

**THE SECRETARY OF STATE FOR JUSTICE**  
**AND**  
**CARVING FUTURES**  
**THE SUPPLIER**  
**HMP ACADEMIES**

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## **1. Definitions used in the Contract**

- 1.1 This Contract shall be interpreted using Schedule J1 (Definitions).

## **2. Formation of Contracts**

- 2.1 The Supplier is appointed by the Authority to the Framework as a non-exclusive, potential provider of the Services with no volume or value guarantee and is eligible for the award of Call Off Contracts during the Contract Period.
- 2.2 In consideration for the formation of the Framework Contract, the Authority has paid the Supplier the sum of one pence (£0.01) sterling receipt of which is acknowledged by the Supplier.
- 2.3 If the Buyer decides to buy Services under the Framework Contract, it must use Schedule F3 (Call Off Award Procedure and Award Criteria) and shall state its requirements in Schedule F2 (Order Form Template and Call Off Schedules). If allowed by the Regulations, the Buyer can:
- 2.3.1 make changes to Schedule F2 (Order Form Template and Call Off Schedules); and/or
  - 2.3.2 create new Call Off Contract Schedules.
- 2.4 Each Call Off Contract:
- 2.4.1 is a separate Contract from the Framework Contract;
  - 2.4.2 is between a Supplier and a Buyer;
  - 2.4.3 includes the Core Terms, the Schedules and the information in the completed Order Form; and
  - 2.4.4 survives the termination of the Framework Contract.
- 2.5 Where the Supplier is approached by another eligible Buyer requesting Services or substantially similar Services, the Supplier must inform them about this Framework Contract prior to accepting an order from another eligible Buyer.
- 2.6 The Supplier acknowledges it has all the information required to perform its obligations under each Contract before entering into a Contract. When information is provided by a Relevant Authority, no warranty of its accuracy is given to the Supplier.
- 2.7 The Supplier shall not be excused from any obligation, nor be entitled to additional costs or charges arising as a result of, any misinterpretation of the Contract or because it failed to either:
- 2.7.1 verify the accuracy of the Due Diligence Information; and/or
  - 2.7.2 properly perform its own adequate checks to satisfy itself as to the accuracy and adequacy of any and all information supplied to the Supplier by or on behalf of the Authority.

- 2.8 The Authority and the Buyer will not be liable for errors, omissions or misrepresentations of any information.
- 2.9 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Services are and remain true and accurate. The Authority reserves the right (at intervals of no less than every two (2) years during the Contract Period) to re-verify the information provided by the Supplier as part of the Suppliers bid to join the Framework and the Supplier shall promptly provide all information requested by the Authority to support such assessment.

### **3. Quality, Standards & Provision of Services**

- 3.1 The Supplier must provide Services:
  - 3.1.1 that comply with the Specification, the Standards, the Framework Response submitted by the Supplier and, in relation to a Call Off Contract, the Call Off Tender
  - 3.1.2 to a professional standard and:
    - 3.1.2.1 reasonable skill and care;
    - 3.1.2.2 in accordance with Good Industry Practice;
    - 3.1.2.3 in accordance with its own policies, processes and internal quality control measures to the extent as they do not conflict with the Contract;
    - 3.1.2.4 on the dates agreed;
    - 3.1.2.5 in compliance with Law;
    - 3.1.2.6 in compliance with the Official Secrets Act 1911 to 1989;
    - 3.1.2.7 in co-operation with the Buyer and third party suppliers on all aspects connected to the Services and ensure that Supplier Personnel comply with any reasonable instructions of the Buyer or the Authority;
    - 3.1.2.8 with all up to date, sufficient and necessary equipment, tools and items required to Deliver the Services;
    - 3.1.2.9 with sufficient allocation of resources and appropriate expertise to each Contract; and
    - 3.1.2.10 ensuring all Services, and anything used in providing the Services are of good quality and are free from defects.
- 3.2 Late Delivery of the Services will be a Default of a Call Off Contract.
- 3.3 The Buyer is entitled to withhold payment for partially or undelivered Services (or mobilisation) but doing so does not stop it from using its other rights under the Contract, common law or otherwise.

