage changes by either party and shall include as a minimum:
 - (i) a trend analysis of performance against performance and availability standards including the requirements of Schedule 9 (Performance Measures and Service Credits) from the Amendment Date to the date of the Continuous Improvement Report to identify areas of performance that can be improved, steps taken by the Contractor to address performance issues and, where the performance trend analysis identifies a deteriorating trend in performance, repeat failures, or significant failures that impact the Authority, an action plan to identify how these failures are to be rectified;
 - (ii) a summary of each Stakeholder Satisfaction Survey that has been carried out by the date of the Continuous Improvement Report;
 - (iii) a report identifying trends and an action plan to address any areas of Authority dissatisfaction; and
 - (iv) a financial summary identifying cost savings which can be generated through investment or changes to the Services and how the Contractor will reinvest those savings in the provision of the Services and improvements in the provision of the Services.

10.4 Contract Reviews

- (a) Within 40 Business Days after the end of a Contract Year or at any other interval as the Authority may determine, the Authority and the Contractor shall meet to review the Contractor's performance of this Agreement in that Contract Year or other period as the

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Authority requests and the Contractor's plans for the following Contract Year (**Contract Review**). The parties agree that the Contract Review will focus on the strategic nature of the Services to the Authority and the importance to the Authority of assessing the performance of its strategic suppliers on a regular basis so that performance issues can be monitored and addressed as they arise. The Authority may provide a report on the Authority's current and future requirements in relation to the Services as part of a Contract Review.

- (b) Subject to Clause 10.4(c), the Contractor shall, for the purposes of Clause 10.4(a), send to the Authority not less than 40 Business Days prior to the end of the Contract Year (or other period referred to in Clause 10.4(a)) a copy of each of:
 - (i) the Service Report completed for the twelve month period ending at the end of the ninth month of that Contract Year (or completed for any other period as the Authority determines);
 - (ii) the Annual Service Plan for the following Contract Year in accordance with Clause 10.1(b);
 - (iii) the Continuous Improvement Report for the following Contract Year (or other period as the Authority determines); and
 - (iv) any other written reports that the Authority may request.
- (c) The Contractor shall:
 - (i) not be required to provide an Annual Service Plan, a Service Report and a Continuous Improvement Report for the First Contract Year in accordance with Clause 10.1 and Clause 10.4(b) respectively;
 - (ii) include, in the Annual Service Plan for the Second Contract Year, the period of the First Contract Year and shall comply with Clause 10.1 with respect to the First Contract Year as though it were part of the Second Contract Year;
 - (iii) include all relevant milestones for the completion of the Annual Service Plan for the First Contract Year and the Second Contract Year in the Transition Plan;
 - (iv) notwithstanding Clause 10.1(b), provide to the Authority the complete Annual Service Plan for the First Contract Year and the Second Contract Year no later than 20 Business Days after the Amendment Date;
 - (v) include, in the Service Report for the Second Contract Year, the period of the First Contract Year and shall report on the First Contract Year in accordance with Clause 10.2 as though it were part of the Second Contract Year; and
 - (vi) include, in the Continuous Improvement Report for the Second Contract Year, the period of the First Contract Year and shall report on the First Contract Year in accordance with Clause 10.3 as though it were part of the Second Contract Year.
- (d) If, at any time following a Contract Review, the Authority, acting reasonably, has serious concerns about:

- (i) the Contractor's continuing ability to meet its obligations under this Agreement, in particular, the obligations set out in Clause 3, based on, amongst other things, the content of the Service Report and provision of information at that Contract Review; or
- (ii) public protection resulting from the Contractor's continuing ability to manage the risk of Serious Harm posed by Applicable Persons,

(**Serious Concerns**), the Authority shall be entitled to initiate the processes out in Clause 10.4(e) (**Remedial Plan Process**).

(e) The Remedial Plan Process shall be as follows:

- (i) The Authority shall notify the Contractor that it has Serious Concerns and requires the Contractor to provide a plan to specify how the Serious Concerns will be addressed (**Remedial Plan**). The notice shall specify the Serious Concerns in outline and contain sufficient detail so that it is reasonably clear to the Contractor the matters it has to remedy.
- (ii) The Contractor shall provide a draft Remedial Plan to the Authority within 20 Business Days (or any other period agreed by the parties in writing) after the date of the notice referred to in Clause 10.4(e)(i) even if the Contractor disagrees with the Serious Concerns or disputes that it is responsible for the matters which are the subject of the Serious Concerns.
- (iii) If:
 - (A) the Contractor does not provide a Remedial Plan; or
 - (B) the Authority considers that the draft Remedial Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not address adequately the Serious Concerns; or
 - (C) the parties cannot agree the Remedial Plan,

the Authority may either agree a further time period for the development and agreement of the Remedial Plan or escalate the matter using the Escalation Process. If a Remedial Plan is not submitted by the Contractor or cannot be agreed between the parties after the further time period referred to in this Clause 10.4(e)(iii), the Authority may escalate the matter using the Escalation Process.

- (iv) If, despite the measures taken under Clause 10.4(e)(iii), a Remedial Plan is not submitted by the Contractor or cannot be agreed between the parties, in each case, within 10 Business Days after the date of completion of the relevant Escalation Process, the Authority may end the Remedial Plan Process at the end of the escalation period set out in the Escalation Process and appoint, and refer the matter to, the Expert who shall consider the nature of the Serious Concerns in accordance with Clause 10.4(f) and make a decision in accordance with Clause 10.4(g).
- (v) If a Remedial Plan is agreed between the parties but the Contractor does not meet the requirements of the Remedial Plan in accordance with the terms of the Remedial Plan to the Authority's reasonable satisfaction, the Authority may escalate the matter using the Escalation Process. If the matter is not resolved within 10 Business Days

after the date of completion of the Escalation Process, the Authority may appoint, and refer the matter to, the Expert who shall consider the nature of the Serious Concerns in accordance with Clause 10.4(f) and make a decision in accordance with Clause 10.4(g).

- (vi) For the purposes of this Clause 10.4, the “**Expert**” shall mean a former chief executive or chairman of a Probation Trust, a former member of the senior civil service of that part of the Authority providing the National Probation Service, a former chief executive or senior officer of a Community Rehabilitation Company or a former Probation Inspector with experience of providing probation or rehabilitative services, in each case who is no longer involved in the provision of probation or rehabilitation services or, if the Authority is unable to identify such a person, a person to be agreed in writing with the Contractor.
- (f) The parties shall provide for, or instruct, the Expert:
 - (i) within five Business Days after his appointment in relation to particular Serious Concerns under Clause 10.4(e)(iv) or (v), to require the parties to submit in writing their respective arguments in respect of the Serious Concerns;
 - (ii) in his absolute discretion, to consider whether a hearing is necessary to resolve the matter;
 - (iii) to act impartially and, where appropriate, take the initiative in ascertaining the facts and the law;
 - (iv) to have the power to request any or all assistance, information or documentation from the parties or other relevant persons;
 - (v) to allow the parties to make representations to him in writing;
 - (vi) to have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement;
 - (vii) to be deemed not to be an arbitrator but to render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reached his determination;
 - (viii) not, save as permitted by Clause 36.4, to disclose to any person any information, data or documentation provided to him by the parties in connection with the Serious Concerns under consideration and all information, data or documentation shall remain the property of the party disclosing or delivering it and all copies shall be returned to that party on completion of the Expert's work;
 - (ix) to provide to both parties his written decision on the matter, within 20 Business Days after his receipt, in his absolute discretion, of all relevant information; and
 - (x) unless the parties otherwise agree in writing, to give reasons for his decision.
- (g) The Expert shall determine whether the Authority has valid grounds for its opinion that Serious Concerns exist. If he determines that valid grounds do or still exist, the Authority shall be entitled to exercise one or more of its rights or remedies under this

Agreement including Clause 33. The Expert's decision shall be final and binding on both parties who shall immediately give effect to the decision.

- (h) The Expert's costs of any reference shall be borne as the Expert shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.

10.5 Independent Review of Continuous Improvement

- (a) Where the Contractor fails to provide the Continuous Improvement Report, or to provide one in accordance with Good Industry Practice, or the Authority has reasonable ground for questioning the accuracy of the analysis undertaken by the Contractor, the Authority shall notify the Contractor of the failure or of the concerns it has. Unless the Contractor rectifies the failure or the Authority's concerns within 15 Business Days after the date of the notification, the Authority may appoint an independent technical advisor to carry out an independent review and produce an independent Continuous Improvement Report. The Authority shall instruct the independent technical advisor not, save as permitted by Clause 36.4, to disclose to any person any information, data or documentation provided to him by the parties in connection with this Clause 10.5.
- (b) The Contractor shall cooperate fully with the independent technical advisor and provide access to (i) systems, copies of reports and any other relevant documents and data and (ii) all relevant Contractor Personnel, to enable the independent technical advisor to complete its report.
- (c) The Contractor shall comply with all recommendations suggested by the independent technical advisor in the Continuous Improvement Report which it produces in accordance with Clause 10.5(a), in each case to the extent that they are in accordance with Good Industry Practice and required by the Authority, as notified to the Contractor in writing.
- (d) The Contractor shall pay for all of the reasonable and proper costs of the independent technical advisor.

11. EQUALITY AND HUMAN RIGHTS REQUIREMENTS

11.1 The Contractor shall not, and shall procure that each Contractor Related Party shall not:

- (a) discriminate directly or indirectly, or by way of victimisation or harassment, against any person on Prohibited Employment Grounds; or
- (b) contravene Sections 29(6), 39, 108, 109, 111, 112 and 149 of the Equality Act 2010; or
- (c) unlawfully discriminate within the meaning and scope of any Applicable Law relating to discrimination in employment.

11.2 The Contractor shall, and shall procure that each Contractor Related Party shall, for the purposes of ensuring compliance with this Clause 11 in relation to personnel engaged in the provision of the Services observe as far as possible the provisions of:

- (a) the Equality and Human Rights Commission Code of Practice on Employment; and

- (b) any other relevant code of practice introduced by a commission or other body set up by UK Parliament to promote, monitor and enforce Equalities Legislation,

including those provisions recommending the adoption, implementation and monitoring of an equal opportunities policy.

11.3 The Contractor shall, at the end of each Contract Year, provide a report to the Authority demonstrating its compliance with the obligations set out in this Clause 11 during that Contract Year and its proposals in respect of equality and diversity for the following Contract Year.

11.4 The Contractor shall, and shall procure that each Contractor Related Party shall, in performing its obligations under this Agreement, comply (to the extent permitted by Applicable Law) with the provisions of Sections 149 and 150 of the Equality Act 2010 on the basis that it is a person who exercises public functions within the meaning of Section 149(2) of the Equality Act 2010.

11.5 The Contractor shall, and shall procure that each Contractor Related Party shall, notify the Authority's Relationship Manager in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Contractor or any Contractor Related Party under the Equalities Legislation.

11.6 Where any investigation is undertaken by a person or body empowered to conduct an investigation and/or proceedings are instituted, in connection with any matter relating to the Contractor's performance of its obligations under this Agreement being in contravention of the Equalities Legislation, the Contractor shall, and shall procure that each Contractor Related Party shall, at its own cost and expense:

- (a) provide any information requested in the timescale allotted by the investigation or proceedings;
- (b) attend any meetings as required and permit any of its staff to attend;
- (c) promptly allow access to and investigation of any documents or data deemed to be relevant;
- (d) allow itself and any of its staff to appear as a witness in any ensuing proceedings; and
- (e) co-operate fully and promptly in every way required by the person or body conducting the investigation or proceedings during the course of that investigation or proceedings.

11.7 The Contractor shall, and shall procure that each Contractor Related Party shall, in performing its obligations under this Agreement, act in a manner which is compatible with the European Convention on Human Rights on the basis that, for the purposes of this Agreement, it is a person who is exercising functions of a public nature under section 6(3)(b) of the Human Rights Act 1998.

12. INFORMATION ASSURANCE

The Contractor shall comply with its obligations set out in Schedule 18 (Information Assurance).

13. ICT

The Contractor shall comply with its obligations set out in Schedule 19 (ICT).

14. MANAGEMENT INFORMATION

The Contractor shall comply with its obligations set out in Schedule 20 (Management Information).

15. AUTHORITY RESPONSIBILITY

15.1 Contractor's responsibility

- (a) The Contractor shall be deemed to have:
 - (i) satisfied itself as to the Assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and
 - (ii) gathered all information necessary to perform its obligations under this Agreement and other obligations assumed.
- (b) The Authority shall not be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any failure to make available to the Contractor any materials, documents, data, drawings, plans or other information relating to this Agreement.

15.2 No relief

Subject to Clause 15.3 and without limiting Clause 39.1(j), the Contractor shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority or any Authority Related Party on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority or any Authority Related Party), is incorrect or insufficient, and it shall make its own enquiries as to the accuracy and adequacy of that information.

15.3 Fraudulent statements

Nothing in this Clause 15 shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently prior to the Amendment Date.

15.4 Exercise of rights

In exercising its rights and duties under this Agreement, the Authority shall act reasonably and proportionally.

16. CONTRACTOR WARRANTIES AND UNDERTAKINGS

16.1 Contractor warranties

The Contractor represents and warrants to the Authority:

- (a) at the Amendment Date and at all times during the Contract Period, that it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to enter into and to exercise its rights and perform its obligations under this Agreement;
- (b) at the Amendment Date, that all information in the Response remains true, accurate and not misleading in all respects;

- (c) at the Amendment Date, that no proceedings or other steps have been taken, or will be taken, and not discharged (nor, to the best of its knowledge, are threatened) for the winding up or dissolution of the Guarantor, the Contractor or a Material Subcontractor, or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Assets or revenue of the Contractor, the Guarantor or a Material Subcontractor; and
- (d) at the Amendment Date and at all times during the Contract Period, that it owns, or has obtained, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Agreement or performance by a Subcontractor under a Material Subcontract, as the case may be.

16.2 Contractor undertakings

The Contractor undertakes to the Authority that, for the Contract Period, it will, and (other than in respect of Clauses 16.2(f), (g), (h), (i) and (k)) will ensure (if appropriate) that each of the Subcontractors under a Material Subcontract will:

- (a) not reorganise or change the nature or scope of its activities in a way that may have a material and detrimental effect on the provision of the Services in accordance with this Agreement or the services under the relevant Material Subcontract, as the case may be;
- (b) not, without the prior written consent of the Authority, (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any material part of its business, employees or Assets which would materially and adversely affect the ability of the Contractor to perform its obligations under this Agreement or the Subcontractor to perform its obligations under the relevant Material Subcontract, as the case may be;
- (c) not undertake the performance of its obligations under this Agreement (or the relevant Subcontract) for the provision of the Services (or services under the relevant Subcontract) otherwise than through itself or a Subcontractor or pursuant to a Grant Agreement in accordance with Clause 4.6;
- (d) ensure that all information contained in the Services Delivery Proposals remains, and will remain true, accurate and not misleading in all respects;
- (e) not be, and is not, subject to any contractual obligations, compliance with which is likely to have a material adverse effect on the Contractor's ability to perform its obligations under this Agreement or the Subcontractor's ability to perform its obligations under the relevant Material Subcontract, as the case may be;
- (f) not propose or permit the voluntary winding up or dissolution of itself or any subsidiary of it (from time to time);
- (g) not, without the prior written consent of the Authority, apply for the appointment of an administrator over its Assets;
- (h) not, without the prior written consent of the Authority, permit the creation, issue, purchase, reduction, buy-back or redemption of shares in its capital or the capital of any subsidiary of it (from time to time) or otherwise permit the reorganisation of its share or loan capital, except for the redemption of the special share in accordance with article 40 of the Contractor's articles of association;

- (i) not, without the prior written consent of the Authority, vary any voting rights attached to any shares in it;
- (j) provide the Services, charge for the Services, carry out its business and conduct its affairs according to Good Industry Practice applicable from time to time to companies registered in the United Kingdom and in a responsible manner and shall observe principles of good social responsibility; and
- (k) not, without the prior written consent of the Authority, change its corporate or trading name.

16.3 Litigation

- (a) The Contractor agrees that, subject to Clause 3.18(f) and Clause 38.10(f):
 - (i) it shall notify the Authority in writing as soon as reasonably practicable of any Litigation of which the Contractor has notice including details of the issue of proceedings;
 - (ii) the Authority shall have a right (in its absolute discretion) to notify the Contractor at any time that it has (in its opinion) an interest in the Litigation and, if the Authority makes that notification, the Contractor shall notify the Authority promptly of all material developments in the Litigation;
 - (iii) the Authority shall be entitled to assume exclusive conduct of the Litigation (which shall include the exclusive right to conduct any proceedings or action, negotiate the settlement of the Litigation and conduct all discussions and dispute resolution efforts in connection with the Litigation) if it has concerns, acting reasonably, about the nature of the matter giving rise to the Litigation;
 - (iv) once the Authority has assumed conduct of the Litigation in accordance with Clause 16.3(a)(ii), the Contractor shall not, and shall procure that no Contractor Related Party shall, admit any liability or agree to any settlement or compromise of the Litigation without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed;
 - (v) the Contractor shall, and shall procure that each Contractor Related Party shall, at the Authority's request, give the Authority all reasonable assistance in connection with the conduct of the Litigation including access to Contractor Personnel and the provision of documents; and
 - (vi) unless or until the Authority assumes exclusive conduct of the Litigation in accordance with Clause 16.3(a)(ii), the Contractor shall take all proper action to deal with the Litigation to minimise the extent of any amount payable under that Litigation and, if the Authority notifies the Contractor that it has an interest in the Litigation in accordance with Clause 16.3(a)(ii), the Contractor shall not agree any settlement of the Litigation without the prior written consent of the Authority.
- (b) For the purposes of this Clause 16.3 and subject to Clause 16.3(d), **Litigation** means (i) a claim, including a claim for judicial review, made against a Contractor Related Party (other than a claim made by the Authority or an Authority Related Party or between the Contractor and any of its Subcontractors) or (ii) an inquest, in each case relating to or which impacts the provision or receipt of the Services.

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- (c) If the Authority assumes exclusive conduct of the Litigation in accordance with Clause 16.3(a)(iii), it shall keep the Contractor informed as to the progress of that Litigation and the Contractor may make reasonable representations to the Authority with regard to the appropriate action to take in relation to that Litigation.
- (d) The Authority shall not be entitled to assume conduct of Litigation where the relevant claim is for Losses which are the subject of a Required Insurance and Clause 16.3(a)(ii), (iii), (iv) and (v) shall not apply to such Litigation.
- (e) Without prejudice to the Authority's rights under this Clause 16.3, the Contractor shall, and shall procure that each Contractor Related Party shall, at the Authority's request, co-operate with the Authority in any request or application by the Authority to become a party to the Litigation, whether pursuant to CPR 19.4 or otherwise, that co-operation to include the provision of a witness statement in support of any such request or application.
- (f) The Contractor warrants, represents and undertakes that no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its Assets, or the Assets of any of its Affiliates, which will or might have a material adverse effect on the Contractor's ability to perform its obligations under this Agreement.

