

Order Form

1. Contract Reference	con_23636	
2. Date	13 March 2024	
3. Buyer	Ministry of Justice 102 Petty France London SW1H 9AJ	
4. Supplier	Institute for Food, Brain and Behaviour (operating as Think Through Nutrition) c/o Critchleys LLP, Beaver House, 23-38 Hythe Bridge Street, Oxford, OX1 2EP	
5. The Contract	<p>The Supplier shall supply the deliverables described below on the terms set out in this Order Form, the attached contract conditions ("Conditions"), the Data Processing Agreement and any Annexes.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p>	
6. Deliverables	Goods	N/A
	Services	Services to achieve Deliverables set out in Annex 2
7. Specification	The specification of the Deliverables is as set out in Annex 2.	
8. Term	<p>The Term shall commence on 1 November 2023</p> <p>and the Expiry Date shall be 31 October 2024, unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.</p>	

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	The Buyer may extend the Contract for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Contract shall apply throughout any such extended period.	
9. Charges	The Charges for the Deliverables shall be as set out in Annex 2 .	
10. Payment	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to:</p> <p>Contact Details noted in the Purchase Order.</p> <p>Within 10 Working Days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment please contact:</p> <p>Redacted</p> <p>Or</p> <p>Redacted</p>	
11. Buyer Authorised Representative(s)	<p>For general liaison your contact will continue to be</p> <p>Redacted</p> <p>or, in their absence,</p> <p>Redacted</p>	
12. Address notices for	Buyer:	Supplier:
	Redacted	Redacted
13. Key Personnel	Buyer:	Supplier:
	Redacted	Redacted

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14. Procedures and Policies	<p>The Buyer may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclosure and Barring Service check.</p> <p>The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "Relevant Conviction"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.</p>

Signed for and on behalf of the Supplier	Signed for and on behalf of the Buyer
Name: Redacted	Name: Redacted
Date: Redacted	Date: Redacted
Signature: Redacted	Signature: Redacted

Annex 2 – Specification

The Deliverables are as set out below:

Headline description	Notes	Milestone
Initial payment	Project initiation & Laravel upgrade	0
Sprint 1 scope	Delivery of page turn, PW reset functionalities, all features up to check-in" and completion of "In Sprint Test".	0
Sprint 2 scope	Wireframes, specification, content management and design assets development and completion of "In Sprint Test".	0
Sprint 3 scope	System security	0
Sprint 4 scope	System remediation	0
Sprint 5 scope	System testing	0
Sprint 6 scope	Project completion (not billed to MoJ)	0
Sprint 7 scope	E2E tests, snagging list and fixes, test plan, system deployment, and all associated tasks leading up to the final product fix.	0
TTN project management	Overseeing project development and delivery and managing any contingency costs	1
Platform build expansion (to enable wider roll out, including to two new prisons in the pilot)	Platform specifications updated to enable bespoke programmes to be run at different prisons	1
Registration field + health and wellbeing questionnaire updates	Changes to User Registration form in line with Science Office feedback	1
Design improvements	To optimise UX in relation to previous changes, key elements need to be added to make the site more visually engaging, including white site heading bar, updated page title bars, updated home screen layout to include module images	1
Food selection / Menus importing (based on Science Office and Climate Change and Sustainability Unit recommendations)	Creation of import template, importing of data, linking menus to sites, updates to check in process to show correct food items to students	1
Manual data entry for food menu import (based on Science Office and Climate Change and Sustainability Unit recommendations)	Receive menus from all prisons, plus additional info like RAG rating and nutritional info, input all into above mentioned import template	1

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Outcomes and gamification (to enhance engagement and retention)	4 dashboards; learning progress, food RAG, food waste, wellbeing, each presenting metrics to learners over time. Display progress and badges to users depending on whether they complete modules each week. Offer daily check-ins on all measures.	1
Penetration testing (in line with HMPPS Cyber Security advice)	Conduct penetration testing to CREST or CHECK status	2
Single Sign On integration (in line with updated Digital Justice recommendations)	Update of integration approach due to changes in HMPPS information architecture design (initial advice on contract award was to build for Active Directory integration)	2