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- 3.4 If and to the extent that in providing the Services, the Supplier provides any Goods:

- 3.4.1 all Goods delivered must be new, or as new if recycled, unused and of recent origin;
- 3.4.2 all manufacturer warranties covering the Goods must be assignable to the Buyer and shall be assigned at no cost upon request from the Buyer;
- 3.4.3 the title in the Goods shall transfer to the Buyer on the earlier of Delivery or payment for those Goods;
- 3.4.4 risk in the Goods shall transfer to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within three (3) Working Days of Delivery;
- 3.4.5 the Supplier warrants that it has full and unrestricted title in all of the Goods at the date of transfer of title; and
- 3.4.6 the Supplier must deliver the Goods on the date and to the specified location of delivery during the Buyer's working hours.

## 4. Collaboration

- 4.1 The Supplier (i) may collaborate with Other Suppliers under the Framework, and (ii) shall collaborate with Other Suppliers and the Buyer at the Establishment, in both cases relation to the provision of the Services and performance of its obligations under the Call Off Contract, including:
- 4.1.1 the use, reuse and purchase of assets which are used in connection with the Services;
  - 4.1.2 sharing information and problem solving;
  - 4.1.3 adoption of consistent working practices, terminology, standards and technology and resourcing;
  - 4.1.4 proactive and transparent communication;
  - 4.1.5 considering the Buyer's overall objectives, performance improvement and innovation;
- and the Supplier shall comply with such further detailed guidelines and processes as may be notified to it from time to time by the Buyer.
- 4.2 The Supplier acknowledges and agrees that it may be required by the Buyer to share data generated in the provision of the Services (including through learner assessment or progress tracking) with such third parties as the Buyer may notify to the Supplier from time to time.
- 4.3 Where specified in the Order Form, the Supplier shall use local data recording systems to collate and share information across the Establishment where it is providing the Services and its staff, across multiple Establishments and with Other Suppliers and third parties notified to the Supplier by the Buyer from time to time.

## **5. Disruption**

- 5.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Call Off Contract it does not disrupt the operations of the Buyer, its employees or any Other Supplier.
- 5.2 The Supplier shall immediately inform the Buyer of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Call Off Contract.
- 5.3 If there is industrial action by the Supplier Personnel, the Supplier shall seek Approval to its proposals to continue to perform its obligations under the Call Off Contract.
- 5.4 If the Supplier's proposals referred to in Clause 5.3 are considered insufficient or unacceptable by the Buyer acting reasonably, then the Call Off Contract may be terminated with immediate effect by the Buyer by notice due to material Default by the Supplier.
- 5.5 If the Supplier or Buyer reasonably believes that the Supplier will be unable to fulfil the requirements of the Call Off Contract owing to a planned full or partial Lockdown or Standstill, the Supplier shall, in consultation with the Buyer revise its plans for delivering the Services during the period of the planned Lockdown or Standstill to avoid loss for the Supplier and additional expense for the Buyer.

## **6. Assets**

- 6.1 Subject to Clause 6.2, the Supplier shall provide all assets and equipment which are reasonably necessary in connection with the provision of the Services. The Supplier shall be responsible for all costs associated with the provision and/or use of assets in connection with the provision of the Services and it will not receive any additional funds from the Buyer in relation to the purchase and /or provision of such assets.
- 6.2 Where indicated in the Order Form that Buyer Assets are available then the Supplier will:
  - 6.2.1 be permitted (but not obliged) to use such assets (on a non-exclusive basis unless stated otherwise in the Order Form) and any such use shall be on and subject to the terms of this Contract including those in the Order Form;
  - 6.2.2 only use such assets in connection with the provision of the Services;
  - 6.2.3 at its own cost keep such assets in good condition and if they are damaged repair them or replace at its own cost them if they cannot be repaired.

- 6.3 The Supplier acknowledges and agrees that all Buyer Assets are provided on an "as is" basis and all warranties and implied terms relating are excluded to the maximum extent permitted by Law.
- 6.4 The Supplier shall make all assets used by it in connection with the provision of the Services available to other persons (nominated by the Buyer from time to time) who provide education services to the Buyer to use in connection with such services. Such use may be provided on reasonable commercial terms as notified by the Supplier from time to time.
- 6.5 The Supplier shall keep an accurate and up to date register of all assets used by it in connection with the provision of the Services and will provide a copy of such register to the Buyer on request and in any event the Supplier shall provide an up to date copy of such list to the Buyer at least three (3) months prior to the Expiry Date or as soon as reasonably practicable where this Contract is terminated.
- 6.6 Clause 15 (*Right to purchase assets or equipment*) shall apply to assets on expiry or earlier termination of this Contract.
- 6.7 Where the Supplier uses the Fixed Price Mobilisation Payment to purchase assets, such assets will be owned by and title shall vest in the Buyer.