16.4 Accounts

- (a) The Contractor represents, warrants and undertakes that, in the three years prior to the Amendment Date (or such other period since the date of incorporation if shorter than 3 years), each of its Affiliates:
 - (i) has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (iii) has not done or omitted to do anything which could have a material adverse effect on its Assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.
- (b) The Contractor shall ensure that it maintains books of accounts and financial records in such a way that the revenues and costs of the Services can be separately identified.

16.5 Tax

- (a) The Contractor shall comply, and shall ensure that each of its Affiliates complies, with all of its obligations as to declaration and payment of Tax and shall provide all information to the Authority following a written request which demonstrates to the Authority how it, or the relevant Affiliate, has complied with those obligations.
- (b) The Contractor represents, warrants and undertakes:
 - (i) that neither it, nor any of its Affiliates, has been a party to, nor has been otherwise involved in, nor will be involved in, any transaction, scheme or arrangement

designed wholly or mainly, or containing steps having no commercial purposes and designed wholly or mainly, for the purpose of avoiding, deferring or reducing a liability to Tax;

- (ii) none of its Tax affairs nor those of its Affiliates has given rise to a criminal conviction for Tax related offences which is unspent, or to a penalty for civil fraud or evasion; and/or
- (iii) none of its Tax returns nor those of its Affiliates submitted on or after 1 October 2012 has been found to be incorrect as a result of:
 - (A) HM Revenue and Customs successfully challenging it under Part 5 of the Finance Act 2013 (the General Anti-Abuse Rule) or the "Halifax" principle; or
 - (B) the failure of an avoidance scheme which the Contractor or any of its Affiliates was involved in and which was, or should have been, notified to HM Revenue and Customs under any statutory provision relating to the disclosure of tax avoidance schemes.

16.6 Real Property

At all times during the Contract Period, the Contractor:

- (a) shall not enter into or agree to enter into any lease or other right of occupation in connection with the delivery of the Services which does not allow for that lease or right of occupation to be assigned to the Authority or a third party on termination of this Agreement on reasonable terms (such as ensuring that any landlord's consent which may be required for an assignment must not be unreasonably withheld or delayed); and
- (b) shall ensure that the Authority is kept regularly informed at all times of the Contractor's proposals for the use of property used to deliver the Services during the Contract Period, including both those premises of the Authority that are leased or licensed to the Contractor pursuant to a Lease and Licence Agreement and other premises used to deliver the Services during the Contract Period, and shall provide updated proposals to the Authority in its Annual Service Plan.

16.7 Prohibited Acts

- (a) The Contractor represents, warrants and undertakes that:
 - (i) in entering into this Agreement it has not committed a Prohibited Act; and
 - (ii) for so long as this Agreement remains in full force, it shall not, and will ensure that each Contractor Related Party shall not, commit a Prohibited Act.
- (b) The Contractor undertakes to the Authority that it shall, during the Contract Period, have in place adequate procedures (as referred to in Section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor from bribing any person with the intention of obtaining or retaining business for the Contractor or with the intention of obtaining or retaining an advantage in the conduct of business for the Contractor.

16.8 Reputational Damage

- (a) The Contractor shall provide the Services, and perform all of its other obligations arising under or in connection with this Agreement, having regard to the standing and reputation of the Authority and, in particular, shall not do anything (by act or omission) that would, or would be reasonably likely:
 - (i) to damage the reputation of the Authority;
 - (ii) to bring the Authority into disrepute;
 - (iii) to attract adverse publicity to the Authority; or
 - (iv) to harm the confidence of the public in the Authority.
- (b) The Contractor shall, when providing the Services, pay due regard to the need for persons in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.

16.9 Good Faith

The Contractor shall, at all times in the performance of its obligations under this Agreement, act in good faith to enable the Authority to derive full benefit of this Agreement.

16.10 Guarantee

The Contractor shall ensure that, during the Contract Period, there is no Material Adverse Financial Change such that, in the reasonable opinion of the Authority, the Guarantor is, or is likely to be, unable to perform its obligations under the Guarantee.

17. INDEMNITIES AND GUARANTEES

17.1 Guarantees

- (a) The Contractor shall, during the Contract Period, ensure that the Guarantee remains in full force and effect.
- (b) If at any time during the Contract Period:
 - (i) there is a material adverse change in the financial position of the Guarantor evidenced by a material adverse change to any of the Guarantor Criteria with respect to the Guarantor of which the Bidder notified the Authority as part of its Response (**Material Adverse Financial Change**), the Contractor shall promptly notify the Authority of the Material Adverse Financial Change as soon as it becomes aware of the Material Adverse Financial Change; and
 - (ii) the Contractor notifies the Authority of a Material Adverse Financial Change or the Authority, acting reasonably, suspects a Material Adverse Financial Change has occurred, the Contractor shall provide the Authority with all information in writing that the Authority reasonably requires to assess the extent of that Material Adverse Financial Change.

17.2 Indemnities

- (a) The Contractor shall, subject to Clause 17.2(b), be responsible for, and shall release and indemnify the Authority and each Authority Related Party on demand from and against, all liability for:
 - (i) death or personal injury;
 - (ii) loss of or damage to property; and
 - (iii) third party actions, claims, demands, costs, charges and expenses brought against the Authority or any Authority Related Party (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, the performance or non-performance by the Contractor of its obligations under this Agreement or its presence on the Authority Premises in carrying out its obligations under this Agreement.

- (b) The Contractor shall, subject to Clause 17.2(c), be responsible for, and shall release and indemnify the Authority, and any Authority Related Party, on demand from and against all liability for Losses arising from third party actions, claims or demands (as described in Clause 17.2(a)(iii)) brought against the Authority or any Authority Related Party for breach of statutory duty which may arise out of, or in consequence of, a breach by the Contractor of its obligations under this Agreement to the extent there are no other remedies available to the Authority under this Agreement.
- (c) The Contractor shall not be responsible, or be obliged to indemnify the Authority, for:
 - (i) any of the matters referred to in Clause 17.2(a) or 17.2(b) which arise as a direct result of the Contractor acting on the written instruction of the Authority;
 - (ii) any injury, loss, damage, cost and expense caused by the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent that the negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Agreement) or by the breach by the Authority of its obligations under this Agreement; or
 - (iii) any claim brought against the Authority that the entering into one or more provisions of this Agreement is unlawful with respect to, or ultra vires, the Authority.
- (d) An indemnity by either party under any provision of this Agreement shall be without limitation to any indemnity by that party under any other provision of this Agreement.

18. LIABILITY

18.1 Limitations of liability

Nothing in this Agreement excludes or limits either party's liability:

- (a) for fraud, theft or any similar dishonesty offence or conduct which would amount to such an offence or conduct;
- (b) for wilful misconduct or wilful abandonment;

- (c) for death or personal injury caused by its negligence or that of its employees or agents and, in the case of the Contractor, any subcontractor or its employees or agents;
- (d) arising as a result of a breach of Clauses 36.2, 36.3 or 36.4;
- (e) under Clause 3.12(e), Clause 3.16(h), Clause 4.3(d)(iii), Clause 17.2, Clause 36.2(g) or Clause 38.10; or
- (f) to the extent that any Applicable Law precludes or prohibits any exclusion or limitation of liability.

For the avoidance of doubt, any amounts payable by either party to the other party in respect of any of the above shall not count towards the financial caps on liability set out in Clauses 18.2 and 18.3.

18.2 Aggregate cap across Contract Period

Subject to Clause 18.1, the aggregate liability of each party to the other party under or in connection with this Agreement, whether arising in tort (including negligence), for breach of contract or otherwise (save for any claim for restitution) shall be limited to the Aggregate Liability Cap.

18.3 Annual cap

Subject to Clauses 18.1 and 18.2, the aggregate liability of each party to the other party under or in connection with this Agreement, whether arising in tort (including negligence), for breach of contract or otherwise (save for any claim for restitution) shall, for Losses suffered or incurred in any Contract Year, be limited to the Annual Liability Cap.

18.4 Indirect and consequential loss

- (a) Subject to Clauses 18.1 and 18.5, neither party shall be liable to the other party for any indirect or consequential or special loss or damage, whether arising in tort (including negligence), breach of contract or otherwise, whether or not that loss was foreseeable.
- (b) Subject to Clause 33.10, the Authority shall not be liable to the Contractor for any loss of profit whether arising in tort (including negligence), breach of contract or otherwise, whether or not that loss was foreseeable.

18.5 Recoverable Losses

Clause 18.4 shall not limit or exclude the Authority's right to recover any of the following Losses incurred by an Authority Related Party:

- (a) additional or administrative costs and expenses arising from a Default by the Contractor (including all costs and expenses incurred as a result of the Contractor losing the keys of an Authority Premises or by compromising the security of the keys or locks of an Authority Premises);
- (b) expenditure or charges incurred as a result of, or rendered unnecessary as a result of, a Default by the Contractor;
- (c) additional costs to maintain the Services until the Expiry Date arising from dealing with the consequences of a Default by the Contractor, including the reasonable and proper cost of implementing and performing workarounds whilst a New Contractor is being procured or the Services are being assumed by an Authority Related Party;

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- (d) the cost of procuring Replacement Services to the extent that they are not included in Clauses 18.5(a), (b) or (c);
- (e) the costs and expenses of restoring and rectifying lost or corrupt Project Data arising from a Default by the Contractor;
- (f) advertising costs reasonably incurred to limit damage caused to the reputation of an Authority Related Party and goodwill arising from a Default by the Contractor;
- (g) the costs and expenses of conducting an audit, investigation, evaluation (including a financial evaluation) or request for information in connection with a Default by the Contractor; and
- (h) amounts equal to fines, penalties and other sanctions imposed by any court, tribunal, regulator or other governmental authority including any associated costs and expenses as a result of a Default by the Contractor,

and the Contractor assumes responsibility for Losses falling within these categories.

18.6 The Contractor agrees that no act or omission by the Authority (including the granting of relief pursuant to Clause 19.1(e)), in the proper exercise of its rights under or pursuant to this Agreement (acting reasonably), shall be taken into account when calculating the Actual Annual Binary Rate, the Actual Quarterly Binary Rate or the Actual Re-Offending Frequency for the purposes of Schedule 11 (Payment Mechanism) and the Contractor shall not be able to claim that any failure by the Contractor to receive an amount payable under Paragraphs 7, 8 or 9 of Schedule 11 (Payment Mechanism) was caused by or was as a result of that act or omission.

18.7 Subject to Clauses 18.1(a), 18.1(b) and 18.1(c), a party shall not be liable to the other party for any Losses suffered or incurred by that other party arising out of or in connection with the provision or receipt of the Services prior to the Amendment Date.

18.8 Miscellaneous

- (a) Nothing in this Clause 18 shall operate to exclude or limit either party's obligations to make payments or pay costs or expenses which do not arise from a Default in accordance with this Agreement, including the Authority's obligation to pay the Charges or the Contractor's obligation to make any refund of Charges (including any payments with respect to pension contributions in accordance with Schedule 22 (Pensions)).
- (b) For the purpose of determining whether the limits on the liability of the Contractor set out in Clauses 18.2 and 18.3 have been exceeded:
 - (i) Insurable Losses; and
 - (ii) any payment of Service Credits made by the Contractor to the Authority pursuant to this Agreement,shall be disregarded.
- (c) Nothing in this Clause 18 shall in any way reduce or affect each party's general duty at law (if any) to mitigate loss suffered by it.

- (d) The parties agree that they have negotiated this Clause 18 and that it represents a fair and equitable position.
- (e) For the purposes of this Clause 18:
 - (i) Annual Liability Cap means [REDACTED];
 - (ii) Aggregate Liability Cap means [REDACTED]; and
 - (iii) **Insurable Losses** means any Losses which:
 - (A) are or would be insured by or on behalf of the Contractor under the Required Insurances, irrespective of whether the Contractor actually took out and maintained or procured the maintenance of those Required Insurances with respect to those Losses in accordance with Clause 26; or
 - (B) are in fact insured Losses by or on behalf of the Contractor relating to the performance of its obligations under this Agreement at the time that the relevant Losses are suffered or incurred.

19. FORCE MAJEURE AND OTHER RELIEF EVENTS

19.1 Relief Events

- (a) Subject to Clauses 19.1(c) and (d), the Contractor shall not be in breach of this Agreement to the extent that the breach is a result of a Relief Event.
- (b) In this Agreement, **Relief Event** means a failure of the Authority to carry out a Dependency in accordance with this Agreement.
- (c) The Contractor shall not be entitled to claim that a breach is a result of a Relief Event pursuant to Clause 19.1(a) unless it:
 - (i) as soon as practicable, and in any event within 15 Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay, a breach of an obligation under this Agreement and/or the Contractor to incur costs, gives to the Authority a notice in writing of its claim for an extension of time or relief from its obligations under this Agreement;
 - (ii) within 10 Business Days after receipt by the Authority of the notice referred to in Clause 19.1(c)(i), gives full details of the Relief Event and relief claimed; and
 - (iii) demonstrates to the reasonable satisfaction of the Authority the extent that:
 - (A) the Relief Event was the cause of the cost incurred and/or the Contractor's failure to comply with its obligations under this Agreement; and
 - (B) the cost incurred and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the Contractor, acting in accordance with Good Industry Practice.
- (d) Following service of a notice by the Contractor pursuant to Clause 19.1(c), the Contractor shall promptly supply to the Authority all further information relating to the claim which:

- (i) is received by the Contractor; or
 - (ii) is reasonably requested by the Authority.
- (e) If the Contractor has complied with its obligations under Clause 19.1(c) and 19.1(d) the Authority shall give the Contractor relief from its obligations under this Agreement, which is reasonable for the relevant Relief Event.
- (f) If information is provided after the dates referred to in Clause 19.1(c) above, the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under this Agreement in respect of the period for which the information is delayed.
- (g) If (i) the parties cannot agree the extent of any delay incurred or relief from the Contractor's obligations under this Agreement; or (ii) the Authority disagrees that a Relief Event has occurred (or as to its consequences) or that the Contractor is entitled to any relief under this Clause 19.1, the parties shall resolve the matter in accordance with Clause 41.
- (h) The provisions of Clause 19.1(e) are the Contractor's exclusive remedy in respect of any Relief Event (including in relation to any Losses suffered or incurred by the Contractor as a result of or in connection with a Relief Event).

19.2 Force Majeure Events

- (a) Subject to Clauses 18.1(a) to 18.1(c) and 19.2(c), neither party shall be liable to the other party for any delay or non-performance of its obligations under this Agreement arising directly from any of the following cause or causes beyond its reasonable control which are unable reasonably to be planned for or avoided: act of God, act of terrorism, war, civil war, armed conflict, fire, earthquake, flood, embargo, riot, sabotage or strike (other than of its own employees), in each case which directly causes either party (**Affected Party**) to be unable to comply with all or a material part of its obligations under this Agreement (**Force Majeure Event**), provided that the Affected Party:
- (i) promptly notifies the other party in writing of the cause of the delay or non-performance, the likely duration of the delay or non-performance, evidence of its effect on its obligations and details of the action it proposes to take to mitigate the effect of the delay or non-performance; and
 - (ii) takes all steps in accordance with Good Industry Practice to overcome or minimise the effect of the delay or non-performance on the other party.
- (b) The performance of the Affected Party's obligations, to the extent affected by the Force Majeure Event, shall be suspended during the period that the Force Majeure Event persists.
- (c) The occurrence of any Force Majeure Event shall not relieve the Contractor of its obligations under the Business Continuity Management System.
- (d) If a Force Majeure Event occurs and the Contractor has not restored full and uninterrupted Services within 24 hours after it has occurred, the Authority shall not be required to pay and the Contractor shall not be entitled to charge, the Charges set out in Schedule 11 (Payment Mechanism) with respect to those Services affected by the Force

Majeure Event for the duration of the period commencing on the date the Force Majeure Event occurred and ending on the date that those Services are resumed in full and on an uninterrupted basis in accordance with this Agreement.

- (e) The Authority may instruct an alternative supplier to provide the services affected by the Force Majeure to ensure continuity of service and the Contractor shall co-operate with the alternative supplier to ensure the smooth and seamless provision of those services to the Authority and each Authority Related Party.
- (f) The Affected Party shall notify the other party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following that notification, this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

19.3 Business Continuity

- (a) Each party shall comply with its obligations set out in Schedule 13 (Business Continuity).
- (b) Within 60 Business Days after the Amendment Date the Contractor shall provide the Authority with full details of its completed Business Continuity Management System that shall be (i) based on the summary set out in Schedule 13 (Business Continuity) and (ii) in accordance with Good Industry Practice and the parties shall amend Schedule 13 (Business Continuity) to reflect the completed Business Continuity Management System pursuant to Clause 42.8.
- (c) The Contractor shall maintain the Business Continuity Management System in accordance with Good Industry Practice and, where applicable, ISO 22301 and perform trial implementations of it on a regular basis (and not less than once in each Contract Year) and shall provide full details of the results of those trial implementations to the Authority as part of the Service Report for that Contract Year. The Contractor and the Authority shall take all precautionary actions which are specified in the Business Continuity Management System. Any proposed changes to the Business Continuity Management System shall be subject to the Change Protocol, provided that any amendments to the Business Continuity Management System may only be made if the revised Business Continuity Management System shall provide at least the same level of business continuity as the then current Business Continuity Management System or are a necessary consequence of another agreed Change.
- (d) Without prejudice to Clause 19.3(c), the Contractor shall review, test and update the Business Continuity Management System:
 - (i) following a material change in the Contractor's business operations;
 - (ii) following a material change to the provision of the Services; and
 - (iii) where reasonably requested to do so by the Authority.
- (e) Each party shall notify the other party in writing as soon as reasonably practicable if it believes that there has been, or is likely to be, a material disruption to business continuity that requires the implementation of the Business Continuity Management System. The parties shall then immediately implement the Business Continuity

Management System and perform their obligations set out in the Business Continuity Management System.