Milestones delivered

0	
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Expected delivery date**Milestones to be delivered**

1	Redacted
2	Redacted
Total	

31-03-24

31-03-25

Short form Terms

Definitions used in the Contract

In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

Associated Educational and Impact Measurement Programmes	means other programmes developed or run by Think Through Nutrition [●];
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
"Charges"	means the charges for the Deliverables as specified in the Order Form;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Contract"	means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form and Annexes;
"Controller"	has the meaning given to it in the GDPR;
"Buyer"	means the person identified in the letterhead of the Order Form;
"Date of Delivery"	means that date by which the Deliverables must be delivered to the Buyer, as specified in the Order Form;
"Buyer Cause"	any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to

		the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
"Data Processing Agreement"		means the agreement between the Buyer and the Supplier, dated on or around the date of this Contract, which governs each Party's obligations in respect of the processing of data;
"Data Protection Legislation"		(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"Data Protection Impact Assessment"		an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Officer"		has the meaning given to it in the GDPR;
"Data Subject"		has the meaning given to it in the GDPR;
"Data Loss Event"		any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Subject Access Request"		a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deliver"		means hand over the Deliverables to the Buyer at the address and on the date specified in the Order Form. Delivered and Delivery shall be construed accordingly;
"Deliverable"		means an item or feature in the supply of Services delivered or to be delivered by the Supplier to achieve the milestones listed in Annex 2, during the performance of this Contract;
"Existing IPR"		any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise) and capable of being licensed under the Contract;
"Expiry Date"		means the date for expiry of the Contract as set out in the Order Form;
"FOIA"		means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Force Majeure Event"	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and iii) any failure of delay caused by a lack of funds;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"Goods"	means the goods to be supplied by the Supplier to the Buyer under the Contract;
"Good Industry Practice"	standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government Data"	a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Data Controller;
"Information"	has the meaning given under section 84 of the FOIA;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Insolvency Event"	in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
"Key Personnel"	means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
LANAH Pilot	the specific version of the Platform developed under the Pilot.

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"Platform"	
"LED"	Law Enforcement Directive (Directive (EU) 2016/680);
"Materials"	all materials, data, documents, drawings, graphics or Software whether in physical or electronic form including (without limitation) gamification elements and improvements to pre-existing materials.
"New IPR"	any and all intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but not including the Supplier's Existing IPR;
"Order Form"	means the letter from the Buyer to the Supplier printed above these terms and conditions;
"Party"	the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
"Personal Data"	has the meaning given to it in the GDPR;
"Personal Data Breach"	has the meaning given to it in the GDPR;
"Pilot"	means a nutrition education pilot developed and delivered by Think Through Nutrition, HMPPS and Oxford Brookes University
"Platform"	means Think Through Nutrition's digital education and impact measurement platform;
"Processor"	has the meaning given to it in the GDPR;
"Purchase Order Number"	means the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;
"Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
"Set Prisons"	means HMPs Berwyn, Wayland, New Hall and Askham Grange;
"Services"	Means the services and Deliverables to be supplied by the Supplier to the Buyer under the Contract;
"Specification"	means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description

and quality) as specified in the Order Form;

"Staff"	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
"Staff Vetting Procedures"	means vetting procedures that accord with good industry practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
"Supplier"	means the person named as Supplier in the Order Form;
"Term"	means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended in accordance with clause [] or terminated in accordance with the terms and conditions of the Contract;
"Territory"	means [the United Kingdom];
"US-EU Privacy Shield Register"	a list of companies maintained by the United States of America Department for Commerce that have self-certified their commitment to adhere to the European legislation relating to the processing of personal data to non-EU countries which is available online at: https://www.privacyshield.gov/list ;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Workers"	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables;
"Working Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

Understanding the Contract

In the Contract, unless the context otherwise requires:

- 1.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

- 1.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 1.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 1.5 the singular includes the plural and vice versa;
- 1.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law; and
- 1.7 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation".

How the Contract works

- 1.8 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 1.9 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 1.10 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

What needs to be delivered

1.11 All Deliverables

- (a) The Supplier must provide Deliverables: (i) in accordance with the Specification; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all law.
- (b) The Supplier must provide Deliverables with a warranty of at least 90 days (or longer where the Supplier offers a longer warranty period to its Buyers) from Delivery against all obvious defects.