## **7. Buyer Obligations**

Save as otherwise expressly provided, the obligations of the Buyer under the Call Off Contract are obligations of the Buyer in its capacity as a contracting counterparty and nothing in the Call Off Contract shall operate as an obligation upon, or in any other way fetter or constrain the Buyer in any other capacity, and the exercise by the Buyer of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Buyer to the Supplier.

## **8. Pricing and payments**

- 8.1 In exchange for the Services, the Supplier shall not be entitled to any on-going payment by the Authority or the Buyer as the HMP Academy Programme has been established on a non-profit basis.
- 8.2 The Supplier shall not be entitled to retain any profit arising from the carrying out the Services (or from any output). Any profit the Supplier generates from the Services shall be reinvested into the Services and/or the HMP Academy Programme.
- 8.3 The Buyer shall be entitled to require the Supplier to provide such information and records as the Buyer may, from time to time, request to ensure compliance with Clauses 8.1 and 8.2. Any failure to so comply shall be a Default.
- 8.4 The Supplier may be entitled to a Fixed Price Mobilisation Payment in accordance with the terms in Schedule C2 (*Charges*) and must invoice the



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Buyer in accordance with the Schedule C2 (*Charges*) and the provisions in this Clause 8.

8.5 The Fixed Price Mobilisation Payment shall:

8.5.1 exclude VAT, which is payable on provision of a valid VAT invoice;

8.5.2 include all costs incurred in connection with the supply of Services and any Goods.

8.6 The Buyer shall pay the Supplier, where it has been agreed on the Order Form, the Fixed Price Mobilisation Payment within thirty (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.

8.7 A Supplier invoice is only valid if it includes:

8.7.1 the Supplier's full name, address and title of the Contract;

8.7.2 all appropriate references including the Contract reference number and other details reasonably requested by the Buyer;

8.7.3 the correct purchase order number which has been allocated by the Buyer to the Contract;

8.7.4 a detailed breakdown of Delivered Services and (if relevant) Goods;

8.7.5 such other details as the Buyer may request.

8.8 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

8.9 The Supplier must ensure that all Sub-Contractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice. Notwithstanding any provision of Clause 22 (*Confidentiality*), if the Supplier fails to pay a Sub-Contractor's invoice in accordance with Clause 8.9, the Authority or the Buyer shall be entitled to publish the details of the late payment or non-payment (including on government websites and in the press).

8.10 If the Authority or the Buyer is able to obtain from any Sub Contract or any other third party more favourable commercial terms for the supply of any materials, goods or services used by the Supplier to provide the Services at cost and that cost is reimbursable by the Buyer, then the Authority or the Buyer may either:

8.10.1 require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items; or

8.10.2 enter into a direct agreement with that Sub-Contractor or third party for the relevant item.

8.11 If the Authority or the Buyer uses Clause 8.10 then the Fixed Price Mobilisation Payment must be reduced by an agreed amount by using the Variation Procedure (and the Parties agree to act reasonably in seeking to agree such variation).

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- 8.12 The Authority and the Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:
  - 8.12.1 the relevant item being made available to the Supplier if required to provide the Services;
  - 8.12.2 any reduction in the Fixed Price Mobilisation Payment excludes any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges.
- 8.13 The Supplier has no right of set-off, counterclaim, discount or abatement except to the extent permitted by a court order.
- 8.14 If any overpayment has been made or the payment of any part is not supported by a valid invoice then the Buyer may recover this payment against future invoices raised or directly from the Supplier. All payments made by the Buyer to the Supplier are on an interim basis pending final resolution of an account with the Supplier;
- 8.15 Any overpayment by either Party, whether of the Fixed Price Mobilisation Payment or of VAT or otherwise, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 8.16 If the Authority or the Buyer fails to pay any undisputed Fixed Price Mobilisation Payment properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998.

## **9. The Buyer's obligations to the Supplier/ Relief from the Supplier's Obligations**

- 9.1 If Supplier Non-Performance arises from an Authority Cause:
  - 9.1.1 neither the Authority or the Buyer can treat the Supplier Non-Performance as a Default or terminate a Contract under Clause 14.6;
  - 9.1.2 the Supplier may be entitled to relief from its obligations to the extent of the Authority Cause (for the avoidance of doubt, any relief does not include any reasonable and proven additional expense)
  - 9.1.3 the Supplier is entitled to additional time needed to make the Delivery of any Goods;
  - 9.1.4 the Supplier shall not be entitled to suspend the continued supply of Services.
- 9.2 Clause 9.1 only applies if the Supplier:

- 9.2.1 gives notice to the Party responsible for the Authority Cause as soon as reasonably practicable and in any event within five (5) Working Days of becoming aware of the Authority Cause;
- 9.2.2 demonstrates that the Supplier Non-Performance only happened because of the Authority Cause;
- 9.2.3 mitigated the impact of the Authority Cause.