20. CONTRACTOR PERSONNEL

20.1 Management of Contractor Personnel

- (a) The Contractor shall be responsible for the management of all Contractor Personnel.
- (b) The Contractor shall use its best endeavours to ensure, and, with effect from the date six months after the Amendment Date, shall ensure, that all Contractor Personnel and all personnel employed or utilised by a Subcontractor:
 - (i) are competent and efficient;
 - (ii) have the right to live and work in the United Kingdom;
 - (iii) have appropriate and relevant qualifications, training and experience to the extent required for their role or employment, pursuant to the “Core Skills in Probation Practice” and the guidelines published from time to time under Section 10 of the OMA and paragraphs 2.2.28-2.2.32 and 2.11 of Schedule 8 (Services Delivery Proposals);
 - (iv) to the extent required for their role or employment, are properly trained and fully conversant with the technologies used by the Contractor in its provision of the Services including nDelius, OASys and Prison NOMIS;
 - (v) are made fully aware of, and attend scheduled training with respect to, practices and procedures that are relevant to their respective roles and that are notified to the Contractor from time to time by the Authority;
 - (vi) receive adequate training on equality and diversity in the workplace;
 - (vii) are not knowingly engaged with nor members of, a group or organisation considered to have racist philosophy, principles, aims or policies and would be subject to disciplinary proceedings and/or dismissal as a result of such engagement or membership; and
 - (viii) receive welfare and counselling services in connection with their provision of the Services including post incident support.
- (c) The Contractor shall employ or utilise, and shall procure that each Subcontractor employs or utilises, at all times a sufficient number of Contractor Personnel to act as officers of providers of probation services (within the meaning of Section 9(1) of the OMA) to fulfil its obligations under this Agreement.
- (d) The Contractor:
 - (i) is, subject to Clause 20.1(f), authorised by the Authority to authorise Contractor Personnel or the personnel of a Subcontractor, to act as an officer of the Contractor for the provision of probation services for the purposes of Section 9(2)(b) of the OMA;

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- (ii) agrees that the Authority can require that an authorisation which the Contractor has given to an individual referred to in Clause 20.1(d)(i) is withdrawn if the relevant individual is in material breach of the Contractor's staff code of conduct and shall withdraw that authorisation with immediate effect as soon as reasonably possible after receipt of a notice in writing to the Contractor from the Authority requiring the withdrawal;
 - (iii) shall not authorise an individual who has had his authorisation withdrawn in accordance with Clause 20.1(d)(ii); and
 - (iv) shall ensure that the Responsible Officer, Supervising Officer and Supervisor has at all times it holds the position of Responsible Officer, Supervising Officer or Supervisor, as the case may be, an authorisation from the Contractor to act as an officer of the Contractor in accordance with the provisions of Clause 20.1(a).
- (e) The Authority shall give the Contractor reasons for the requirement to withdraw an authorisation referred to in Clause 20.1(d)(ii) and ensure that they are reasonable.
- (f) Without prejudice to Clause 20.1(d), the Contractor shall not be entitled to authorise an individual pursuant to Clause 20.1(d)(i) unless that individual has the necessary skills to manage the delivery of the sentence of the court and to identify, respond to and manage changes in an offender's behaviour that indicate his risk of Serious Harm is increasing. The Contractor shall comply with the procedures set out in paragraphs 2.11.8-2.11.14 of Schedule 8 (Services Delivery Proposals) to ensure compliance by the Contractor with this Clause 20.1(f).
- (g) If directed in writing by the Authority, the Contractor shall, within 20 Business Days after that direction, provide details of the qualifications, training and experience of each person authorised by the Contractor pursuant to Clause 20.1(d)(i) in connection with this Agreement and shall provide a copy of any certificate or qualification of competence that has been issued in respect of that person. The Contractor shall, if required by the Authority, provide Contractor Personnel with a copy of the Cabinet Office Joint Statement on access to skills, trade unions and advice in government contracting.
- (h) The Authority shall have the right, by written notice to the Contractor, to require the removal of any member of the Contractor Personnel with an executive function within the Contractor from the provision of the Services who, in the reasonable opinion of the Authority, is in any way disruptive to the provision or receipt of the Services or would, or would be likely to, damage the reputation of an Authority Related Party in the manner described in Clause 16.8. The exercise of this right shall not (i) relieve the Contractor of its obligations under this Agreement or (ii) entitle the Authority to require the removal of that member of the Contractor Personnel as a director of the Contractor. The Authority shall co-operate with the Contractor in providing any information the Contractor reasonably requires in relation to the notice from the Authority so as to enable the Contractor to investigate and take any disciplinary action with respect to the relevant member of the Contractor Personnel as it deems necessary.
- (i) The Contractor shall, no less than once in every Contract Year, request and consider feedback from the Authority on the performance of the Contractor Personnel. The Contractor shall ensure that its performance review and appraisal process applicable to the Contractor Personnel, including its process for awarding bonuses, takes account of that feedback.

20.2 Personnel Placements

- (a) The Contractor and the Authority shall discuss and agree in good faith the extent to which they can offer placement opportunities to the personnel of the other party.
- (b) Subject to Clause 20.2(a), the Contractor shall facilitate the exchange and assessment of the Contractor Personnel and the Authority Personnel for the purposes of professional training and development including (i) the provision of offender management placements for the Authority Personnel engaged in the provision of the National Probation Service to enable them to qualify as probation officers and (ii) the opportunity for the Contractor Personnel to gain experience of the provision of the National Probation Service.

20.3 Vetting

- (a) The Contractor shall, and shall ensure that each of its Subcontractors shall, at all times during the Contract Period:
 - (i) comply with the Mandatory Prison Service Instruction and the Mandatory Probation Instruction relating to vetting in accordance with Clause 3.1(f); and
 - (ii) maintain its security vetting status as required by the relevant Mandatory Prison Service Instruction and the relevant Mandatory Probation Instruction.
- (b) Subject to Clause 20.3(a), the Contractor shall, and shall ensure that each of its Subcontractors shall, ensure a risk-based assessment is made of the suitability of each Contractor Personnel for the duties he or it will be carrying out.

20.4 Security and conduct on Authority Premises

- (a) Whilst on any Authority Premises, the Contractor shall ensure that all Contractor Personnel and all personnel of a Subcontractor shall comply with all security measures implemented by the Authority (or in the case of a private prison, the measures applied by that prison) in respect of persons attending that Authority Premises to the extent those security measures have been notified to or ought reasonably to have been known by the Contractor, the Contractor Personnel and/or the personnel of a Subcontractor. The Authority shall provide copies of its written security procedures where they exist in general, or for specific Authority Premises, to the Contractor on written request.
- (b) The Contractor agrees that any Contractor Personnel or personnel of a Subcontractor who cannot produce a pass issued by the Authority when required to do so by any appropriate personnel or agent of the Authority, or who contravene any conditions on the basis of which a pass is issued, may be refused admission to the Authority Premises or be required to leave the Authority Premises.
- (c) The Contractor shall return any pass within four Business Days after the Authority's Relationship Manager requires it to be returned or if the person for whom the pass was issued ceases to be involved in the performance of the Services. The Contractor shall return all passes on or before the Termination Date.
- (d) Whilst on the Authority Premises, the Contractor shall ensure that all Contractor Personnel and personnel of a Subcontractor shall comply with all rules, regulations and other requirements as may be in force in respect of the conduct of persons attending and

working at the Authority Premises, to the extent that those rules, regulations and other requirements have been notified to or ought reasonably to have been known by the Contractor, the Contractor Personnel, or the personnel of any Subcontractor.

- (e) The Authority shall have the right to refuse vehicles entry to the Authority Premises if the Contractor or its drivers fail to comply with any of the provisions of this Clause 20.4.
- (f) Without prejudice to any other rights and remedies the Authority may have under this Agreement, any breach of Applicable Law shall be sufficient grounds for the Authority to serve a Warning Notice on the Contractor.
- (g) Without prejudice to Clause 3.12(d), to the extent required to provide the Resettlement Services, the Authority gives the Contractor the right (in common with the Authority and all others authorised by the Authority) to occupy and access such parts of the Resettlement Prisons as the Authority may designate from time to time and subject to such terms and such reasonable rules as the Authority may inform the Contractor. For the avoidance of doubt, the Contractor agrees and confirms that any access to or occupation of Authority Premises (including any prisons) granted by the Authority to Contractor Personnel shall not create any specific right, licence or tenancy to the space that the Contractor Personnel has been given access to or occupation of, and that it shall not make or allege any claim to a right, licence or tenancy at any time.

20.5 Prevention of Corruption

The Contractor shall ensure that:

- (a) the Contractor Personnel are trained in accordance with Good Industry Practice on how to avoid and detect corrupt practices;
- (b) the Contractor Personnel are under an obligation to report any corrupt practices that they are aware of to the Contractor; and
- (c) any corrupt practices are reported to the Authority and dealt with appropriately which may include pursuing a prosecution or disciplinary action.

20.6 Health and Safety

- (a) The Contractor agrees that it has been supplied with the Authority's Health and Safety Policies relating to occupational health, safety and fire. The Contractor agrees to comply with those Health and Safety Policies and any additional rules relating to the Authority Premises whilst on the Authority Premises which the Authority notifies to the Contractor from time to time relating to occupational health, safety and fire.
- (b) The Contractor shall appoint one or more Contractor Personnel to be responsible for ensuring that the Contractor complies with Clause 24 and this Clause 20.6 with respect to occupational health and, safety and fire.
- (c) The Contractor shall use reasonable endeavours to identify health and safety hazards and notify the Authority in writing as soon as possible of any of those hazards of which it becomes aware in the performance of this Agreement and at or in relation to the Authority Premises or maintenance of them.

- (d) The Contractor shall ensure that the Contractor Personnel shall comply with the requirements of the Green Book with respect to all Contractor Personnel including those aspects which relate to Contractor Personnel working in a custody environment. The Contractor shall maintain records and share information with the Authority in relation to risk assessment and progress of immunisation programme against the relevant diseases. For the purposes of this Clause 20.6, the Green Book means the Department of Health Green Book – Immunisation against Infectious Disease 2006 as updated from time to time online at <https://www.gov.uk/government/collections/immunisation-against-infectious-disease-the-green-book>.

20.7 Industrial Relations

The Contractor shall promptly inform and keep informed the Authority in writing of any industrial relations issues or other matters relating to the Contractor Personnel which may adversely affect the performance of this Agreement.

20.8 Costs

The Contractor shall pay its own costs of any notice, instruction or decision of the Authority under this Clause 20.

21. KEY PERSONNEL

21.1 Retention of Key Personnel

The Contractor shall ensure that each of the Key Personnel (each a **Key Person**) devotes substantially his whole time to the provision of the Services and performance of the Contractor's other obligations under this Agreement or as otherwise agreed between the Authority and the Contractor in writing.

21.2 Replacement of Key Personnel

- (a) The Contractor shall use all reasonable endeavours to ensure that the role of each Key Person is promptly filled and that any replacement will be equally or more competent and experienced as the Key Person he is replacing and fully competent to carry out the tasks assigned to the Key Person whom he is replacing. Without limiting the foregoing, the Contractor shall ensure that the role of each Key Person being replaced is fully covered by a suitable, appropriately qualified and experienced temporary replacement during any period when the role is vacant. The Contractor shall ensure that a suitable temporary replacement for each Key Person is identified in the Business Continuity Management System at all times.
- (b) Before assigning a replacement Key Person in accordance with Clause 21.2(a), the Contractor shall:
- (i) comply with Clause 20.3 in respect of the replacement Key Person;
 - (ii) provide the Authority with a curriculum vitae and any other information about the replacement Key Person as reasonably requested by the Authority; and
 - (iii) introduce the replacement Key Person to the Authority and provide the Authority with an opportunity to interview the replacement Key Person.

- (c) The Authority shall notify the Contractor within three Business Days after being introduced to that replacement Key Person if it reasonably objects to the appointment of that replacement Key Person as a member of the Key Personnel, together with the reasons for its objection, and the Contractor shall ensure that a new replacement Key Person is introduced to the Authority within 20 Business Days (or any other period if agreed in writing by the Authority before the expiry of that 20 Business Day period) after receipt of that notice.
- (d) Any replacement Key Person shall be included in the list of Key Personnel in Schedule 5 (Key Personnel) and the parties shall amend that Schedule pursuant to Clause 42.8. All costs associated with the removal or replacement of any Key Person shall be borne by the Contractor.

22. PENSIONS

The parties shall comply with their respective obligations set out in Schedule 22 (Pensions).

23. GOVERNANCE

23.1 Relationship Managers

- (a) Each party shall comply with its obligations set out in Schedule 14 (Governance). Without limiting the foregoing, each party shall, on the Amendment Date, appoint, or confirm the appointment of, the Relationship Manager and appropriate qualified representatives to the Relationship Management Group set out in Schedule 14 (Governance). Each party shall notify the other in writing promptly in the event of any change to these appointments.
- (b) Each party shall ensure that the Relationship Manager and the Relationship Management Group members appointed by it shall perform the activities and responsibilities assigned to them in, and in accordance with, Schedule 14 (Governance).
- (c) The Contractor agrees that the Authority shall exercise its rights under this Agreement through the Relationship Manager it appoints in accordance with Clause 23.1(a) and the Contractor shall not accept the authority of any other person for the purposes of this Agreement unless it receives notice in writing from the Authority setting out the scope and duration of that authority.

23.2 Notification of events affecting the Contractor's performance

- (a) Without prejudice to the Authority's other rights or remedies, the Contractor shall notify the Authority in writing, as soon as reasonably practicable after it comes to the Contractor's attention, of any event or circumstance affecting the performance of the Contractor's obligations under this Agreement which has or is reasonably likely to have a material adverse impact on the Authority or any Authority Related Party or the provision of the Services, in whole or in part, including any relevant:
 - (i) delay or failure of performance of the Services;
 - (ii) delay or failure of performance under, or termination of, any Subcontract;
 - (iii) threat of or planned industrial action, including any strikes or lock-outs;

- (iv) interruption or unavailability of power supplies or telecommunications networks;
 - (v) failure of the Contractor System or any equipment; or
 - (vi) loss or corruption of any Project Data.
- (b) Each party shall notify the other party in writing as soon as it becomes aware of any matter which could materially affect the performance of the Services or the cost of providing the Services.

23.3 Risk-reduction meeting

- (a) If the Contractor notifies the Authority under Clause 23.2, the Authority can request the Contractor to attend, and the Contractor shall attend, a risk-reduction meeting. At that meeting, the Contractor shall:
- (i) make and consider proposals as to how the event or circumstance can be avoided or reduced;
 - (ii) seek solutions that will bring advantage to all those who will be affected;
 - (iii) decide on the actions to be taken and who, in accordance with this Agreement, will take them; and
 - (iv) decide whether any risks have been avoided or reduced.
- (b) Subject to Clause 23.3(c), the Contractor shall carry out the actions agreed by the parties that it shall take in accordance with Clause 23.3(a)(iii) and within the time periods agreed by the parties for those actions to be completed.
- (c) If the risk-reduction meeting does not arise from or in connection with a Default by the Contractor, any Changes to be made in accordance with Clause 23.3 shall be made in accordance with the Change Protocol.

24. COMPLIANCE WITH AND CHANGE IN LAW

24.1 General

The Contractor shall, at all times during the Contract Period, comply with, and take all steps necessary to ensure that the Services are performed so as to comply with all Legislation, Directions and any applicable judgment of a relevant court of law and all Changes in Law (together **Applicable Law**).

24.2 Changes in Law

- (a) Subject to paragraph 24.2 (f), if a Change in Law occurs or is shortly to occur, either party may give notice in writing to the other party to express an opinion on its likely effects, giving details of its opinion of:
- (i) any necessary change in the Services;
 - (ii) whether any changes are required to the terms of this Agreement to deal with the Change in Law;

- (iii) whether relief from compliance with obligations is required, including the obligation of the Contractor to meet the Performance Measures during the implementation of the Change in Law;
- (iv) any loss of revenue that will result from the Change in Law; and
- (v) any costs that are required or no longer required as a result of the Change in Law taking effect during the Contract Period,

in each case giving in full detail the procedure for implementing any change in the Services.

- (b) If the Contractor's costs in complying with the Applicable Law are increased as a result of a Change in Law, subject to Clause 42.10(b), the Authority shall compensate the Contractor for the actual costs incurred by the Contractor in excess of £10,000 (so that only the excess of that amount is recoverable) and within 20 Business Days after receipt of a written demand by the Contractor supported by reasonably detailed evidence in writing that the costs have in fact been incurred.
- (c) If the Contractor's costs in complying with Applicable Law are reduced as a result of a Change in Law, the Authority shall be entitled to recover an amount equal to the reduction in those costs from the Contractor in accordance with Clause 24.2(d). The Contractor shall provide to the Authority in writing within 20 Business Days after that Change in Law reasonably detailed evidence in writing of the costs reduction or that its costs have not reduced or will not reduce.
- (d) The Contractor shall reimburse the Authority an amount equal to the reduction from which the Contractor benefits in accordance with Clause 24.2(c) in excess of £10,000 (so that only the excess of that amount is recoverable) and within 20 Business Days after receipt of a written demand by the Authority.
- (e) The relevant party shall issue invoices for the relevant amounts payable under this Clause 24.2 to the other party in accordance with paragraph 16 of Schedule 11 (Payment Mechanism).
- (f) The Contractor shall not be relieved of its obligations to provide the Services or perform its other obligations under this Agreement nor be entitled to compensation for its increased costs or an increase in the Charges as a result of a Change in Law where the Change in Law is of a general legislative nature (including one relating to tax, levy, impost duty or other charge).
- (g) The parties shall agree a Change in Law Change and any compensation or reimbursement payable under this Clause 24.2 by means of compensation or reimbursement for increased or reduced costs or an adjustment to or any reduction in the Charges, in accordance with the Change Protocol.

24.3 Meaning of Change in Law

- (a) For the purposes of this Agreement, "**Change in Law**" means the coming into force after the date of this Agreement of:
 - (i) Legislation other than Legislation which, at the date of this Agreement:
 - (A) has received Royal Assent but has not been commenced; or

- (B) subject to Clause 24.3(c), has been published;
 - (ii) any Directions; or
 - (iii) any applicable judgment of a relevant court of law which creates or changes a binding precedent.
- (b) The Contractor agrees that the coming into force of the Offender Rehabilitation Act 2014 shall not be a Change in Law for the purposes of this Agreement.
- (c) For the purposes of Clause 24.3(a)(i)(B) and subject to Clause 24.2(d), the parties agree that proposed Legislation which comes into force after the date of this Agreement which is different from that which was published on or before the date of this Agreement and where those differences require the Contractor to incur additional costs which it would not have had to incur had the relevant proposed Legislation come into force in the form published before the date of this Agreement, the coming into force of that proposed Legislation shall be a Change in Law for the purposes of this Agreement.
- (d) The Contractor shall provide to the Authority as part of the process set out in the Change Protocol, reasonably detailed evidence in writing of the additional costs that it will have to incur as a direct result of the coming into force of the proposed Legislation.
- (e) For the purposes of Clause 24.3(a)(i)(B), published means published:
- (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union.

24.4 Changes in VAT

The Authority shall pay to the Contractor from time to time all sums equal to any Irrecoverable VAT incurred by the Contractor but only to the extent that it arises as a result of a Change in Law (which for the purposes of this Clause 24.4 shall include a change in the VAT rate) and in accordance with, and subject to the provisions of, Clause 24.2. The Contractor shall include in the evidence it is required to provide under Clause 24.2.(b) written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this Clause 24.4, **Irrecoverable VAT** means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in performing the Services or any of the obligations or provisions under this Agreement (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Contractor is not entitled to repayment or credit from HMRC in respect of such input VAT.