1.12 Goods clauses

- (a) All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- (b) All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.
- (c) The Supplier transfers ownership of the Goods on completion of delivery (including off-loading and stacking) or payment for those Goods, whichever is earlier.

- (d) Risk in the Goods transfers to the Buyer on delivery, but remains with the Supplier if the Buyer notices damage following delivery and lets the Supplier know within three Working Days of delivery.
- (e) The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- (f) The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- (g) The Supplier must provide sufficient packaging for the Goods to reach the point of delivery safely and undamaged.
- (h) All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- (i) The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- (j) The Supplier will notify the Buyer of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the Buyer against the costs arising as a result of any such request.
- (k) The Buyer can cancel any order or part order of Goods which has not been delivered. If the Buyer gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.
- (l) The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with clause 4.2. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- (m) The Buyer will not be liable for any actions, claims, costs and expenses incurred by the Supplier or any third party during delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation then the Supplier shall indemnify from any losses, charges costs or expenses which arise as a result of or in connection with such damage or injury where it is attributable to any act or omission of the Supplier or any of its [sub-suppliers].

1.13 Services clauses

- (a) Late delivery of the Services will be a default of the Contract.
- (b) The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions including any security requirements.
- (c) The Buyer must provide the Supplier with reasonable access to its premises at reasonable times for the purpose of supplying the Services
- (d) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (e) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (f) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

- (g) On completion of the Services, the Supplier is responsible for leaving the Buyer's premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer's premises or property, other than fair wear and tear.
- (h) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality.
- (i) The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

Pricing and payments

- 1.14 On the date of successful completion of a Deliverable, demonstrated by the Supplier to the reasonable satisfaction of the Buyer, the Supplier shall be entitled to submit a valid invoice (which shall include all relevant documentary evidence) for the charge(s) in accordance with the amounts set out in the Order Form and as more particularly detailed in Annex 2 in relation to relevant Deliverable. The Supplier shall raise invoices promptly and in any event within 90 days from when the charges are due.
- 1.15 All Charges:
 - (a)
 - (b) include all costs connected with the supply of Deliverables.
- 1.16 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.
- 1.17 A Supplier invoice is only valid if it:
 - (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
 - (b) includes a detailed breakdown of Deliverables which have been delivered (if any).
- 1.18 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 1.52. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 0.
- 1.19 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 1.20 The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

The Buyer's obligations to the Supplier

- 1.21 If Supplier fails to comply with the Contract as a result of a Buyer Cause:
 - (a) the Buyer cannot terminate the Contract under clause 11;

- (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
 - (c) the Supplier is entitled to additional time needed to deliver the Deliverables;
 - (d) the Supplier cannot suspend the ongoing supply of Deliverables.
- 1.22 Clause 1.21 only applies if the Supplier:
- (a) gives notice to the Buyer within 10 Working Days of becoming aware;
 - (b) demonstrates that the failure only happened because of the Buyer Cause;
 - (c) mitigated the impact of the Buyer Cause.

Record keeping and reporting

- 1.23 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 1.24 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.
- 1.25 The Supplier must allow any auditor appointed by the Buyer access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
- 1.26 The Supplier must provide information to the auditor and reasonable co-operation at their request.
- 1.27 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- (a) tell the Buyer and give reasons;
 - (b) propose corrective action;
 - (c) provide a deadline for completing the corrective action.
- 1.28 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand
 - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

Supplier staff

- 1.29 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;

- (b) be vetted using Good Industry Practice and in accordance with the instructions issued by the Buyer in the Order Form;
 - (c) comply with all conduct requirements when on the Buyer's premises.
- 1.30 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 1.31 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.
- 1.32 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 1.33 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 1.34 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
 - (a) requested to do so by the Buyer (not to be unreasonably withheld or delayed);
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
 - (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

Rights and protection

- 1.35 The Supplier warrants and represents that:
 - (a) it has full capacity and authority to enter into and to perform the Contract;
 - (b) the Contract is executed by its authorised representative;
 - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
 - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
 - (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
 - (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
 - (g) it is not impacted by an Insolvency Event.
- 1.36 The warranties and representations in clause 1.35 are repeated each time the Supplier provides Deliverables under the Contract.
- 1.37 The Supplier indemnifies the Buyer against each of the following:
 - (a) wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
 - (b) non-payment by the Supplier of any tax or National Insurance.
- 1.38 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.