## **10. Record keeping and reporting**

### **10.1 The Supplier shall:**

- 10.1.1 attend progress meetings with the Buyer and provide progress reports when required by the Buyer (and/or at the frequency and times specified in the Order Form);
- 10.1.2 keep and maintain full and accurate records and accounts of all matters relating to the operation of each Contract for 7 years after the End Date;
- 10.1.3 allow any Auditor access to their premises to verify all contract accounts and records relating to the performance of the Contract and all related matters, and/or provide copies for an Audit;
- 10.1.4 provide reasonable co-operation and provide information to the Auditor at their request;
- 10.1.5 supply a Relevant Authority with any information or data on an ad hoc basis as may be required by the Relevant Authority for use in response to parliamentary questions or other Government business.

## **11. Supplier Personnel**

### **11.1 The Supplier Personnel involved in the performance of each Contract must:**

- 11.1.1 be appropriately trained and qualified;
- 11.1.2 act in a responsible and professional manner;
- 11.1.3 deliver the Services with the due care and diligence expected of a skilled professional;
- 11.1.4 be vetted in accordance with Good Industry Practice and the Security Policy; and
- 11.1.5 comply with all conduct requirements and policies when on the Buyer's Premises.

11.2 Where a Buyer decides one of the Supplier's Personnel isn't suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.

11.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 35.

11.4 The Supplier must provide a list of Supplier Personnel needing to access the Buyer's Premises and say why access is required.

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- 11.5 The Supplier indemnifies the Authority and 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 Personnel.
- 11.6 The Supplier shall ensure that Supplier Personnel respond flexibly and within agreed timescales set by the Authority and/or Buyer in response to requests, including changes to planned Services or cancellations.
- 11.7 Supplier Personnel shall not:
  - 11.7.1 be expected to be involved in 'rub down' or 'wandering' of Learners entering or leaving the learning environment; nor
  - 11.7.2 be responsible for cleaning and facility upkeep (and for the avoidance of doubt this means Supplier Personnel will not be responsible for cleaning toilets and cleaning up bodily fluids). However, the facilities should be left as they would be expected to be found and in a condition conducive to learning.
- 11.8 The Supplier shall indemnify both the Authority and the Buyer against all claims brought by any person arising from any breach of the Contract by the Supplier and/or any negligent act or omission of the Supplier or any Supplier Personnel in connection with the provision of the Services.
- 11.9 Neither Party shall, directly or indirectly, solicit or procure (otherwise than by general advertising or under the Employment Regulations), any employees or contractors (including the Supplier Personnel) who are directly employed or engaged in connection with the provision of the Services while such persons are employed or engaged and for a period of six (6) Months thereafter.
- 11.10 If Supplier breaches Clause 11.9, it shall pay the Authority or the Buyer a sum payable by the Supplier in breach in respect of the first year of the relevant employee or contractors engagement.
- 11.11 The Parties agree that the sum specified in Clause 11.10 is a reasonable pre-estimate of the loss and damage which the party not in breach would suffer if there was a breach of Clause 11.9.

## 12. General Warranties and Indemnities

- 12.1 The Supplier warrants and represents that:
  - 12.1.1 it has full capacity and authority to enter into and to perform each Contract;
  - 12.1.2 each Contract is executed by its duly authorised representative;
  - 12.1.3 it is a validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;
  - 12.1.4 there are no actions, suits proceedings 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 each Contract;

- 12.1.5 all statements made and documents submitted as part of the procurement of the Services are and remain true and accurate;
- 12.1.6 it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each Contract;
- 12.1.7 it does not have any contractual obligations which are likely to have a material adverse effect on its ability to perform each Contract;
- 12.1.8 it is not impacted by an Insolvency Event;
- 12.1.9 in entering into each Contract it has not committed any fraud;
- 12.1.10 it will immediately inform the Relevant Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed;
- 12.1.11 it has notified the Authority and the Buyer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance); and
- 12.1.12 it will comply with each Call Off Contract.
- 12.2 The warranties and representations in Clauses 2.9 and 12.1 are repeated based on current facts each time the Supplier provides Services under the Contract.
- 12.3 The Supplier indemnifies both the Authority and every Buyer against each of the following:
  - 12.3.1 wilful misconduct of the Supplier, any Sub-Contractor and Supplier Personnel that impacts the Contract;
  - 12.3.2 third party claims arising from the provision of the Services;
  - 12.3.3 non-payment by the Supplier of any tax or National Insurance.
- 12.4 The Authority or a Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.
- 12.5 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Authority and every Buyer.
- 12.6 All third party warranties and indemnities covering the Services (any Goods) must be assigned for the Authority or Buyer's benefit by the Supplier.