25. CHANGE IN OWNERSHIP

25.1 Ownership Information

- (a) The Contractor represents and warrants to the Authority that, at the Amendment Date, the legal and beneficial ownership of the Contractor and the Guarantor is as set out in Schedule 2 (Ownership and Corporate Structure of the Contractor and Guarantor) and

that no arrangements are in place that result or may result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares in the Contractor or the Guarantor.

- (b) Without prejudice to Clause 25.2:
 - (i) subject to Applicable Law, the Contractor shall inform the Authority, if it becomes aware, of any proposed Change of Ownership prior to its occurrence, or, if it does not have prior information, as soon as reasonably practicable (and, in any event, within 10 Business Days) after any Change of Ownership occurring, and shall provide, with this information, details of the new ownership structure (legal and beneficial) and of the purchase price paid; and
 - (ii) the Authority may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, require the Contractor to confirm, as soon as reasonably practicable and in any event within 10 Business Days after receipt of the Authority's request for details, whether any Change of Ownership has occurred together with the supplementary information specified in Clause 25.1(b)(i).
- (c) For the purposes of Clauses 25.1(b)(i) and (ii), with respect to the Guarantor, Change of Ownership shall mean a Change of Ownership that would result, or has resulted, in any person acquiring, whether by a series of transactions over a period of time or not, an Interest in shares in the Guarantor which (taken together with shares in the Guarantor in which persons Acting in Concert with him are Interested) carry 30 per cent. or more of the voting rights of the Guarantor. For the purposes of this Clause 25.1(c):
 - (i) **Acting in Concert** has the meaning given to it in the City Code on Takeovers and Mergers; and
 - (ii) **Interest** has the meaning given to 'Interests in securities' in the City Code on Takeovers and Mergers.
- (d) The Contractor's obligations under Clause 25.1(b) shall, except where a legal transfer of shares has occurred, be limited to the extent of the Contractor's awareness having made all reasonable enquiries.

25.2 Transfer of Interests: Flexibility and Restrictions

- (a) No Change of Ownership may occur during the Contract Period without the prior written consent of the Authority which shall not be unreasonably withheld or delayed.
- (b) Any Change of Ownership arising as a consequence of:
 - (i) any change in legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000); or
 - (ii) any transfer of shares in the Contractor by the Guarantor and/or an Affiliate of the Guarantor to the Guarantor and/or an Affiliate of the Guarantor,

shall be disregarded for the purpose of Clause 25.2(a) but Clause 25.1 shall apply to all those Changes of Ownership.

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- (c) Where, during the Contract Period, the holder of any shares in the Contractor is an Affiliate of the Guarantor and that holder ceases to be an Affiliate of the Guarantor, it shall be a breach of this Clause 25.2 if the shares held by that holder are not, within 20 Business Days after that holder ceasing to be an Affiliate of the Guarantor transferred to the Guarantor, or an Affiliate of the Guarantor.

26. INSURANCE

26.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Agreement, the Contractor shall, for the periods specified in Schedule 16 (Insurance) take out and maintain or procure the maintenance of the insurances described in Schedule 16 (Insurance) and any other insurances as may be required by Applicable Law (together the Required Insurances). The Contractor shall ensure that the Required Insurances are in full force and effect in each case no later than the commencement of the period of insurance specified in Schedule 16 (Insurance).

26.2 Without prejudice to the express requirements of Schedule 16 (Insurance), the cover provided under the Required Insurances shall be of the type and scope and shall be on terms no less favourable than those generally available to a prudent contractor in the United Kingdom insurance market from time to time in respect of the relevant risks insured.

26.3 The cover provided under the Required Insurances shall not contain any limitations, exclusions or restrictive conditions other than those provided for in Schedule 16 (Insurance) or otherwise imposed by insurers as a matter of insurance market practice for the class of insurance in question in the United Kingdom insurance market from time to time.

26.4 The Contractor shall:

- (a) take out and maintain the Required Insurances with insurers who are of good financial standing and of good repute in the United Kingdom insurance market; and
- (b) where specified in Schedule 16 (Insurance), ensure that the relevant policy of insurance shall contain an 'indemnity to principals' or additional insured clause under which the Authority shall be indemnified by the insurer in respect of claims made against the Authority arising from death, bodily injury or third party property damage as a result of the provision of the Services under this Agreement.

26.5 Without limiting the other provisions of this Agreement, the Contractor shall:

- (a) promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Required Insurances;
- (b) in the event that the Authority receives a claim relating to the Services or this Agreement, co-operate with the Authority and assist it in dealing with claims including providing information and documentation in a timely manner; and
- (c) promptly notify the insurers of any material increase in any risk insured under any insurances of which the Contractor is or becomes aware.

26.6 The Contractor shall not (and the Contractor shall ensure that none of its Subcontractors of any tier shall) take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

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26.7 The Authority may elect (but shall not be obliged) to purchase any insurance which the Contractor is required to maintain pursuant to this Agreement but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection with that purchase as a debt due from the Contractor.

26.8 The Contractor shall provide to the Authority:

- (a) evidence of insurance in a form satisfactory to the Authority (acting reasonably) on request of all Required Insurances (together with any other information reasonably requested by the Authority relating to such Required Insurances) and the Authority shall be entitled to inspect them during ordinary business hours; and
- (b) on the Amendment Date and within 15 Business Days after the renewal of any Required Insurances, evidence in a form satisfactory to the Authority (acting reasonably) that the premiums payable under all Required Insurances have been paid and that the Required Insurances are in full force and effect in accordance with the requirements of this Clause 26 and Schedule 16 (Insurance).

The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this Clause 26.8(b) shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory, in either case, for the purposes of this Agreement.

26.9 Where the minimum limit of indemnity specified in Schedule 16 (Insurance) in relation to any of the insurances is specified as being "in the aggregate":

- (a) if and to the extent that the level of cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Contractor shall ensure that the cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; and
- (b) if the Contractor is or has reason to believe that it will be unable to ensure that cover is reinstated to maintain at all times the minimum limit of indemnity specified it shall submit to the Authority immediately full details of the policy concerned and shall submit immediately its proposed solution for maintaining the minimum limit of indemnity specified.

26.10 The Contractor shall notify the Authority at least five Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.

26.11 Except where the Authority is the claimant party, the Contractor shall give the Authority notice within 20 Business Days after any insurance claim in excess of one hundred thousand pounds (£100,000) relating to the provision of Services or this Agreement on any of the Required Insurances or which, but for the application of the applicable policy excess or deductible, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

26.12 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.

26.13 Where any Required Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor

shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Agreement or otherwise.

27. AUTHORITY ACCESS RIGHTS

27.1 Access – General

- (a) Where the Authority reasonably believes that it needs to take action in connection with the Services:
 - (i) because there is, or is likely to be, a breach by the Contractor of any of its obligations under this Agreement, or a Subcontractor under a Material Subcontract, which materially and adversely affects the performance of the Services;
 - (ii) because a serious risk exists to the health or safety of persons or property or to the environment;
 - (iii) to discharge a statutory duty or to comply with a direction of a Relevant Authority; and/or
 - (iv) because an Emergency has arisen,

the Authority shall be entitled, without prejudice to its other rights and remedies, to take action in accordance with this Clause 27.

- (b) If Clause 27.1(a) applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:
 - (i) the action it wishes to take whether with respect to any or all of the Contractor, a Subcontractor or an Allocated Person;
 - (ii) the reason for the action;
 - (iii) the date it wishes to start the action;
 - (iv) the expected time period which it believes will be necessary for the action (which, for the avoidance of doubt, can be an indefinite period); and
 - (v) to the extent practicable, the effect on the Contractor or the relevant Subcontractor, as the case may be, and its obligation to provide the Services during the period the action is being taken.
- (c) For the purposes of Clause 27.1(b), the action which the Authority wishes to take may include access to any or all items and personnel specified in Schedule 15 (Audit).
- (d) Following service of the notice pursuant to Clause 27.1(b), the Authority shall take the action as notified under Clause 27.1(b) and any consequential additional action as it reasonably believes is necessary (together, **Required Action**) and the Contractor shall give all reasonable assistance to the Authority before it takes, and while it is taking, the Required Action including providing the Authority with all necessary training to use the Contractor System for the purposes of taking the Required Action and facilitating access for the Authority to the Allocated Persons if requested by the Authority. The Authority shall provide the Contractor with notice of completion of the Required Action

and shall use reasonable endeavours to provide advance notice, as is reasonably practicable, of its anticipated completion.

- (e) Where the Required Action has been taken otherwise than as a result of a Default by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice. For the avoidance of doubt, if the Authority exercises its right to take the Required Action in accordance with this Clause 27, the employees of the Contractor will not transfer to the Authority (by operation of the Employment Regulations, a scheme pursuant to any Applicable Law or otherwise) and shall remain employed by the Contractor at all times while the Authority is taking the Required Action and afterwards.

27.2 Access Without Contractor Default

- (a) If the Required Action is taken under Clause 27.1 in circumstances where the Contractor is not in Default under or in connection with this Agreement, then for so long as and to the extent that the Required Action is taken, and the Contractor is prevented from providing any part of the Services:
 - (i) the Contractor shall be relieved from its obligations to provide that part of the Services (and its obligation to pay Service Credits); and
 - (ii) subject to Clause 27.2(b), the Authority shall continue to pay the Charges for the Services affected by the Required Action.
- (b) The Authority shall not be required to pay the Charges in accordance with Clause 27.2(a)(ii) unless the Contractor provides all reasonable assistance to the Authority while it is taking the Required Action. The Contractor shall also be required to provide additional assistance to the Authority if the Authority requests it and, subject to Clause 42.10(b), the Authority shall pay the Contractor's cost of providing that assistance. The Contractor shall issue invoices for the relevant amounts payable under this Clause 27.2(b) to the Authority in accordance with paragraph 16 of Schedule 11 (Payment Mechanism).

27.3 Access on Contractor Default

If the Required Action is taken under Clause 27.1 in circumstances where the Contractor is in Default under or in connection with this Agreement, then, without prejudice to the Authority's other rights and remedies, for so long as and to the extent that the Required Action is taken and the Contractor is prevented from providing any part of the Services:

- (a) the Contractor shall be relieved from its obligations to provide that part of the Services (and its obligation to pay Service Credits); and
- (b) the Authority shall continue to pay the Charges, less an amount equal to all the Authority's reasonable costs of operation in taking the Required Action.

27.4 Contract Management

- (a) The Contractor shall, at all times during the Contract Period, on not less than one month's prior written notice from the Authority to the Contractor, provide a Facility for not more than six Authority Personnel. The Authority shall be entitled to cease to use a

Facility at any time on giving the Contractor not less than one months' notice but shall be entitled to exercise its rights pursuant to this Clause 27.4(a) at any time.

- (b) For the purposes of Clause 27.4(a), "**Facility**" means:
- (i) an office in each Contractor Location with facilities typically provided in an office including a desk, a chair, a computer with access to the Authority ICT or internet access for use by a laptop with internet capability to access the Authority ICT and a telephone, from which the Authority Personnel can reasonably carry out all relevant activities associated with the management of this Agreement on behalf of the Authority, monitor the provision by the Contractor of the Services and monitor the compliance by the Contractor of the terms of this Agreement;
 - (ii) access to a secure space and meeting rooms in each Contractor Location;
 - (iii) access to each Contractor Location on the same terms and to the same extent as access is given by the Contractor to the Contractor's directors and other senior executives; and
 - (iv) access to all other Contractor Premises.

28. PRICE AND PAYMENT

28.1 Payment mechanism

The parties shall comply with their respective obligations set out in Schedule 11 (Payment Mechanism).

28.2 Euro

- (a) Any legislative requirement to account for the Services in Euro (€) (or to prepare for that accounting) instead of and/or in addition to Pounds Sterling (£), shall be implemented by the Contractor at nil charge to the Authority.
- (b) The Authority shall provide all reasonable assistance to facilitate compliance with Clause 28.2(a) by the Contractor.

29. AUDIT

The parties shall comply with their respective obligations set out in Schedule 15 (Audit).

30. EMPLOYEE MATTERS

30.1 Employee Incentives

The Contractor shall comply with its obligations set out in Schedule 21 (Employee Incentives).

30.2 Employee Transfers

The parties shall comply with their respective obligations set out in Schedule 25 (Employee Matters).

30.3 Employee Protections

- (a) In this Clause 30.3 and in Clause 30.4:
- (i) **Employee** means: (i) any employee of the Contractor who was employed by a Transferor immediately before the Employee Transfer Date whose employment transferred from a Transferor to the Contractor pursuant to the Staff Transfer Scheme on the Employee Transfer Date; or (ii) any employee of another Community Rehabilitation Company or NOMS who transferred to such Community Rehabilitation Company or NOMS pursuant to the Staff Transfer Scheme on the Employee Transfer Date and who subsequently transfers to the Contractor in the circumstances described in paragraph 6 of the Staff Transfer Scheme;
 - (ii) **New Employee** means any new employee directly recruited by the Contractor after the Employee Transfer Date to carry out obligations of the Contractor in respect of this Agreement. For the avoidance of doubt, New Employee does not include any employee of the Contractor who has transferred to the Contractor by virtue of the Employment Regulations or otherwise by operation of law;
 - (iii) **Employee Transfer Date** means the date on which Employees transferred on a compulsory basis into the employment of the Contractor (or another Community Rehabilitation Company or NOMS, as the case may be) by virtue of the Staff Transfer Scheme;
 - (iv) **NOMS** means the National Offender Management Service, an Executive Agency of the Ministry of Justice (within which the National Probation Service will sit after the Employee Transfer Date);
 - (v) **Staff Transfer Scheme** means the transfer scheme made by the Secretary of State for Justice effective on 1 June 2014 pursuant to the OMA 2007; and
 - (vi) **Transferor** means the probation trusts set out in Schedule 1 to the Staff Transfer Scheme.
- (b) The Contractor shall comply with the Staff Transfer Scheme insofar as it imposes obligations and duties on the Contractor in relation to Employees or confers rights against the Contractor on Employees.
- (c) The Contractor shall not be entitled to effect any compulsory redundancies of the Employees until after 1 June 2015 or until the date that falls seven months after the Amendment Date, whichever is the later.
- (d) The Contractor acknowledges that since the Employee Transfer Date the voluntary redundancy terms (the **Voluntary Redundancy Terms**) set out in Appendix B to the National Agreement on Staff Transfer and Protections dated 29 January 2014 (the **National Agreement**) a copy of which is contained in Part 2 of Schedule 25 to this Agreement have been applied in all cases of voluntary redundancy of Employees (save where more beneficial terms exist).
- (e) The Contractor shall be entitled to effect voluntary redundancies of Employees from the Employee Transfer Date in accordance with Applicable Law. Other than where more beneficial terms exist, in all cases of voluntary redundancy of Employees the Contractor

shall give effect to the Voluntary Redundancy Terms, unless agreed otherwise between the Contractor and Employee.

- (f) For the avoidance of doubt, in the event that an Employee of a particular Transferor had at the Employee Transfer Date a contractual entitlement to more favourable voluntary redundancy terms than the Voluntary Redundancy Terms, the Contractor will honour those original terms unless otherwise agreed in writing with the Employee.
- (g) The parties acknowledge that the existing collective pay remit (as set out in the National Negotiating Council (NNC) and Standing Committee for Chief Officer Grades (SCCOG) National Agreements on Pay and Conditions of Service) has transferred to the Contractor.
- (h) The parties acknowledge that the Contractor has adopted the existing NNC and SCCOG National Agreements on Pay and Conditions of Service for all Employees including the following provisions (as referenced in the National Agreement):
 - (i) the provisions of paragraph 36 of Section A4 of the NNC Agreement on Pay and Conditions of Service, which sets out the provisions where an employee incurs additional traveling expenditure as the result of a change in work location determined by the employing body, and the corresponding provisions of Section A5 of the SCCOG National Agreement on Pay and Conditions of Service; and
 - (ii) the provisions of paragraphs 23-33 of Section 4 of the NNC Agreement on Pay and Conditions of Service, which set out the provisions in respect of removal allowances where employees are required to move in consequence of a decision of the employing body, and the corresponding provisions of Section A5 of the SCCOG National Agreement on Pay and Conditions of Service,

and the Contractor shall continue to comply with the NNC and SCCOG National Agreements on Pay and Conditions of Service for all Employees including the provisions set out in (i) and (ii) above, save to the extent that Employees' terms and conditions are renegotiated by consent.

- (i) The Contractor agrees that proposed new or changed posts in the Contractor will be evaluated in accordance with the existing NNC and SCCOG Job Evaluation Schemes which form part of the contracts of service of Employees.

30.4 Protections for New Employees

For so long as the Contractor remains a party to the NNC and SCCOG National Agreements on Pay and Conditions of Service all New Employees shall be engaged on like terms and conditions (save for any that relate to provision of or entitlement to occupational pension schemes) as those set out for Employees in the NNC and SCCOG National Agreement on Pay and Conditions of Service as at the date of this Agreement (and which are to transfer under the Staff Transfer Scheme) save where those terms and conditions have been varied by consent in which case the terms and conditions applicable as at the date of recruitment will be those that apply to New Employees, until such time as they are further renegotiated by consent.

30.5 Protections for Senior Attendance Centre Employees

- (a) In this Clause 30.5:

- (i) **Employee** means any employee of the Contractor who was employed by NOMS immediately before the Senior Attendance Centre Employee Transfer Date whose employment transferred from NOMS to the Contractor pursuant to the Senior Attendance Centre Staff Transfer Scheme on the Senior Attendance Centre Employee Transfer Date;
 - (ii) **NOMS** means the National Offender Management Service, an Executive Agency of the Ministry of Justice (within which the National Probation Service will sit after the Employee Transfer Date);
 - (iii) **Senior Attendance Centre** has the meaning given to it in the Senior Attendance Centre Staff Transfer Scheme;
 - (iv) **Senior Attendance Centre Employee Transfer Date** means the date on which Employees transferred on a compulsory basis into the employment of the Contractor by virtue of the Senior Attendance Centre Staff Transfer Scheme; and
 - (v) **Senior Attendance Centre Staff Transfer Scheme** means the transfer scheme made by the Secretary of State for Justice on or after 31 July 2014 pursuant to the OMA 2007.
- (b) The Contractor shall comply with the Senior Attendance Centre Staff Transfer Scheme insofar as it imposes obligations and duties on the Contractor in relation to Employees or confers rights against the Contractor on Employees.
 - (c) The Contractor shall not be entitled to effect any compulsory redundancies of the Employees until after 1 June 2015 or until the date that falls seven months after the Amendment Date, whichever is the later.
 - (d) The Contractor acknowledges that, since the Senior Attendance Centre Employee Transfer Date, the voluntary redundancy terms (the **Voluntary Redundancy Terms**) set out in Appendix B to the National Agreement on Staff Transfer and Protections dated 29 January 2014 (the **National Agreement**), a copy of which is contained in Part 2 of Schedule 25 to this Agreement, have applied in all cases of voluntary redundancy of Employees (save where more beneficial terms exist).
 - (e) The Contractor shall be entitled to effect voluntary redundancies of Employees from the Senior Attendance Centre Employee Transfer Date in accordance with Applicable Law. Other than where more beneficial terms exist, in all cases of voluntary redundancy of Employees the Contractor shall give effect to the Voluntary Redundancy Terms, unless agreed otherwise between the Contractor and Employee.
 - (f) For the avoidance of doubt, in the event that an Employee had at the Senior Attendance Centre Employee Transfer Date a contractual entitlement to more favourable voluntary redundancy terms than the Voluntary Redundancy Terms, the Contractor will honour those original terms unless otherwise agreed in writing with the Employee.
 - (g) The parties acknowledge that the Employees will be entitled to any pay award for 2014/15 and 2015/16 that would have applied had their employment not transferred to the Contractor from NOMS on the Senior Attendance Centre Employee Transfer Date. The pay award will be implemented by the Contractor in a timely way taking into account the terms of the pay award as applicable to the Employees.