- 1.39 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

Intellectual Property Rights (IPRs)

- 1.40 Each Party keeps ownership of its Existing IPRs. The Supplier hereby grants to the Buyer a non-exclusive, , perpetual, irrevocable, transferable royalty-free, licence to use, change and sub-license the Supplier's Existing IPR in the Territory, strictly for the purpose of receiving and using the Deliverables within the Set Prisons, participating in the Pilot.
- 1.41 Any New IPR created under the Contract relating to the Platform and the Associated Educational and Impact Measurement Programmes, is owned by the Supplier. The Supplier hereby grants to the Buyer a non-exclusive, perpetual, irrevocable, transferable royalty-free, licence to use the New IPR in the Territory within the Set Prisons, participating in the Pilot.
- 1.42 Where a Party acquires ownership of intellectual property rights incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 1.43 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 1.40, 1.41 or otherwise agreed in writing.
- 1.44 Subject to clauses 1.45, and 1.54 if any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer against all reasonable losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim, provided that such infringement is not due to the Buyer's negligence or unauthorised modification, adaptation or use.
- 1.45 Liability under the indemnity at clause 1.44 is conditional on the Buyer discharging the following obligations. If any third party makes a IPR Claim, or notifies an intention to make a IPR Claim, against the Buyer which may reasonably be considered likely to give rise to a liability under the indemnity at clause 1.44, the Buyer shall:
- (a) within a reasonable period of time, give written notice of the IPR Claim to the Supplier, specifying the nature of the IPR Claim in reasonable detail;
 - (b) consult with the Supplier before making any admission of liability, agreement or compromise in relation to the IPR Claim.

In each case, the Buyer shall have full discretion in determining the extent to which it shares detail of any such IPR Claim where, in its opinion, such IPR Claim contains sensitive information.

For the avoidance of doubt, the Buyer shall retain full conduct of any IPR Claim.

- 1.46 If an IPR Claim is made or anticipated, the Supplier must, at its own expense, either:

- (a) obtain for the Buyer the rights to use the third party's intellectual property that falls within the scope of the Pilot; or ;
- (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

Ending the contract

1.47 The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.

1.48 The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.

1.49 Ending the Contract without a reason

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if it's terminated clause 1.51(b) to 1.51(g) applies.

1.50 When the Buyer can end the Contract

- (a) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
 - (i) there's a Supplier Insolvency Event;
 - (ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
 - (iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - (iv) there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
 - (v) if the Buyer discovers that the Supplier was in one of the situations in 57(1) or 57(2) of the Regulations at the time the Contract was awarded;
 - (vi) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
 - (vii) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
- (b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 1.51(b) to 1.51(g) applies.

1.51 What happens if the Contract ends

Where the Buyer terminates the Contract under clause 1.50(a) all of the following apply:

- (a) the Supplier is responsible for the Buyer's reasonable costs of procuring replacement deliverables for the rest of the term of the Contract;
- (b) the Buyer's payment obligations under the terminated Contract stop immediately;
- (c) accumulated rights of the Parties are not affected;
- (d) the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
- (e) the Supplier must promptly return any of the Buyer's property provided under the Contract;
- (f) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement;
- (g) the following clauses survive the termination of the Contract: [3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35] and any clauses which are expressly or by implication intended to continue.

1.52 When the Supplier can end the Contract

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- (b) If a Supplier terminates the Contract under clause 1.52(a):
 - (i) the Buyer must promptly pay all outstanding charges incurred to the Supplier;
 - (ii) the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
 - (iii) clauses 1.51(d) to 1.51(g) apply.

1.53 Partially ending and suspending the Contract

- (a) Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with clause 0) any necessary variation required by clause 1.53, but the Supplier may not either:
 - (i) reject the variation;
 - (ii) increase the Charges, except where the right to partial termination is under clause 1.49.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 1.53.