### **13. Intellectual Property Rights (IPRs)**

- 13.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR used in connection with the Services to enable it to:
  - 13.1.1 receive and use the Services;

- 13.1.2 make use of the deliverables provided by a Replacement Supplier to enable a smooth transfer of services to the Replacement Supplier;
  - 13.1.3 make use of services provided by any other providers of education or training services (subject to the prior consent of the Supplier which shall not be unreasonably withheld or delayed).
- 13.2 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Buyer Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.
- 13.3 Where a Party acquires ownership of IPRs that is inconsistent with the allocation of title set out under a Contract it shall assign in writing such IPRs as it has acquired to the other Party on request and at its own cost and do all things reasonably necessary to complete such transfer.
- 13.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 13 or otherwise agreed in writing.
- 13.5 If there is an IPR Claim, the Supplier indemnifies the Authority and each Buyer from and against all losses, damages, costs or expenses (including professional fees and fines) incurred by them as a result.
- 13.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
  - 13.6.1 obtain for the Authority and the Buyer the rights in Clause 13.1 and 13.2 without infringing any third party IPR;
  - 13.6.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Services.

## **14. Term and Termination**

- 14.1 The Framework Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law. Any Call Off Contract takes effect on the Start Date and ends on the End Date (as stated in the Order Form) or earlier if required by Law.

Ending the contract without a reason

- 14.2 The Authority may extend the Framework Contract for the Extension Period by mutual agreement giving the Supplier no less than sixty (60) Working Days written notice prior to when it would have expired.
- 14.3 The Authority has the right to terminate the Framework Contract at any time without reason or liability by giving the Supplier at least sixty (60) Working Days' notice and if it's terminated Clauses 14.11.1 to 14.11.6 applies.
- 14.4 Each Buyer has the right to terminate their Call Off Contract (or part of it) at any time without reason and without cost by giving the Supplier written



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notice which will vary depending on the length of the Call Off Contract Period:

- 14.4.1 if it is six (6) Months or less then at least five (5) Working Days' notice will be provided;
- 14.4.2 if it is more than six (6) Months then at least one (1) Months' notice will be provided;

and if it's terminated then Clauses 14.11.1 to 14.11.6 shall apply.

14.5 The Authority may terminate the Framework Contract if:

- 14.5.1 a Buyer terminates a Call Off Contract for any of the reasons listed in Clause 14.6;
- 14.5.2 the Supplier terminates a Call Off Contract in accordance with Clause 14.4; or
- 14.5.3 the Supplier is terminated under another Call Off Contract with the Authority due to a default by the Supplier under said Call Off Contract.

When the Authority or the Buyer can end a Contract

14.6 If any of the following events happen, the Relevant Authority has the right to immediately terminate its Contract by issuing a Termination Notice to the Supplier on the occurrence of any of the following:

- 14.6.1 the updated information provided by the Supplier in response to a request under Clause 2.9 would not be sufficient to allow the Supplier to join the Framework;
- 14.6.2 a Supplier Insolvency Event;
- 14.6.3 a Contract Default that is not corrected in line with an accepted Rectification Plan;
- 14.6.4 the Relevant Authority rejects a Rectification Plan or the Supplier does not provide it within ten (10) days of the request;
- 14.6.5 any material default of the Contract;
- 14.6.6 a Default of Clauses 2.9 (*Formation of Contracts*), 8 (*Pricing and Payments*), 10 (*Record keeping and reporting*), 13 (*Intellectual Property Rights (IPRs)*), 19 (*Data Processing*), 22 (*Confidentiality*), 35 (*Preventing fraud, bribery and corruption*), 40 (*Conflict of interest*) or the security provisions on pages 13-15 of Schedule FI (Specification) (where applicable) relating to any Contract;
- 14.6.7 consistent repeated failure to meet the Key Performance Indicators in accordance with Order Form;
- 14.6.8 a Change of Control of the Supplier which has not been pre-approved by the Relevant Authority in writing