30.6 Secondments

- (a) The Contractor agrees that it will in good faith and for the purposes of maximising career development opportunities for employees of the Contractor, consider offering to any of its employees who wish to do so the opportunity to be seconded to the Authority or another Community Rehabilitation Company on such terms as may be agreed from time to time and in this respect the Contractor is expected to use the Agreed Form Secondment Framework Agreement wherever possible.
- (b) For the purposes of this Clause 30.6, **Agreed Form Secondment Framework Agreement** means the template secondment agreements which have been initialled for the purpose of identification by the Authority's solicitors and either the Contractor or the Contractor's solicitors (if applicable) or otherwise by or on behalf of the Authority and the Contractor.

31. SET-OFF

- 31.1** The Contractor shall not be entitled to set off any amount due to the Authority by it, but the Authority may set off any amount owed to it by the Contractor under this Agreement which has fallen due and payable against any amount due to the Contractor under this Agreement. The Authority shall give the Contractor not less than 10 Business Days' notice of its intention to exercise its rights pursuant to this Clause 31.
- 31.2** Whenever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of this Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due, to the Contractor under this Agreement or under any other agreement or contract with the Authority.
- 31.3** Any overpayment by either party, whether of an amount paid under this Agreement or of VAT, shall be a sum of money recoverable by the party who made the overpayment from the party in receipt of the overpayment.
- 31.4** The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- 31.5** If any amount to be set off by the Authority pursuant to Clause 31.1 is disputed, any undisputed element of that amount shall be set off and the disputed element shall be dealt with in accordance with Clause 41.

32. VAT

- 32.1** All amounts due under this Agreement are exclusive of VAT. If any supply made or referred to in this Agreement is or becomes chargeable to VAT for which the person making the supply is liable to account the person receiving the supply (**Recipient**) shall in addition pay the person making the supply (**Supplier**) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
- 32.2** Where this Agreement requires any party (**Paying Party**) to repay, refund or reimburse any other party (**Indemnified Party**) for the costs of any supplies made to the Indemnified Party, the Paying Party shall also indemnify the Indemnified Party against all liability to VAT in respect of that supply, except to the extent that the Indemnified Party is able to recover the VAT on such supply.

32.3 The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Agreement and payable by the Authority to the Contractor.

33. CONTRACT PERIOD AND TERMINATION

33.1 Contract Period

- (a) This Agreement shall take effect on the Amendment Date and, subject to Clause 33.1(b), unless terminated at an earlier date under this Clause 33 or otherwise ceasing to have effect (whether as a result of termination, frustration, avoidance or otherwise), shall expire on the Expiry Date and the provisions of Clause 35 shall apply. Unless the Authority gives notice pursuant to Clause 33.1(b), this Agreement shall effectively terminate at the end of the Exit Period.
- (b) The Authority shall have the right to extend the Contract Period at its discretion by giving the Contractor not less than 12 months' written notice (to expire no later than the Expiry Date) that it wishes to extend the Contract Period for the Renewal Period. If the Authority gives notice under this Clause 33.1(b) that it wishes to extend the Contract Period, this Agreement shall expire at the end of the Renewal Period. This Agreement shall terminate at the end of the Exit Period following expiry of the Renewal Period.

33.2 Termination on Contractor Default

Subject to Clause 33.3, the Authority shall be entitled to terminate this Agreement by giving notice in writing to the Contractor (**Authority Termination Notice**) if a Contractor Default has occurred.

33.3 Rectification

- (a) The Authority Termination Notice for the purposes of Clause 33.2 must specify:
 - (i) the type and nature of Contractor Default that has occurred, giving reasonable details; and
 - (ii) that the Exit Period will commence on the day falling 20 Business Days after the date of the Authority Termination Notice (or any other later day if agreed in writing by the Authority before the expiry of that 20 Business Day period) and this Agreement shall effectively terminate on the Termination Date, unless, in the case of a Contractor Default which is capable of remedy, the Contractor rectifies the Contractor Default within that period of 20 Business Days (**Rectification Period**).
- (b) If the Contractor rectifies the Contractor Default within the Rectification Period, the Authority Termination Notice will be deemed to be revoked and this Agreement will continue in force.
- (c) If the Contractor fails to rectify the Contractor Default within the Rectification Period, the Exit Period will commence on the day falling five Business Days after the expiry of the Rectification Period and this Agreement shall effectively terminate on the Termination Date.

33.4 Termination on Persistent Breach by Contractor

- (a) If a breach of this Agreement by the Contractor has occurred and has continued for more than 60 Business Days or occurred more than twice in any 12 month period, the Authority may serve a notice (a **Warning Notice**) on the Contractor:
 - (i) specifying that it is a formal warning notice;
 - (ii) giving reasonable details of the breach; and
 - (iii) stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.
- (b) If, following service of a Warning Notice, the breach specified has continued for a further 20 Business Days or recurred in 2 or more months within the 6 month period after the date of service of the Warning Notice, the Authority may serve another notice (a **Final Warning Notice**) on the Contractor:
 - (i) specifying that it is a final warning notice;
 - (ii) stating that the breach specified has been the subject of a Warning Notice served within the 6 month period prior to the date of service of the Final Warning Notice; and
 - (iii) stating that if the breach continues for more than 20 Business Days or recurs in 2 or more months within the 6 month period after the date of service of the Final Warning Notice, this Agreement may be terminated.
- (c) If, following service of a Final Warning Notice, the breach specified has continued for more than 20 Business Days or has recurred in 2 or more months within the 6 month period after the date of service of the Final Warning Notice, the Authority shall be entitled to terminate this Agreement by giving the Contractor an Authority Termination Notice and the Exit Period will commence on the day falling five Business Days after the date of the Authority Termination Notice and this Agreement shall effectively terminate on the Termination Date.
- (d) The Parties agree that a failure by the Contractor to meet the Service Level Percentage of a Performance Measure in a month in circumstances where it has not also failed to meet the Improvement Plan Trigger Level for that Performance Measure shall not amount to a breach for the purposes of Clause 33.4(a).
- (e) The Parties agree that a failure by the Contractor to meet the Improvement Plan Trigger Level of a Performance Measure in a month shall not amount to a breach in that month (**Initial Month**) for the purposes of Clause 33.4(a) where the Contractor has also failed to meet the Improvement Plan Trigger Level of that Performance Measure during the first and/or second month following that Initial Month but shall with respect to all subsequent months.

33.5 Termination on Increase in Reoffending

- (a) Subject to Clause 33.5(b), the Authority shall be entitled to terminate this Agreement by giving the Contractor an Authority Termination Notice pursuant to paragraphs 8.8, 8.9 or 9.9 of Schedule 11 (Payment Mechanism) and the Exit Period will commence on the

day falling five Business Days after the date of the Authority Termination Notice and this Agreement shall effectively terminate on the Termination Date.

- (b) The Authority shall notify the Contractor that it intends to exercise its right under Clause 33.5(a) and shall consider any representations the Contractor makes to it in writing as to why the Authority should not exercise that right provided the Authority receives them within 10 Business Days after that notification under this Clause 33.5.

33.6 Termination on Meeting Aggregate Liability

If the aggregate liability of the Contractor to the Authority under or in connection with this Agreement equals or exceeds the amount specified in Clause 18.2, the Authority shall be entitled to terminate this Agreement by giving the Contractor an Authority Termination Notice and the Exit Period will commence on the day falling five Business Days after the date of the Authority Termination Notice and this Agreement shall effectively terminate on the Termination Date.

33.7 Termination on Force Majeure

If a Force Majeure Event affecting the Contractor continues or its consequences are such that the Contractor is unable to comply with its obligations under this Agreement for a period of more than 60 Business Days, the Authority shall be entitled to terminate this Agreement by giving the Contractor an Authority Termination Notice and the Exit Period shall commence on the day falling five Business Days after the date of the Authority Termination Notice and this Agreement shall effectively terminate on the Termination Date.

33.8 Termination on Corrupt Gifts and Fraud

- (a) If the Contractor or any of its subcontractors (or anyone employed by or acting on behalf of any of them) or any of its shareholders commits any Prohibited Act, the Authority shall be entitled to act in accordance with Clauses 33.8(b) to 33.8(g).
- (b) Notwithstanding Clauses 33.8(c) to 33.8(f), if a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, the Authority shall be entitled to terminate this Agreement by giving the Contractor an Authority Termination Notice provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Authority may not terminate this Agreement unless, acting reasonably, it considers termination of this Agreement to be in the best interests of the provision of the Services.
- (c) If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, the Authority may terminate this Agreement by giving the Contractor an Authority Termination Notice, unless within five Business Days after receipt of the notice the Contractor terminates the employee's employment and (if necessary) procures the performance of that part of the Services by another person.
- (d) If the Prohibited Act is committed by a subcontractor or by an employee of that subcontractor not acting independently of that subcontractor, the Authority may terminate this Agreement by giving the Contractor an Authority Termination Notice, unless within five Business Days after receipt of that notice the Contractor procures the performance of that part of the Services by another person provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Authority may not terminate this Agreement unless, acting reasonably, it considers termination of this Agreement to be in the best interests of the provision of the Services.

- (e) If the Prohibited Act is committed by an employee of a subcontractor acting independently of that subcontractor, the Authority may terminate this Agreement by giving the Contractor an Authority Termination Notice, unless within five Business Days after receipt of that notice the subcontractor procures the performance of that part of the Services by another person or terminates the employee's employment and (if necessary) procures the performance of that part of the Services by another person.
- (f) If the Prohibited Act is committed by any other person listed in Clause 33.8(a) but not specified in Clauses 33.8(b) to 33.8(e), the Authority may terminate this Agreement by giving the Contractor an Authority Termination Notice unless within five Business Days after receipt of that notice, the Contractor procures the termination of that person's employment and of the appointment of their employer (where not employed by the Contractor or the subcontractors) and (if necessary) procures the performance of that part of the Services by another person provided that, if the Prohibited Act is an offence under section 7(1) of the Bribery Act 2010, the Authority may not terminate this Agreement unless, acting reasonably, it considers termination of this Agreement to be in the best interests of the provision of the Services.
- (g) In an Authority Termination Notice served by the Authority pursuant to this Clause 33.8, the Authority shall specify:
 - (i) the nature of the Prohibited Act; and
 - (ii) the identity of the party whom the Authority believes has committed the Prohibited Act.
- (h) If the Contractor takes the action specified in Clause 33.8(c), (d), (e) or (f), in accordance with the relevant one of Clause 33.8(c), (d), (e) or (f), the Authority Termination Notice shall be deemed to be revoked and this Agreement will continue in force.
- (i) If the Contractor fails to take the action specific in Clause 33.8(c), (d), (e) or (f), the Exit Period will commence on the day falling five Business Days after the date of the Authority Termination Notice and this Agreement shall effectively terminate on the Termination Date.

33.9 Voluntary Termination by Authority

- (a) The Authority shall be entitled to terminate this Agreement at any time before the Expiry Date by giving the Contractor an Authority Termination Notice stating:
 - (i) that the Authority is terminating this Agreement under this Clause 33.9; and
 - (ii) that the Exit Period will commence on the date specified in the Authority Termination Notice, which date must be a minimum of 12 months after the date of the Authority Termination Notice.
- (b) The Exit Period shall commence on the date specified in the Authority Termination Notice and this Agreement shall effectively terminate on the Termination Date.

33.10 Compensation on Voluntary Termination

- (a) On termination of this Agreement under Clause 33.9, the Authority shall pay to the Contractor an amount equal to the aggregate of:
 - (i) the Subcontractor Breakage Costs;
 - (ii) redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Agreement; and
 - (iii) subject to Clause 33.10(b), the relevant amount (**Termination Compensation Amount**) set out in Appendix 8 of Schedule 11 (Payment Mechanism) in the column headed "Termination Compensation Amount" for each Contract Year or part of a Contract Year in the period between the Termination Date and the Expiry Date.
- (b) For the avoidance of doubt, the Authority shall not be required to pay a Termination Compensation Amount for a Contract Year or part of a Contract Year referred to in Clause 33.10(a)(iii) which is part of an Exit Period.
- (c) For the purposes of this Clause 33.10, the Termination Compensation Amount for a Contract Year which has commenced but not yet expired on the date of the relevant Termination Date shall be reduced by a proportion equal to the proportion that the expired part of that Contract Year bears to a whole Contract Year.

33.11 Contractor's Right to Terminate

The Contractor shall have no right to terminate this Agreement at law or under the terms of this Agreement.

33.12 Assets and Fair Value

- (a) The Authority may require the Contractor, with effect from the Termination Date, to transfer its rights, title and interest in and to the Assets to the Authority or as directed by the Authority. The Contractor agrees that this transfer may be done pursuant to:
 - (i) an agreement between the Contractor and the Authority or a New Contractor, as the case may be; or
 - (ii) a scheme made under Schedule 2 of the OMA.
- (b) The Contractor shall, in each agreement entered into in accordance with Clause 33.12(a)(i):
 - (i) assign to the Authority or the New Contractor, as the case may be, all warranties, representations, rights and other protections which the Contractor obtained at the time of acquisition of each Asset to the extent they are capable of being assigned or novated to the Authority or the New Contractor, as the case may be;
 - (ii) agree to all other reasonable terms relating to the sale and purchase of the Assets taking into account the nature of the Assets, the condition of the Assets and the cost of the assets and how they were paid for; and

- (iii) do all other acts (including entering into any contracts) which may be necessary to ensure that the Authority or a New Contractor, as the case may be, obtains all of its rights, title and interest in and to the Assets with effect from the Termination Date in accordance with Clause 33.12(a).
- (c) If the Authority exercises its rights pursuant to this Clause 33.12, it shall:
 - (i) notify the Contractor which, if any, of the Assets the Authority requires to be transferred to it (and/or its nominee) and/or any New Contractor; and
 - (ii) pay to the Contractor the Fair Value of each Asset transferred to the Authority or as directed by the Authority.

34. CONSEQUENCES OF TERMINATION

34.1 Gross Up of Termination Payments

If any amount of compensation payable by the Authority (whether payable as a lump sum or instalments) under Clause 33.10 is subject to Tax payable to a Relevant Authority in the United Kingdom, the Authority shall pay to the Contractor an additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

34.2 Method of Payment

The Authority shall pay to the Contractor amounts specified in Clause 33.10 on or before the date falling 20 Business Days after the Termination Date.

34.3 Exclusivity of Remedy

Any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Agreement. The compensation payable under Clause 33.10 shall be the sole remedy of the Contractor against the Authority in respect of termination of this Agreement.

34.4 Continuing Obligations

Save as otherwise expressly provided in this Agreement or as already taken into account in the calculation of any payment of compensation on termination pursuant to this Agreement, and notwithstanding the provisions of Clause 34.3:

- (a) termination of this Agreement shall be without prejudice to any accrued rights or obligations under this Agreement as at the Termination Date; and
- (b) termination of this Agreement shall not affect the continuing rights and obligations of the Contractor and the Authority under Clauses 5, 16, 17, 18, 22, 24, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36.1, 36.2, 36.4, 38, 39, 41, 42.1, 42.2, 42.4, 42.5, 42.7, 42.10 and 42.11 and Schedule 1 (Definitions), Schedule 4 (Commercially Sensitive Information), Schedule 11 (Payment Mechanism), Schedule 12 (Change Protocol), Schedule 15 (Audit), Schedule 16 (Insurance), Schedule 22 (Pensions), Schedule 24 (Exit Plan and Termination Assistance), Schedule 25 (Employee Matters) and Schedule 26 (Fair

Value) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to that termination or the consequences of that termination.

35. EXIT AND EXIT PLAN

35.1 Exit Plan

- (a) The Contractor shall, within 120 Business Days after the Amendment Date, produce a draft Exit Plan, based on the principles set out in Schedule 24 (Exit Plan and Termination Assistance), for the orderly transition of the Services (or any of the Services) from the Contractor to the Authority or any New Contractor if this Agreement is terminated, expires or otherwise ceases to have effect. Within 20 Business Days after the submission by the Contractor to the Authority of the draft Exit Plan, the parties shall meet and respectively use all reasonable endeavours to agree the contents of the Exit Plan, based on the principles set out in Schedule 24 (Exit Plan and Termination Assistance).
- (b) The Contractor shall update the Exit Plan at the commencement of each Contract Year as part of the Annual Service Plan to reflect changes in the Services and the manner of provision of the Services during that Contract Year. Following each update, the Contractor shall submit the revised Exit Plan to the Authority for review. Within 20 Business Days after the submission of the revised Exit Plan by the Contractor to the Authority, the parties shall meet and respectively use all reasonable endeavours to agree the contents of the revised Exit Plan.
- (c) The Contractor shall, in updating the Exit Plan, ensure that all necessary information and explanation required for the purpose of executing the Exit Plan and to enable suitably qualified employees of the Authority or a New Contractor to be able to use the Contractor System and receive the Services is made available to the Authority.
- (d) Save where termination occurs under Clause 33.7 (in which case the parties will use their respective reasonable endeavours to fulfil their obligations under this Clause 35), within 20 Business Days after the date of the Authority Termination Notice or 20 Business Days after the commencement of the Exit Period on expiry of this Agreement, whichever is the earlier (or, where this Agreement ceases to have effect for any other reason, as soon as practicable afterwards), the Contractor shall submit to the Authority for review and approval, a revised Exit Plan that could be implemented immediately. The parties shall meet and respectively use all reasonable endeavours to agree the contents of the Exit Plan. Until the agreement of the Exit Plan, the Contractor shall provide the Exit Services to the Authority in accordance with the last approved version of the Exit Plan (insofar as this still applies).
- (e) The Contractor shall during the Exit Period at the request of the Authority:
 - (i) continue to provide, or shall ensure that each relevant Subcontractor continues to provide, all or any part of the Services (as determined by the Authority) (as applicable);
 - (ii) comply with its obligations set out in this Clause 35, Schedule 24 (Exit Plan and Termination Assistance) and the Exit Plan; and
 - (iii) provide the Exit Services that the Authority may require.