How much you can be held responsible for

- 1.54 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.

- 1.55 No Party is liable to the other for:
- (a) any indirect losses;
 - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 1.56 In spite of clause 1.54, neither Party limits or excludes any of the following:
- (a) its liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
 - (b) its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
 - (c) any liability that cannot be excluded or limited by law.
- 1.57 In spite of clause 1.54, the Supplier does not limit or exclude its liability for any indemnity given under clauses 1.12(j), 1.12(m), 1.33, 1.37, , 1.61, **Error! Reference source not found.** or 1.98(b).
- 1.58 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with the Contract, including any indemnities.
- 1.59 If more than one Supplier is party to the Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

Obeying the law

- 1.60 The Supplier must, in connection with provision of the Deliverables, use reasonable endeavours to:
- (a) comply and procure that its subcontractors comply with the Supplier Code of Conduct appearing at (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf) and such other corporate social responsibility requirements as the Buyer may notify to the Supplier from time to time;
 - (b) support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010;
 - (c) not use nor allow its subcontractors to use modern slavery, child labour or inhumane treatment;
 - (d) meet the applicable Government Buying Standards applicable to Deliverables which can be found online at: <https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>
- 1.61 The Supplier indemnifies the Buyer against any costs resulting from any default by the Supplier relating to any applicable law to do with the Contract.
- 1.62 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 13.1 and Clauses 27 to 32
- 1.63 "Compliance Officer" the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;

Data protection

- 1.64 The subject of data protection between the Parties is governed by the Data Processing Agreement.

What you must keep confidential

- 1.65 Each Party must:
- (a) keep all Confidential Information it receives confidential and secure;
 - (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent, except for the purposes anticipated under the Contract;
 - (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 1.66 In spite of clause 1.65, a Party may disclose Confidential Information which it receives from the disclosing Party in any of the following instances:
- (a) where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the recipient Party notifies the disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - (b) if the recipient Party already had the information without obligation of confidentiality before it was disclosed by the disclosing Party;
 - (c) if the information was given to it by a third party without obligation of confidentiality;
 - (d) if the information was in the public domain at the time of the disclosure;
 - (e) if the information was independently developed without access to the disclosing Party's Confidential Information;
 - (f) to its auditors or for the purposes of regulatory requirements;
 - (g) on a confidential basis, to its professional advisers on a need-to-know basis;
 - (h) to the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 1.67 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Buyer at its request.
- 1.68 The Buyer may disclose Confidential Information in any of the following cases:
- (a) on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
 - (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - (c) if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - (d) where requested by Parliament;
 - (e) under clauses 1.20 and 0.

- 1.69 For the purposes of clauses 1.66 to 1.68 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in clause 0.
- 1.70 Information which is exempt from disclosure by clause 0 is not Confidential Information.
- 1.71 The Supplier must not make any press announcement or publicise the Contract or any part of it in any way, without the prior written consent of the Buyer and must take all reasonable steps to ensure that Supplier Staff do not either.

When you can share information

- 1.72 The Supplier must tell the Buyer within 48 hours if it receives a Request For Information.
- 1.73 Within the required timescales the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- (a) comply with any Freedom of Information Act (FOIA) request;
 - (b) comply with any Environmental Information Regulations (EIR) request.
- 1.74 The Buyer may talk to the Supplier to help it decide whether to publish information under clause 0. However, the extent, content and format of the disclosure is the Buyer's decision, which does not need to be reasonable.

Invalid parts of the contract

If any part of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.

Entire agreement

The Contract and the Data Processing Agreement constitute the entire agreement between the Parties and supersede all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

Other people's rights in a contract

No third parties may use the Contracts (Rights of Third Parties) Act (CRTPA) to enforce any term of the Contract unless stated (referring to CRTPA) in the Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

Circumstances beyond your control

- 1.75 Any Party affected by a Force Majeure Event is excused from performing its obligations under the Contract while the inability to perform continues, if it both:
- (a) provides written notice to the other Party;
 - (b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

- 1.76 Either party can partially or fully terminate the Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.
- 1.77 Where a Party terminates under clause 1.76:
- (a) each party must cover its own losses;
 - (b) clause 1.51(b) to 1.51(g) applies.

Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

Giving up contract rights

A partial or full waiver or relaxation of the terms of the Contract is only valid if it is stated to be a waiver in writing to the other Party.

Transferring responsibilities

- 1.78 The Supplier cannot assign the Contract without the Buyer's written consent.
- 1.79 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 1.80 When the Buyer uses its rights under clause 1.79 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 1.81 The Supplier can terminate the Contract novated under clause 1.79 to a private sector body that is experiencing an Insolvency Event.
- 1.82 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 1.83 If the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
- (a) their name;
 - (b) the scope of their appointment;
 - (c) the duration of their appointment.

Changing the contract

- 1.84 Either Party can request a variation to the Contract which is only effective if agreed in writing and signed by both Parties. The Buyer is not required to accept a variation request made by the Supplier.

How to communicate about the contract

- 1.85 All notices under the Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working

Day. Otherwise the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

- 1.86 Notices to the Buyer or Supplier must be sent to their address in the Order Form.
- 1.87 This clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

Preventing fraud, bribery and corruption

- 1.88 The Supplier shall not:
- (a) commit any criminal offence referred to in the Regulations 57(1) and 57(2);
 - (b) offer, give, or agree to give anything, to any person (whether working for or engaged by the Buyer or any other public body) an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other public function or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any other public function.
- 1.89 The Supplier shall take all reasonable steps (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with good industry practice, to prevent any matters referred to in clause 1.88 and any fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Contract and shall notify the Buyer immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.
- 1.90 If the Supplier or the Staff engages in conduct prohibited by clause 1.88 or commits fraud in relation to the Contract or any other contract with the Crown (including the Buyer) the Buyer may:
- (a) terminate the Contract and recover from the Supplier the amount of any loss suffered by the Buyer resulting from the termination, including the cost reasonably incurred by the Buyer of making other arrangements for the supply of the Deliverables and any additional expenditure incurred by the Buyer throughout the remainder of the Contract; or
 - (b) recover in full from the Supplier any other loss sustained by the Buyer in consequence of any breach of this clause.

Equality, diversity and human rights

- 1.91 The Supplier must follow all applicable equality law when they perform their obligations under the Contract, including:
- (a) protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
 - (b) any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 1.92 The Supplier must take all necessary steps, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on the Contract.

Health and safety

- 1.93 The Supplier must perform its obligations meeting the requirements of:
- (a) all applicable law regarding health and safety;
 - (b) the Buyer's current health and safety policy while at the Buyer's premises, as provided to the Supplier.
- 1.94 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer premises that relate to the performance of the Contract.

Environment

- 1.95 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 1.96 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

Tax

- 1.97 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate the Contract where the Supplier has not paid a minor tax or social security contribution.
- 1.98 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under the Off Contract, the Supplier must both:
- (a) comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
 - (b) indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.
- 1.99 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:
- (a) the Buyer may, at any time during the term of the Contract, request that the Worker provides information which demonstrates they comply with clause 1.98, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
 - (b) the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
 - (c) the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to

- demonstrate how it complies with clause 1.98 or confirms that the Worker is not complying with those requirements;
- (d) the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

Conflict of interest

- 1.100 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the Contract, in the reasonable opinion of the Buyer.
- 1.101 The Supplier must promptly notify and provide details to the Buyer if a conflict of interest happens or is expected to happen.
- 1.102 The Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential conflict of interest.

Reporting a breach of the contract

- 1.103 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected breach of law, clause 1.60, or clauses 0 to 0.
- 1.104 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in clause 1.103.

Resolving disputes

- 1.105 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute.
- 1.106 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using clauses 1.107 to 1.109.
- 1.107 Unless the Buyer refers the dispute to arbitration using clause 1.108, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- (a) determine the dispute;
 - (b) grant interim remedies;
 - (c) grant any other provisional or protective relief.
- 1.108 The Supplier agrees that the Buyer has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

1.109 The Buyer has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under clause 1.107, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under clause 1.108.

1.110 The Supplier cannot suspend the performance of the Contract during any dispute.

Which law applies

This Contract and any issues arising out of, or connected to it, are governed by English law.