During the Exit Period, if the Authority has requested the Contractor to continue to provide the Services or ensure that the Services are provided by any Subcontractor, the Authority shall continue to pay the Charges in accordance with Schedule 11 (Payment Mechanism).

- (f) If there is any dispute between the parties regarding, or any failure to agree, the manner in which the Exit Services set out in the Exit Plan are to be performed or the content of the Exit Plan, either party may, by written notice to the other party, refer that issue for determination in accordance with the Dispute Resolution Procedure.
- (g) During the Exit Period, the Contractor shall co-operate with the Authority or a New Contractor in accordance with Clause 35.3 and use all reasonable endeavours to reallocate resources to provide this co-operation without additional costs. If this is not possible, the Contractor shall be entitled to request a Change in relation to the provision of any reasonable assistance which is not already in the scope of the Exit Services or the Exit Plan, consent to which shall not be unreasonably withheld or delayed by the Authority.
- (h) During the 12 months prior to the Expiry Date or from service of an Authority Termination Notice, the Contractor shall not (i) make any change to the Contractor Personnel which would have a material adverse impact on the Authority's business or the Services; or (ii) terminate or vary in any material respect any Subcontract that is necessary to enable the Authority or a New Contractor to provide services which are substantially similar to the Services, in each case without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.
- (i) During the Exit Period and, in any event, by the end of the Exit Period:
 - (i) the Contractor shall, as requested by the Authority, destroy all Project Data in its possession which is no longer relevant in accordance with Information Security PSO 9010 and Information Assurance PSO 9015 or transfer that Project Data to the Authority, save to the extent that the Project Data is required for Clause 3.16(d) or for the purposes of providing any of the Services to the extent it remains relevant in accordance with Information Assurance PSO 9015 to the Authority under this Clause 35 or the Exit Plan;
 - (ii) a party shall, on written request of the other party, destroy or return to that other party all Confidential Information of that other party and shall certify that it has not retained or has destroyed (as applicable) that other party's Confidential Information save to the extent that information is required by that party for the purposes of providing or receiving any Services or Exit Services; and
 - (iii) the Authority may exercise its rights in accordance with Clause 27.

35.2 Extension of Exit Period

The Authority shall be entitled at any time during the Exit Period to extend the period of the Exit Period by 2 months' notice in writing to the Contractor for a period not exceeding 12 months.

35.3 Transition to Another Contractor

- (a) During the Exit Period and for a reasonable period after the Exit Period, the Contractor shall co-operate fully with the transfer of responsibility for the Services (or any of the

Services) to the Authority or a New Contractor and, for the purposes of this Clause 35.3, the meaning of the term "co-operate" shall include:

- (i) liaising with the Authority and/or a New Contractor, and providing reasonable assistance and advice relating to the Services and their transfer to the Authority or to that New Contractor to allow the Services to continue without interruption or adverse effect following termination or expiry of this Agreement;
 - (ii) allowing that New Contractor access (at reasonable times and on reasonable notice) to the Contractor Premises but not so as to interfere with or impede the provision of the Services;
 - (iii) providing to the Authority and/or to that New Contractor all and any information relating to the Services which is reasonably required for the efficient transfer of responsibility for their performance but excluding information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor; and
 - (iv) transferring its rights, title and interest in and to the Assets to the New Contractor with effect on and from the Termination Date in accordance with Clause 33.12(a) of this Agreement.
- (b) With effect from the Termination Date, the Contractor shall, at the request of the Authority, novate, and procure the novation of, each Subcontract to the New Contractor or to the Authority pursuant to the terms of the relevant Subcontract.
- (c) For a period of 12 months from the Termination Date, the Contractor grants to the Authority and a New Contractor and each Authority Related Party a royalty-free, non-exclusive, non-transferable, irrevocable and worldwide licence (including the right to sublicense) to use the Contractor IPRs to receive and provide the Replacement Services.

35.4 Transfer of Responsibility

The Contractor shall take no action at any time during the Contract Period or after the end of that period which is calculated or intended, directly or indirectly, to prejudice or frustrate the transfer to a New Contractor of the Services.

35.5 Outstanding Changes

- (a) Immediately following the receipt of an Authority Termination Notice, the Contractor shall notify the Authority in writing of the current status and costs incurred for each outstanding Change. The Authority shall review each outstanding Change and determine in each case whether:
- (i) the Change should be implemented; or
 - (ii) no further work should be undertaken by either party in respect of that Change, in which case the Authority shall not be required to pay the Contractor any further costs in relation to that Change.

- (b) If the Authority exercises its right to terminate this Agreement in accordance with Clause 33.9, the Contractor shall be entitled to recover all reasonable costs incurred in respect of each aborted Change up to the date of the Authority Termination Notice.

36. TRANSPARENCY AND INFORMATION

36.1 Contractor's Records and Provision of Information

- (a) The Contractor shall:
 - (i) at all times maintain a full record of particulars of the costs of performing the Services; and
 - (ii) when requested by the Authority, provide all of the costs referred to in Clause 36.1(a)(i), including details of any funds held by the Contractor specifically to cover those costs, in the form and detail as the Authority may require.
- (b) The Contractor shall keep (and procure that the Subcontractors shall keep) books of account in accordance with best accountancy practice with respect to this Agreement showing in detail:
 - (i) administrative overheads;
 - (ii) payments made to its subcontractors and any other operating costs;
 - (iii) capital and revenue expenditure; and
 - (iv) all other items that the Authority may require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement.
- (c) The Contractor shall maintain or procure that full records are maintained of:
 - (i) the Contractor's performance against the Performance Measures and the payment of Service Credits;
 - (ii) all incidents relating to health, safety and security which occur during the Contract Period; and
 - (iii) all staff matters including turnover, pay and disciplinary matters.
- (d) The Contractor shall, and shall procure that each Subcontractor shall, provide to the Authority all data, statistics and other information in its possession or control including information which it obtains in connection with the performance of its obligations under this Agreement for the purposes of the Authority's ability to manage this Agreement, assuring delivery of the Services, risk management, managing an Applicable Person (including information for the purposes of preparing a pre sentence or parole report, sentencing requirements and information for other court or parole purposes), ensuring public protection, undertaking evaluation and obtaining evidence of measures which effectively reduce reoffending, assuring the proper use of public money and meeting its specific duties under Part 1 of the OMA including the preparation of its annual plan under Section 8 of the OMA.
- (e) The Contractor shall provide all information requested by any or all of the Police National Crime Agency, the Security Services, the Secret Intelligence Service,

Immigration Enforcement, Victim Liaison Unit, the Multi Agency (Lifer) Risk Assessment Panel and all other organisations and agencies as the Authority reasonably requests, for the purposes of those agencies carrying out their duties to protect the public from serious harm in terms of counter terrorism, radicalisation, and serious organised crime and to prevent and detect crime and assist with immigration enforcement.

- (f) The Contractor shall comply with all directions from the Authority and each Authority Related Party (if directed to do so by the Authority) to take all action with respect to an Applicable Person which the Authority or the relevant Authority Related Party requires if that action is required in the public interest and is in connection with the purposes set out in Clause 36.1(e) including action relating to the application of the Services to the Applicable Person, the management of the Applicable Person's case and any subject access requests relating to the Applicable Person. The Contractor agrees that the direction shall be Confidential Information for the purposes of this Agreement including the fact that the direction itself has been made and the provisions of Clause 36.4 shall apply to it.
- (g) The Contractor shall comply with Schedule 20 (Management Information) with respect to the creation and management of the records referred to in this Clause 36.
- (h) The Contractor shall permit records referred to in this Clause 36 to be examined and copied by the Comptroller and Auditor General and his representatives.
- (i) The Contractor shall ensure that all Project Data shall be retained for the periods specified in the Mandatory Probation Instruction "Management of Offender Records PI 59/2014".
- (j) If the Authority wishes to enter into an agreement with a Community Rehabilitation Company on expiry or termination of this Agreement or engage in a comparison of services and costs between providers of services similar to the Services at any time during the Contract Period, the Contractor shall (and shall ensure that each of its subcontractors shall) comply with all requests of the Authority to provide information which it reasonably requires for the purposes of that agreement, any associated procurement process and engagement in a comparison of services and costs between providers of services similar to the Services including in relation to the Contractor's costs of providing the Services.
- (k) The Contractor shall:
 - (i) provide to the Authority copies of its annual report and accounts within 20 Business Days after their publication;
 - (ii) use all reasonable endeavours to assist the Authority in its preparation of any report required by a government department, from time to time; and
 - (iii) provide all information reasonably required by the Authority in connection with Changes in accordance with the provisions of the Change Protocol.
- (l) The Authority may, where there has been a Contractor Default, require the Contractor to provide an interim project report and, without prejudice to its other rights and remedies, to attend meetings that the Authority may convene to discuss that report and the circumstances giving rise to it.

- (m) The Contractor agrees that performance related and financial information provided to the Authority under this Agreement will be made available to a Commissioning Body at its request for the purposes of contract management, assessing the suitability for bidders when considering the award of contracts and overseeing the management, and the performance, of relationships with strategic suppliers at a cross-Government level.

36.2 Data Protection

- (a) The terms processing (and its derivatives), personal data, data controller, data processor and data subject shall, where used in this Agreement, have the meanings given to them under the UK Data Protection Act 1998 (**DPA**).
- (b) In relation to all personal data processed under this Agreement (**Relevant Personal Data**) each party acknowledges that it is a data controller and that it, in common with the other party (but not jointly) determines the purposes for which and the manner in which the Relevant Personal Data is, or is to be, processed. The Contractor shall at all times comply with the DPA, including maintaining a valid and up-to-date registration or notification under the DPA covering the data processing it will perform as a Data Controller in connection with the Services.
- (c) The Contractor shall, and shall procure that each of its subcontractors (including each Subcontractor) shall:
 - (i) only undertake processing of Relevant Personal Data as reasonably required in connection with the Services or the performance of its other obligations under this Agreement;
 - (ii) provide a fair processing notice, based on the Authority's standard fair processing notice which it uses from time to time (that relates to the purpose of providing the Services), to all data subjects whose Relevant Personal Data the Contractor is processing as a data controller in connection with the Services;
 - (iii) not process or transfer any Relevant Personal Data outside the European Economic Area without the prior written consent of the Authority;
 - (iv) other than pursuant to Clause 36.2(e), not process any Relevant Personal Data that it receives pursuant to this Agreement for any other reason other than in connection with the Services or the performance of its other obligations under this Agreement;
 - (v) comply with the requirements of Schedule 18 (Information Assurance) in relation to data management and information security;
 - (vi) not disclose Relevant Personal Data to any third parties other than:
 - (A) to employees and Subcontractors to whom disclosure is reasonably necessary for the Contractor to carry out the Services;
 - (B) to the extent required under a court order;
 - (C) where explicitly permitted pursuant to this Agreement, or

- (D) Relevant Personal Data in relation to a data subject, to that data subject in accordance with its request under the DPA, provided that no exemption to disclosure applies under the DPA, and

provided that the Contractor shall ensure that disclosure under Clause 36.2(c)(vi)(A) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 36 and shall give notice in writing to the Authority of any disclosure of Relevant Personal Data it or a subcontractor is required to make under Clause 36.2(c)(vi)(B) promptly after it is aware of the requirement and ensure that any disclosure under Clause 36.2(c)(vi)(C) is necessary, proportionate and a record of that disclosure is kept by the Contractor;

- (vii) keep a record of any complaint, notice or communication from a Relevant Authority which relates directly or indirectly to its processing of the Relevant Personal Data or its compliance with the DPA or when it is otherwise in breach of the DPA, and where not prevented from doing so by the Relevant Authority, provide a summary report of the number and nature of the complaints or breach (including details of the resolution on such matters) to the Authority as requested from time to time; and
- (viii) bring into effect and maintain all appropriate technical and organisational measures to prevent unauthorised or unlawful processing of Relevant Personal Data and accidental loss or destruction of, or damage to, Relevant Personal Data including taking reasonable steps to ensure the reliability of any person having access to the Relevant Personal Data.
- (d) The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor and/or the subcontractors referred to in Clause 36.2(c)(viii). Within 20 Business Days after a request, the Contractor shall at its own cost and expense supply written particulars of the measures detailed to a reasonable level to enable the Authority to determine whether or not any Relevant Personal Data has been, or will be, processed in compliance with the DPA.
- (e) If requested by the Authority, the Contractor shall provide details of the Relevant Personal Data processed by it in relation to any data subject promptly on receipt of a request by the Authority.
- (f) The Contractor shall comply with the processes set out in Schedule 18 (Information Assurance) in connection with incident management procedures.
- (g) The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause 36.2 caused by any act or omission of the Contractor or any Subcontractor.
- (h) The Contractor shall, when necessary and at its own cost and expense, assist and cooperate with the Authority to enable the Authority to remain compliant with the Public Records Acts 1957 and 1968.
- (i) The Contractor may, subject to its compliance with sections 33(1)(a) and (b) of Part 4 of the DPA, this Clause 36 (in particular Clauses 36.2(b) and (c)(ii)) and Schedule 18 (Information Assurance), conduct research including historical and statistical analysis of all Relevant Personal Data associated with:

- (i) operational methods;
- (ii) commissioning and resourcing;
- (iii) accounting and auditing;
- (iv) forensic investigation;
- (v) policy;
- (vi) performance;
- (vii) likelihood of re-conviction or re-offending; and
- (viii) public protection,

provided that, where possible, the Relevant Personal Data is anonymised before the research has begun.

36.3 Public Relations and Publicity

- (a) The Contractor shall not by itself, its employees or agents and shall procure that its subcontractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this Agreement without the prior written approval of the Authority.
- (b) No facilities to photograph or film in or on any property used for the provision of the Services shall be given or permitted by the Contractor without the prior written approval of the Authority.

36.4 Confidentiality

- (a) The parties agree that the provisions of this Agreement shall, subject to Clause 36.4(b), not be treated as Confidential Information and may be disclosed without restriction and the Contractor acknowledges that the Authority intends, subject to Clause 36.4(b), to publish this Agreement on a website.
- (b) Clause 36.4(a) shall not apply to provisions of this Agreement designated as Commercially Sensitive Information and listed in Part 1 of Schedule 4 (Commercially Sensitive Information) to this Agreement which shall, subject to Clause 36.4(e), be kept confidential for the periods specified in that Part.
- (c) Subject to Clause 36.4(a), each party shall keep confidential all Confidential Information received from, or requested by, the other party relating to this Agreement and shall ensure that each Contractor Related Party in the case of the Contractor and each Authority Related Party in the case of the Authority are prevented from making any disclosure to any person of any such Confidential Information.
- (d) The parties agree that information provided pursuant to Clause 25.1 in respect of any change in ownership which has actually taken place shall not be treated as Confidential Information.

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- (e) Clauses 36.4(b) and (c) shall not apply to:
- (i) any matter which a party can demonstrate is already, or becomes, generally available and in the public domain otherwise than as a result of a breach of this Clause 36.4;
 - (ii) any disclosure to enable a determination to be made under Clause 10.4 or Clause 41.2 in accordance with the provisions set out in those Clauses;
 - (iii) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation (including to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement) placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
 - (iv) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - (v) any provision of information to the parties' own or their Affiliates' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor or its Affiliates to enable it to carry out its obligations under this Agreement, or may wish to acquire shares in the Contractor or its Affiliates in accordance with the provisions of this Agreement, to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
 - (vi) any disclosure by the Authority of information relating to the provision of the Services and all other information reasonably required for the purpose of conducting a due diligence exercise to any bidder as part of a retender or proposed New Contractor, its advisers and lenders, should the Authority decide to retender this Agreement or undertake any market testing, benchmarking or market comparison;
 - (vii) any registration or recording of the Consents and property registration required;
 - (viii) any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers for any proper purpose of the Authority or of the relevant department, office or agency of the Government; or
 - (ix) any disclosure for the purpose of:
 - (A) the examination and certification of the Authority's or the Contractor's accounts;
 - (B) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (C) complying with a proper request from either party's insurance adviser or insurer on placing or renewing any insurance policies; or

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- (D) (without prejudice to the generality of Clause 36.4(e)(iii)) compliance with the FOIA and/or the Environmental Information Regulations;
- (x) any disclosure that the Authority (acting reasonably) deems necessary or appropriate in the course of carrying out its public functions; or
- (xi) any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Agreement to the extent required for the performance of those obligations,

provided that, for the avoidance of doubt, neither Clause 36.4(e)(ix)(D) nor Clause 36.4(e)(iii) shall permit disclosure of Confidential Information otherwise prohibited by Clause 36.4(c) where that information is exempt from disclosure under Section 41 of the FOIA.

- (f) Where disclosure is permitted under Clause 36.4(e), other than Clauses 36.4(e)(i), 36.4(e)(iii), 36.4(e)(iv), 36.4(e)(vii) and 36.4(e)(ix), the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement.
- (g) For the purposes of the National Audit Act 1983, the Comptroller and Auditor General may examine all documents that he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Subcontractor and may require the Contractor and any Subcontractor to produce oral or written explanations he considers necessary. For the avoidance of doubt, it is agreed that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Agreement.
- (h) The Contractor shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purpose of this Agreement, except with the prior written approval of the Authority.
- (i) Where the Contractor, in carrying out its obligations under this Agreement, is provided with information relating to people or users of the Services, the Contractor shall not disclose or make use of any of that information other than for the purpose for which it was provided, unless the Contractor has obtained the prior written approval of that person or user and has obtained the prior written approval of the Authority.
- (j) On or before the Termination Date, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to people or users including any documents in the possession, custody or control of a Subcontractor, are delivered to the Authority.
- (k) The parties acknowledge that the National Audit Office has the right to publish details of this Agreement (including Commercially Sensitive Information) in its relevant reports to Parliament.
- (l) The provisions of this Clause 36.4 are without prejudice to the application of the Official Secrets Acts 1911 to 1989.
- (m) The Contractor undertakes to comply with, and ensure that the Contractor Personnel comply with:

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- (i) the Official Secrets Acts 1911 to 1989; and
- (ii) Section 182 of the Finance Act 1989.
- (n) If the Contractor or the Contractor Personnel fail to comply with this Clause 36.4, the Authority shall be entitled to terminate this Agreement pursuant to Clause 33.2 by giving notice in writing to the Contractor.
- (o) The Contractor shall ensure that each Subcontractor complies with the provisions of this Clause 36.4.

36.5 Freedom of Information

- (a) The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to each of them in the manner provided for in Clause 36.5(b) to 36.5(g) (inclusive).
- (b) Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf, and which the Authority does not hold itself, the Authority shall refer the Request for Information to the Contractor as soon as practicable and, in any event, within 5 Business Days after receiving it and the Contractor shall:
 - (i) provide the Authority with a copy of the Information in the form that the Authority requires as soon as practicable and, in any event, within 10 Business Days (or any other period as the Authority acting reasonably may specify) after the Authority's request; and
 - (ii) provide all necessary assistance reasonably requested by the Authority in connection with the Information to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- (c) Following a referral under Clause 36.5, and until the time the Contractor has provided the Authority with the Information specified in Clause 36.5(b)(i), the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided to identify and locate the Information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:
 - (i) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
 - (ii) whether Information is to be disclosed in response to a Request for Information,and in no event shall the Contractor respond directly, or allow its Subcontractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority in writing.
- (d) The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least six years (from the date it is acquired) and shall permit the Authority to inspect the Information as requested from time to time.

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- (e) The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and, in any event, within three Business Days after receiving it.
- (f) The Contractor acknowledges that any lists provided by it listing or outlining Confidential Information are of indicative value only and that the Authority may, nevertheless, be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
- (g) In the event of a referral from the Authority pursuant to Clause 36.5(b), the Contractor shall, as soon as practicable and, in any event, within 5 Business Days after the referral, inform the Authority of the Contractor's estimated costs of complying with the Request for Information to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where the costs (either on their own or in conjunction with the Authority's own costs in respect of the Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations, the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the Request for Information and, where it does require the Contractor to comply with the Request for Information, the 10 Business Days period for compliance shall be extended by the number of additional Business Days for compliance as the Authority is entitled to under Section 10 of the FOIA. In that case, the Authority shall notify the Contractor of the additional Business Days as soon as practicable after becoming aware of them and shall reimburse the Contractor for the costs incurred by the Contractor in complying with the Request for Information to the extent it is itself entitled to reimbursement of those costs in accordance with its own FOIA policy from time to time. The Contractor shall issue invoices for the relevant amounts payable under this Clause 36.5(g) to the other party in accordance with paragraph 16 of Schedule 11 (Payment Mechanism).
- (h) The Contractor acknowledges that (notwithstanding the provisions of Clause 40) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000 (the **Code**), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor, a Subcontractor or the Services:
 - (i) in certain circumstances without consulting with the Contractor; or
 - (ii) following consultation with the Contractor and having taken their views into account,

provided always that, where (i) above applies, the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

36.6 Research and Evaluation

If the Contractor undertakes or commissions any research in connection with this Agreement, the Services or Applicable Persons, the Contractor shall, and shall ensure that each of the Contractor Personnel shall: (i) comply with the requirements set out in the Mandatory Probation Instruction "Research Applications" and (ii) provide to the Authority a copy of all evidence and research findings that are produced as a result of that research.

37. ASSIGNMENT

37.1 Restrictions on the Contractor

- (a) Subject to Clause 37.1(b), the Contractor shall not assign, transfer or otherwise dispose of any of its rights or transfer (including by way of novation) or otherwise dispose of any of its obligations under this Agreement without the prior written consent of the Authority and any such purported assignment, transfer or disposal shall be void.
- (b) The restrictions in Clause 37.1(a) shall not prevent the Contractor from granting an assignment of its rights under this Agreement for the purposes of obtaining financing subject to obtaining the Authority's prior written consent which shall not unreasonably be withheld or delayed.

37.2 Restrictions on the Authority

- (a) The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) whether in whole or in part having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement being:
 - (i) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
 - (ii) any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations of the Authority under this Agreement and the relevant guarantee.
- (b) Any change in the legal status of the Authority such that it ceases to have the legal capacity, power and authority to perform its obligations under this Agreement shall not affect the validity of this Agreement. In such circumstances, this Agreement shall bind and inure to the benefit of any successor body to the Authority.

38. INTELLECTUAL PROPERTY

38.1 Ownership of Pre-existing IPRs

- (a) All Intellectual Property Rights belonging to a party (and, in the case of the Contractor, each Contractor Related Party and, in the case of the Authority, each Authority Related Party) prior to the Amendment Date shall remain vested in that party.
- (b) All Intellectual Property Rights in or to any brand or trade mark shall remain vested in the owner of the relevant brand or trade mark and neither party's trade marks or brands shall be used by the other party for any purpose without the other party's prior written consent. If that consent is given, the party receiving consent shall use the relevant trade marks or brands in compliance with the consenting party's brand guidelines and in accordance with the terms and conditions of the consent or the relevant trade mark licence between the parties (if any).

38.2 Licence of IPRs

- (a) As between the parties, the Contractor shall be the sole and exclusive owner of the Contractor IPRs.
- (b) As between the parties, the Authority shall be the sole and exclusive owner of the Authority IPRs.
- (c) The Contractor grants, and shall ensure that each Contractor Related Party grants, to:
 - (i) the Authority and each Commissioning Body for which Services are commissioned pursuant to Clause 3.1(g) or Clause 5.1; and
 - (ii) the Authority the right to grant to each Authority Related Party,
a royalty-free, non-exclusive, non-transferable, irrevocable and worldwide licence (including a right to sub-license) to use and reproduce the Contractor IPRs to the extent necessary to receive and use the Services and any Replacement Services and perform the Authority's obligations under this Agreement.
- (d) Without prejudice to any other rights or licences granted by the Authority under this Agreement, the Authority grants to each Contractor Related Party, a royalty-free, non-exclusive, non-transferable and worldwide licence (including a right to sub-license) to use the Authority IPRs solely to the extent necessary to provide the Services and perform its obligations in accordance with this Agreement. The Contractor shall ensure that the Contractor Personnel are made aware that the Authority IPRs are owned by the Authority and shall comply with the terms of this licence and Clause 38.

38.3 Branding

- (a) The Contractor acknowledges that the Authority is the owner of all the Authority brands (including all trade marks, signs and logos, whether registered or unregistered).
- (b) The Contractor shall not, and shall procure that each of its Subcontractors shall not:
 - (i) use the Authority brands as part of its corporate or trading name;
 - (ii) do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Authority brands or the reputation or goodwill associated with the Authority brands or the Authority;
 - (iii) apply for, or obtain, registration of the Authority brands for any goods or services; and
 - (iv) apply for, or obtain, registration of any trade or service mark which consists of, or comprises, or is confusingly similar to, the Authority brands.
- (c) The Contractor shall comply at all times during the Contract Period with the Brand Manual.

38.4 Notification of unauthorised use of IPRs

The Contractor shall immediately notify the Authority in writing giving full particulars if any of the following matters come to its attention:

- (a) any actual, suspected or threatened infringement of an Authority brand or Authority IPRs;
- (b) any actual or threatened claim that the Authority brands or Authority IPRs are invalid;
- (c) any actual or threatened opposition to the Authority brands or Authority IPRs;
- (d) any claim made or threatened that use of the Authority brands or Authority IPRs infringes the rights of any third party;
- (e) any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Contractor under this Clause 38; or
- (f) any other form of attack, charge or claim to which the Authority brands or Authority IPRs may be subject.

38.5 Consequence of termination on IPRs

- (a) On and with effect from the Termination Date and subject to any provisions set out elsewhere in this Agreement:
 - (i) all rights and licences granted pursuant to Clauses 38.2, 38.3 and 38.6(b) shall cease;
 - (ii) the Contractor shall cease all use of the Authority IPRs save as set out in this Clause 38.5; and
 - (iii) the Contractor shall co-operate with the Authority in the cancellation of any sub-licences registered pursuant to this Agreement and shall execute all documents and do all acts and things as may be necessary to effect that cancellation.
- (b) Without prejudice to any other rights or remedies that the Authority may have, the Contractor acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Clause 38.5 by the Contractor. Accordingly, the Authority shall be entitled, without proof of damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Clause 38.5.

38.6 Ownership of Bespoke Materials

- (a) Except to the extent expressly agreed otherwise, the Intellectual Property Rights subsisting in Bespoke Materials shall vest in the Authority unconditionally and immediately on their creation or acquisition. The Contractor assigns to the Authority absolutely with full title guarantee (or such title as it holds with limited title guarantee) all right, title and interest (present and future) in any Intellectual Property Rights in the Bespoke Materials.
- (b) The Authority grants to each Contractor Related Party a royalty-free, non-exclusive, non-transferable, worldwide licence (including a right to sub-license) to use, reproduce, modify, adapt and develop the Intellectual Property Rights in the Bespoke Materials solely to the extent necessary to provide the Services and perform its obligations under this Agreement.

- (c) The Contractor grants, and shall ensure that each Contractor Related Party grants, to the Authority a fully paid up, royalty-free, non-exclusive, transferable, perpetual, irrevocable and worldwide licence (including a right to sub-license) to use all Contractor IPRs to the extent required for the purposes of using and exploiting the Bespoke Materials only.
- (d) The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Agreement or the performance of this Agreement.
- (e) If the Contractor wishes to use any of the Bespoke Materials other than for the purposes of providing the Services in accordance with this Agreement, it shall notify the Authority in writing and the parties shall negotiate in good faith with a view to agreeing the terms of a licence for the use of the Bespoke Materials and the terms of any arrangements for the sharing of revenue arising from the use.
- (f) The Authority acknowledges and agrees that [REDACTED] (as defined in Schedule 8 (Services Delivery Proposals)) is an Off-the-shelf Package with configuration to suit the Services and has not been created, developed or acquired for the Authority under this Agreement and, therefore, will not constitute Bespoke Materials. [REDACTED] shall be Third Party Software for the purposes of this Agreement utilised in accordance with the provisions of Clause 35.3(c), Clause 38.2(c) and 38.8(a).

38.7 Licence of Third Party IPRs

Subject to Clause 38.8, the Contractor grants, or shall procure the grant of, and shall ensure that each Contractor Related Party and Subcontractor grants, to the Authority and each Authority Related Party a royalty-free, non-exclusive, non-transferable, irrevocable and worldwide licence (including a right to sub-license) to use and reproduce Third Party IPRs to the extent necessary to receive and use the Services and any Replacement Services and perform the Authority's obligations under this Agreement.

38.8 Use of Third Party Software Materials

- (a) If the Contractor wishes to use any Third Party Software Materials in the performance of its obligations under this Agreement, the Contractor shall use, wherever reasonably practicable, Off-the-shelf Packages. If the Contractor has or can procure the right to sub-license those Third Party Software Materials, the Contractor shall grant to the Authority and each Authority Related Party a sub-license in respect of those Third Party Software Materials on the terms set out in Clause 38.2(c) if and to the extent required to receive the Services. If the Contractor does not have the right to sub-license those Third Party Software Materials to the Authority and each Authority Related Party on the terms set out in Clause 38.2(c), the Contractor shall ensure, at its cost and expense, the Authority and each Authority Related Party is granted a licence, directly by that Third Party on the Third Party's standard licence terms, to use that Off-the-shelf Package.
- (b) If the Contractor wishes to use any Third Party Software Materials which are not Off-the-shelf Packages in the performance of the Contractor's obligations, the Contractor shall obtain the right:
 - (i) for the Authority and each Authority Related Party to have the Source Code for those Third Party Software Materials placed in escrow at all times, on the Authority's request and at the Authority's cost, with NCC Escrow International

Limited or any successor or alternative escrow agent approved in writing by the Authority from time to time; and

- (ii) for the Authority and each Authority Related Party to use the Third Party Software Materials during the Contract Period on the terms set out in Clause 38.2(c),

or failing that, the Contractor shall obtain the prior written consent of the Authority to use those Third Party Software Materials in connection with the provision of the Services or the performance of the Contractor 's other obligations arising under or in connection with this Agreement.

38.9 Escrow

If requested by the Authority, the Contractor shall place the Source Code for any Software Materials owned by the Contractor and used in the provision of the Services in escrow with NCC Escrow International Limited or any successor or alternative escrow agent approved in writing by the Authority from time to time. With respect to any Bespoke Materials owned by the Authority, the Contractor shall from time to time on request provide the Authority with an up-to-date version of the Source Code.

38.10 Intellectual Property Rights Indemnity

- (a) Subject to the provisions of this Clause 38.10, the Contractor shall indemnify the Authority and each Authority Related Party on written demand in respect of all Losses incurred by or awarded against the Authority or that Authority Related Party in connection with any claim or action against the Authority or that Authority Related Party by any Third Party that the receipt by the Authority or that Authority Related Party of any Services (or any part of them) infringes the Intellectual Property Rights of that Third Party (**Contractor IPR Claim**) within the time specified in that written demand and shall take all steps necessary to defend the Contractor IPR Claim.
- (b) The Authority agrees that:
 - (i) it shall notify the Contractor in writing as soon as reasonably practicable of any Contractor IPR Claim of which the Authority has notice;
 - (ii) the Contractor shall (subject to Clause 38.10(c)) upon notification in accordance with Clause 38.10(a), assume exclusive conduct of the Contractor IPR Claim (which shall include the exclusive right to conduct any proceedings or action, negotiate the settlement of the Contractor IPR Claim and conduct all discussions and dispute resolution efforts in connection with the Contractor IPR Claim);
 - (iii) no Authority Related Party shall admit any liability or agree to any settlement or compromise of the Contractor IPR Claim without the prior written consent of the Contractor, which shall not be unreasonably withheld or delayed;
 - (iv) the Authority shall, at the Contractor's request, cost and expense, give the Contractor all reasonable assistance in connection with the conduct of the Contractor IPR Claim including access to personnel and provision of documents; and
 - (v) until the Contractor assumes exclusive conduct of the Contractor IPR Claim in accordance with Clause 38.10(b)(ii), the Authority shall take all proper action to

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deal with the Contractor IPR Claim so as to minimise the extent of any amount payable under that claim.

- (c) If any Contractor IPR Claim is made, or in the Authority's reasonable opinion is likely to be made, against any Authority Related Party, the Contractor shall promptly and at its cost and expense either:
 - (i) obtain for that Authority Related Party the right to continue using the Services in the manner permitted under this Agreement; or
 - (ii) modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement but in such a way that it complies with its obligations under this Agreement in relation to all and every part of the Services.
- (d) The indemnity in Clause 38.10(a) shall not apply to any Contractor IPR Claim which arises directly and solely from:
 - (i) any changes to the Contractor System made by the Authority without the written consent of the Contractor, which consent shall not be unreasonably withheld or delayed; or
 - (ii) the use of the Contractor System in combination with any other materials, software, equipment or systems not supplied or approved by the Contractor, which approval shall not be unreasonably withheld or delayed.
- (e) Subject to the provisions of this Clause 38.10, the Authority shall indemnify the Contractor on written demand in respect of all Losses incurred by or awarded against the Contractor in connection with any claim or action against the Contractor by any Third Party that the use or possession by the Contractor of materials made available to the Contractor by the Authority (the **Authority Supplied Materials**) (or any part of them) infringes the Intellectual Property Rights of that Third Party (**Authority IPR Claim**) within the time specified in that written demand and shall take all steps necessary to defend the Authority IPR Claim.
- (f) The Contractor agrees that:
 - (i) it shall notify the Authority in writing as soon as reasonably practicable of any the Authority IPR Claim of which the Contractor has notice;
 - (ii) the Authority shall, subject to Clause 38.10(g) upon notification in accordance with Clause 38.10(f)(i) assume exclusive conduct of the Authority IPR Claim (which shall include the exclusive right to conduct any proceedings or action, negotiate the settlement of the Authority IPR Claim and conduct all discussions and dispute resolution efforts in connection with the Authority IPR Claim);
 - (iii) the Contractor shall not admit any liability or agree to any settlement or compromise of an Authority IPR Claim without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed;
 - (iv) the Contractor shall, at the Authority's request, cost and expense, give the Authority all reasonable assistance in connection with the conduct of the Authority IPR claim, including access to its personnel and the provision of documents; and

- (v) until the Authority assumes exclusive conduct of the Authority IPR Claim in accordance with Clause 38.10(f)(ii), the Contractor shall take all proper action to deal with the Authority IPR Claim so as to minimise the extent of the amount payable under that claim.
- (g) The indemnity in Clause 38.10(e) shall not apply to any Authority IPR Claim to the extent it arises directly from:
 - (i) any changes to the Authority Supplied Materials made by the Contractor without the written consent of the Authority, which consent shall not be unreasonably withheld or delayed; or
 - (ii) the use of those Authority Supplied Materials in combination with any other materials, software, equipment or systems not supplied or approved by the Authority, which approval shall not be unreasonably withheld or delayed.
- (h) This Clause 38.10 shall remain in full force and effect notwithstanding any expiry or termination of this Agreement.

39. PROJECT DATA

39.1 Project Data

- (a) As between the Contractor and the Authority, the Authority is to be treated as the owner of Project Data and the Contractor agrees that the Project Data is the property of the Authority. All Intellectual Property Rights in or to the Project Data shall vest in the Authority unconditionally and immediately on their creation. The Contractor assigns to the Authority absolutely with full title guarantee (or the title as it holds with limited title guarantee) all right, title and interest (present and future) in any Intellectual Property Rights in the Project Data which may vest in it.
- (b) The Authority grants to each Contractor Related Party a royalty-free and non-exclusive licence (with the right to sublicense to Subcontractors solely to the extent necessary to provide the Services to the Authority) for the Contract Period to use the Project Data on the terms of this Agreement for the purpose of providing the Services to the Authority in accordance with this Agreement.
- (c) The Contractor shall:
 - (i) store, copy or use Project Data only to the extent necessary to perform its obligations under this Agreement;
 - (ii) keep the Project Data logically segregated from all other data (including the Contractor's own data and the data of any other customer of the Contractor);
 - (iii) ensure that the Project Data is accurate (other than Project Data provided to the Contractor by the Authority where the Contractor shall use reasonable endeavours to ensure that the Project Data is accurate) and shall preserve the integrity of the Project Data and prevent the corruption or loss of the Project Data; and
 - (iv) to the extent the Project Data is held or processed or both by the Contractor, supply the Project Data to the Authority in the format specified by the Authority from time to time.

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- (d) The Contractor shall create an accurate and up to date record relating to each Applicable Person (as applicable) on nDelius (or any other application as required by the Authority from time to time) in accordance with each Technical Note including as required in Schedule 7 (Services Output Specification), Schedule 9 (Performance Measures and Service Credits), Schedule 10 (Interfaces) and Schedule 20 (Management Information) or as otherwise set out in this Agreement and which includes:
- (i) compliance with the sentence of the court;
 - (ii) attendance as required under Schedule 7 (Services Output Specification) or Schedule 10 (Interfaces);
 - (iii) progress of the requirements to which the Applicable Person is subject;
 - (iv) any change in circumstances of the Applicable Person;
 - (v) the level of risk of Serious Harm posed by the Applicable Person;
 - (vi) key risk management decisions;
 - (vii) the Applicable Person's needs as identified by the offender manager in relation to resettlement and likelihood of reoffending;
 - (viii) key events;
 - (ix) victim information;
 - (x) reviews of the relevant Plan;
 - (xi) when the initial appointment was held with each Allocated Person; and
 - (xii) all other relevant information.

For all other Project Data relating to Applicable Persons that is not recorded as nDelius, the Contractor shall use the Authority's reporting templates as requested from time to time.

- (e) The Contractor shall not:
- (i) delete or remove any proprietary notices contained within or relating to the Project Data;
 - (ii) disclose Project Data to any Third Party (other than permitted Subcontractors) or any of the Contractor's customers without the prior written approval of the Authority except if required to do so by a Relevant Authority or by any Applicable Law provided it notifies the Authority in writing that it is required to do so before the disclosure (if permitted to do so by the relevant Applicable Law) or after it has made the disclosure if prior notification is prohibited by the relevant Applicable Law; and
 - (iii) use the Project Data to solicit any business for any of the Contractor's products or services,

save as expressly permitted under Clauses 39.1(b) or Clause 29.

- (f) If any part of the Project Data ceases to be required by the Contractor for the performance of its obligations under this Agreement and, in any event, on or before the Termination Date if earlier, the Contractor shall promptly return that Project Data to the Authority.
- (g) If any Project Data is corrupted, lost or degraded as a result of the Contractor's failure to comply with the Authority ICT Policies or any other breach by the Contractor of this Agreement, the Contractor shall, without limiting the Authority's other rights or remedies, at its own cost and expense carry out any remedial action necessary to restore or replace the corrupted, lost or degraded Project Data.
- (h) In all other circumstances not covered by Clause 39.1(g), if the Project Data is corrupted, lost or degraded, the Contractor shall carry out, so far as it is reasonably capable, those remedial actions which are reasonably necessary to restore Project Data as the Authority reasonably requires and at the Authority's cost and expense.
- (i) If and to the extent the Project Data comprises personal data, this shall be processed always in accordance with Clause 36.2.
- (j) The Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Project Data and neither the Authority nor an Authority Related Party shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Project Data.

39.2 Back-up and safe storage of data

The Contractor shall ensure the back up and storage in safe custody of the Project Data in the possession or control of the Contractor at all times during the Contract Period in accordance with Good Industry Practice. Without prejudice to this obligation, the Contractor shall submit to the Authority for written approval its proposals for the back up and storage in safe custody of all Project Data and the Authority shall be entitled to object if the proposals are not in accordance with Good Industry Practice. The Contractor shall comply, and shall procure that each Contractor Related Party complies, with all procedures which the Authority reasonably requires the Contractor to follow having reviewed the Contractor' proposals for the back up and storage of Project Data. The Contractor may vary its procedures for back-up and storage of Project Data subject to submitting its proposals for change to the Authority for its prior written approval, to which it shall be entitled to object on the basis set out in this Clause 39.2.

39.3 Mistakes in Information

- (a) The Contractor shall be responsible for the accuracy of all data, drawings, reports, documents, plans, software, formulae, calculations and other data and information supplied to the Authority in connection with the Services and shall pay to the Authority any extra costs occasioned by any discrepancies, errors or omissions in any of them.
- (b) The Contractor acknowledges that it has:
 - (i) made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;

- (ii) raised all relevant due diligence questions with the Authority before the Amendment Date;
 - (iii) satisfied itself that it has sufficient information to ensure that it can provide the Services; and
 - (iv) entered into this Agreement in reliance on its own due diligence alone.
- (c) Without prejudice to Clause 39.3(b), the Contractor shall:
- (i) use its reasonable endeavours to check and verify that the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority are accurate; and
 - (ii) promptly notify the Authority in writing if it discovers errors or discrepancies in the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority.

39.4 Data Exchange Requirements

Each party shall comply with the terms of and provide the data as set out in the Data Exchange Requirements.

40. CONFLICTS OF INTEREST

40.1 Conflicts of Interest

- (a) The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Contractor Personnel is placed in a position where, in the reasonable opinion of the Authority:
- (i) there is or may be an actual conflict, between the financial or personal interests of the Contractor and the duties owed to the Authority under the provisions of this Agreement; or
 - (ii) the behaviour of the Contractor or any of the Contractor Personnel is not in the Authority's best interests or might adversely affect the Authority's reputation,

provided that nothing in this Clause 40.1 shall prohibit the Contractor from enforcing any rights which it may have under or in connection with this Agreement against the Authority.

- (b) The Contractor shall, as soon as reasonably practicable, disclose to the Authority full particulars of any behaviour which might give rise to the matters referred to in Clauses 40.1(a)(i) or (ii).

40.2 Right to terminate

- (a) The Authority shall be entitled to terminate this Agreement by giving the Contractor an Authority Termination Notice and/or to take any other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, between the financial or personal interests of the Contractor or the Contractor Personnel and the duties owed to the Authority under the provisions of this Agreement. The actions of the Authority pursuant to this Clause 40.2 shall not prejudice or affect any right of action or remedy which has accrued or will accrue to the Authority.

- (b) If the Authority gives an Authority Termination Notice pursuant to Clause 40.2(a), the Exit Period will commence on the day falling 20 Business Days after the date of the Authority Termination Notice and this Agreement shall effectively terminate on the Termination Date unless the Authority in its absolute discretion allows the Contractor the opportunity to rectify the conflict within that period of 20 Business Days. If the Contractor rectifies the conflict within that period, the Authority Termination Notice will be deemed to be revoked and this Agreement will continue in force. If the Contractor fails to rectify the conflict within that period, the Exit Period will commence on the day falling five Business Days after the expiry of that period and this Agreement shall effectively terminate on the Termination Date.

41. DISPUTE RESOLUTION

41.1 Resolution of Disputes

- (a) The parties agree that each dispute arising under or in relation to any aspect of this Agreement or any non-contractual obligations arising under or in connection with it (**Dispute**) shall be resolved in accordance with this Clause 41.
- (b) If a Dispute arises, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the Dispute.
- (c) Each Dispute shall be referred for resolution by either party first to:
 - (i) in the case of the Authority, the Relationship Manager appointed by the Authority under Clause 23.1; and
 - (ii) in the case of the Contractor, the Relationship Manager appointed by the Contractor under Clause 23.1.
- (d) If the Dispute cannot be resolved by the Relationship Managers in accordance with Clause 41.1(c) within 10 Business Days after the Dispute has first been referred pursuant to Clause 41.1(c), either party may give written notice to the other party that the Dispute has not been resolved by the Relationship Managers (**Dispute Notice**). Within five Business Days after the date of the Dispute Notice, the Dispute shall be referred to the Chairperson of the Contractor and to the designated Senior Responsible Officer for account management of the Authority for resolution. If the Dispute is not resolved by agreement in writing between the parties within 10 Business Days after the date of the Dispute Notice, the Dispute shall be resolved in accordance with the remaining provisions of this Clause 41 or Clause 42.12, as the case may be.

41.2 Adjudication

- (a) Without prejudice to Clause 41.1, if the parties agree in writing, the Dispute may be referred to adjudication and an adjudicator (**Adjudicator**) shall be selected in accordance with Clause 41.2(b).
- (b) The Adjudicator nominated to consider a dispute referred to him shall be selected on a rotational basis from the panel of experts appointed in accordance with the following:
 - (i) the experts shall be wholly independent of the Contractor, a Contractor Related Party, the Authority, an Authority Related Party and any of the major competitors of the Contractor;

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- (ii) the panel shall be comprised of three experts who shall be appointed jointly by the Contractor and the Authority;
 - (iii) the appointments shall take place on or before the date 40 Business Days after the Amendment Date;
 - (iv) if any member of a panel resigns during the Contract Period, a replacement expert shall be appointed by the Contractor and the Authority as soon as practicable after the date of the resignation; and
 - (v) if the Authority and the Contractor are unable to agree on the identity of the experts to be appointed to the panel, the President for the time being of the Chartered Institute of Arbitrators shall appoint the experts within 20 Business Days after any application for that appointment by either party.
- (c) Within five Business Days after appointment in relation to a particular Dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary to resolve the Dispute.
- (d) The Adjudicator shall provide to both parties his written decision on the Dispute within 20 Business Days after his appointment (or any other period as the parties may agree in writing after the reference). Unless the parties otherwise agree in writing, the Adjudicator shall give reasons for his decision. The Adjudicator's decision (in the absence of manifest error) shall be binding on both parties who shall immediately give effect to the decision.
- (e) The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- (f) The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator, his determination or the procedure by which he reached his determination.
- (g) The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement.
- (h) All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not, save as permitted by Clause 36.4, disclose to any person or company any information, data or documentation and all information, data or documentation shall remain the property of the party disclosing or delivering it and all copies shall be returned to that party on completion of the Adjudicator's work.
- (i) The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

41.3 Arbitration

- (a) Without prejudice to Clause 41.1, if the parties agree in writing, the Dispute may be referred to arbitration. The parties shall agree on the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than 10 years' standing (**Arbitrator**). If the parties are unable within 10 Business Days after agreeing that the Dispute should be referred to arbitration to agree the identity of the Arbitrator, either party may request the President of the Law Society to make the appointment.
- (b) The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Agreement and, where appropriate, to order financial compensation to be paid by one party to the other Party. The arbitration shall take place in London.
- (c) The Arbitrator shall, in his absolute discretion, make any procedural directions as he considers necessary such as ordering the parties to provide written submissions within the time period as he considers appropriate and/or to attend any hearings as he deems necessary.
- (d) The Arbitrator shall deliver his decision on any matter referred to him within 20 Business Days after concluding any hearings which may have been held in connection with the matter and, in any event, within 60 Business Days (or any other period as the parties may agree in writing) after his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both parties. The costs of the arbitration will be in the discretion of the Arbitrator.

41.4 Other Relief

This Clause 41 and Clause 42.12 do not limit either party's right to seek interim relief (such as an injunction) against the other party through the English courts to protect its rights and interests, or to enforce the obligations of the other party.

41.5 Continuing obligations

The parties shall continue to comply with, observe and perform all their obligations under this Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this Clause 41 and shall give effect immediately to every decision of the Adjudicator and the Arbitrator delivered under this Clause 41.

42. MISCELLANEOUS

42.1 Announcements

The Contractor shall not:

- (a) subject to Clause 36.3, make or authorise any public or private announcement or communication concerning this Agreement; or
- (b) notwithstanding Clause 38.3, refer to, or use any business name or trade mark of, the Authority in any promotional communications,

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without the prior written consent of the Authority (which, in the case of Clause 42.1(a), shall not be unreasonably withheld or delayed), except where required by Applicable Law provided it notifies the Authority in writing that it is required to do so before the communication (if permitted to do so by the relevant Applicable Law) or after it has made the communication if prior notification is prohibited by the relevant Applicable Law.

42.2 Notices

- (a) Any notice or other communication to be given under this Agreement to a party must be in writing (which does not include any form of electronic communication (as defined in the Electronic Communications Act 2000)) and must be delivered or sent by post to the party to whom it is to be given at its address set out below:

- (i) to the Authority at:

Ministry of Justice Procurement Directorate
10th Floor
102 Petty France
London SW1H 9AJ

Marked for the attention of: Head of Commercial & Contract Management

- (ii) to the Contractor at:

Ingeus UK Ltd
Fourth Floor
66 Prescott Street
London E1 8HG

Marked for the attention of: Chief Financial Officer

or at any other address as it shall have notified to the other party in accordance with this Clause 42.2. Any notice or other communication sent by post shall be sent by prepaid first class recorded delivery post (if within the United Kingdom) or by prepaid airmail (if elsewhere). The parties shall agree in writing within 20 Business Days after the Amendment Date a written protocol for the delivery of notices for the operational management of this Agreement (including by way of email) and the Contractor shall comply at all times with that written protocol as updated in writing from time to time.

- (b) Any notice or other communication shall be deemed to have been given:
- (i) if delivered, on the date of delivery; or
- (ii) if sent by post, on the second Business Day after it was put into the post.
- (c) In proving the giving of a notice or other communication, it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted by prepaid first class recorded delivery post or by prepaid airmail as the case may be.
- (d) This Clause 42.2 shall not apply in relation to the service of any claim form, notice, order, judgement or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

42.3 Entire Agreement

- (a) This Agreement (and the documents referred to in it) and, subject to Clause 18.7, including the Services Agreement as it existed prior to the Amendment Date contain the whole agreement between the parties relating to the transactions contemplated by this Agreement and supersede all previous agreements between the parties relating to these transactions.
- (b) Nothing in Clause 42.3(a) limits or excludes any liability for fraud.

42.4 Third Party Rights

- (a) Subject to Clauses 42.4(b) and 42.4(c), no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement. This Clause 42.4 does not apply to the Crown and does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.
- (b) The Contractor acknowledges and agrees that the Authority has entered into this Agreement for its own benefit and for the benefit of each Authority Related Party. The Authority shall enforce any provision of this Agreement on behalf of each Authority Related Party except to the extent that it is not able to so do as a result of Applicable Law. The Contractor agrees that a Default by the Contractor may result in Losses being suffered by an Authority Related Party and agrees that the Authority shall not be precluded from recovering those Losses from the Contractor under this Agreement solely by reason of the fact that they were incurred by an Authority Related Party and not by the Authority itself.
- (c) If and to the extent that the Authority is not able to recover a Loss incurred by a Commissioning Body under the provisions of this Clause 42.4 in any instance where a claim to recover Loss is not, by operation of law or decision of a court, deemed to be enforceable by the Authority itself (including, for example, where it is deemed that the Authority has no standing to enforce the claim for recover of Loss for whatever reason), that Commissioning Body shall be entitled to enforce this Agreement against the Contractor in its own right in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 but only to the extent those rights relate to a Service commissioned by that Commissioning Body, subject always to the liability provisions in this Agreement, which shall apply mutatis mutandis to claims made by the Commissioning Body and even though the relevant Clause may be silent as to which person is intended to have the benefit of the relevant obligation, refer only to the Authority or not specifically identify a Commissioning Body.
- (d) Clause 42.4(c) shall not apply to any Clause in this Agreement which requires:
 - (i) the consent or agreement of the Authority; or
 - (ii) the Contractor to notify or advise the Authority of any matter,and it shall be sufficient in each case for the Contractor to obtain only the consent or agreement or to notify or advise the Authority only.
- (e) The consent of each Commissioning Body is not necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of this Agreement.

42.5 Waiver

The rights of each party under this Agreement:

- (a) may be exercised as often as necessary;
- (b) except as otherwise provided by this Agreement, are cumulative and not exclusive of rights or remedies provided by law; and
- (c) may be waived only in writing and specifically.

Delay in the exercise or non-exercise of any right is not a waiver of that right. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Agreement.

42.6 No partnership or agency

At all times during the Contract Period, the Contractor shall be an independent contractor and nothing in this Agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor and, accordingly, neither party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other party save as expressly permitted by the terms of this Agreement.

42.7 Severability

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

42.8 Amendments

No amendment of this Agreement shall be binding on the parties unless set out in writing, expressed to amend this Agreement and signed by an authorised representative of each of the parties. This Clause 42.8 shall not apply to a Change which is required to be made through the Change Protocol.

42.9 Further assurance

Each party undertakes, at the request and cost and expense of the other party, to sign all documents and to do all other acts which may be necessary to give full effect to this Agreement.

42.10 Costs

- (a) Each party shall pay the costs and expenses incurred by it in connection with the entering into, expiry and termination of this Agreement.
- (b) Where this Agreement provides for the Authority to pay costs to the Contractor, the Contractor shall be entitled to recover those costs from the Authority provided that it demonstrates, to the reasonable satisfaction of the Authority, that the costs have been reasonably incurred and could not reasonably have been mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

42.11 Counterparts

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

42.12 Governing Law and Jurisdiction

- (a) This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the law of England and Wales.
- (b) Subject to the Dispute Resolution Procedure, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute, claim or controversy arising out of or in connection with this Agreement (including a dispute, claim or controversy relating to any non-contractual obligations arising out of or in connection with this Agreement) and the parties accordingly submit to the exclusive jurisdiction of the English courts.

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

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

SCHEDULE 2

OWNERSHIP AND CORPORATE STRUCTURE OF THE CONTRACTOR AND GUARANTOR

**OFFICIAL SENSITIVE
CPA09, STAFFORDSHIRE AND WEST MIDLANDS, BIDDER 837
FINAL**

**SCHEDULE 3
CONTRACT PACKAGE AREA**

**OFFICIAL SENSITIVE
CPA09, STAFFORDSHIRE AND WEST MIDLANDS, BIDDER 837
FINAL**

**SCHEDULE 4
COMMERCIALLY SENSITIVE INFORMATION**

**SCHEDULE 5
KEY PERSONNEL**

**SCHEDULE 6
PERMITTED SUBCONTRACTORS**

**SCHEDULE 7
SERVICES OUTPUT SPECIFICATION**

**SCHEDULE 8
SERVICES DELIVERY PROPOSALS**

**SCHEDULE 9
PERFORMANCE MEASURES AND SERVICE CREDITS**

SCHEDULE 10

INTERFACES

**SCHEDULE 11
PAYMENT MECHANISM**

**OFFICIAL SENSITIVE
CPA09, STAFFORDSHIRE AND WEST MIDLANDS, BIDDER 837
FINAL**

**SCHEDULE 12
CHANGE PROTOCOL**

**SCHEDULE 13
BUSINESS CONTINUITY**

**SCHEDULE 14
GOVERNANCE**

SCHEDULE 15

AUDIT

SCHEDULE 16

INSURANCE

OFFICIAL SENSITIVE
CPA09, STAFFORDSHIRE AND WEST MIDLANDS, BIDDER 837
FINAL

SCHEDULE 17
INDUSTRY STANDARD PARTNER AGREEMENT

**SCHEDULE 18
INFORMATION ASSURANCE**

SCHEDULE 19

ICT

**SCHEDULE 20
MANAGEMENT INFORMATION**

**SCHEDULE 21
EMPLOYEE INCENTIVES**

SCHEDULE 22

PENSIONS

SCHEDULE 23

MARKET STEWARDSHIP PRINCIPLES

**SCHEDULE 24
EXIT PLAN AND TERMINATION ASSISTANCE**

**SCHEDULE 25
EMPLOYEE MATTERS**

SCHEDULE 26

FAIR VALUE

**SCHEDULE 27
TRANSITION AND TRANSFORMATION PLAN**

SIGNATORIES

SIGNED by)

)

for and on behalf of)

**THE SECRETARY OF STATE FOR)
JUSTICE**

SIGNED by)

)

for and on behalf of)

**THE STAFFORDSHIRE AND WEST)
MIDLANDS COMMUNITY
REHABILITATION COMPANY
LIMITED**