- 14.6.9 a variation to a Contract which cannot be agreed using Clause 33 (*Changing the contract*) or resolved using Clause 42 (Dispute Resolution);
  - 14.6.10 the Supplier was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
  - 14.6.11 the Supplier has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law;
  - 14.6.12 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
  - 14.6.13 the Supplier or its Affiliates embarrass or bring the Authority or the Buyer into disrepute or diminish the public trust in them;
  - 14.6.14 any breach by the Supplier or any of its Affiliates of any call off agreement made under the Framework Contract or of any other contract with the Authority or Buyer (whichever is Party to this Contract) giving rise to a right for the Authority or Buyer under such contract to terminate it.
- 14.7 If there is a Default, the Relevant Authority can, without limiting its other rights, request that the Supplier provide a Rectification Plan.
- 14.8 When the Relevant Authority receives a requested Rectification Plan it can either:
- 14.8.1 reject the Rectification Plan or revised Rectification Plan, giving reasons
  - 14.8.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties
- 14.9 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:
- 14.9.1 must give reasonable grounds for its decision
  - 14.9.2 may request that the Supplier provides a revised Rectification Plan within five (5) Working Days
- 14.10 If any of the events in 73 (1) (a) to (c) of the Regulations happen, the Relevant Authority has the right to immediately terminate the Contract and Clauses 14.11.1 to 14.11.6 applies.



Consequences of Expiry or Termination by the Authority or Buyer

14.11 Where a Contract expires or the Relevant Authority terminates a Contract under Clause 14.6 or this clause is specifically invoked:

- 14.11.1 The Buyer's payment obligations under the terminated Contract stop immediately;
- 14.11.2 accumulated rights and remedies of the Parties are not affected
- 14.11.3 the Supplier must promptly delete or return the Government Data except where required to retain copies by Law
- 14.11.4 the Supplier must promptly return any of the Authority or the Buyer's property provided under the terminated Contract (including the Buyer Assets)
- 14.11.5 the Supplier must, at no cost to the Authority or the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier)
- 14.11.6 the following Clauses survive the termination of each Contract: 10 (*Record keeping and reporting*), 11.5 (*Supplier Personnel*), 13 (*Intellectual Property Rights (IPRs)*), 14.11 (*Consequences of Expiry or Termination by the Authority or Buyer*), 16 (*Limitation of Liability*), 19 (*Data Processing*), 22 (*Confidentiality*), 23 (*Sharing information*), 26 (*Invalid parts of the Contract*), 27 (*No other terms apply*), 42 (*Dispute Resolution*), 43 (*Governing Law and Jurisdiction*) and any Clauses and Schedules which are expressly or by implication intended to continue

14.12 In addition to Clause 14.11, where Relevant Authority terminates a Contract under Clause 14.4 or 14.5, the Supplier shall bear the Relevant Authority's reasonable costs of re-procurement of Replacement Services for the remainder of the Contract Period of the terminated Contract, including any incremental increase in the costs of procuring services to replace the Services.

14.13 Upon termination or expiry of the Contract, the Supplier shall:

- 14.13.1 give all reasonable assistance to the Buyer and any incoming supplier of the Services to ensure an orderly transition of the Services to such incoming supplier;
- 14.13.2 return all requested documents, information, assets and data to the Buyer as soon as reasonably practicable;
- 14.13.3 assign licences and contracts (at no additional cost as had been charged to the Supplier) as reasonably requested by the Buyer to the Buyer to enable continued provision of the Services.

When the Supplier can end the Contract

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- 14.14 The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate a Call Off Contract if the Buyer fails to pay two (2) successive undisputed invoices within thirty (30) days of the date of the reminder notice which was sent in respect of the second invoice.
- 14.15 The Supplier shall not be entitled to suspend performance under a Contract unless the Supplier is entitled to terminate the Contract pursuant to Clause 14.14 above.
- 14.16 If a Supplier terminates a Call Off Contract under Clause 14.14:
- 14.16.1 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;
  - 14.16.2 Clauses 14.11.4 to 14.11.6 apply.

### When Sub-Contracts can be ended

- 14.17 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
- 14.17.1 there is a Change of Control of a Sub-Contractor which isn't pre-approved by the Relevant Authority in writing;
  - 14.17.2 the acts or omissions of the Sub-Contractor have caused or materially contributed to a right of termination under Clause 14.6;
  - 14.17.3 a Sub-Contractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Relevant Authority.

### Partially ending and suspending the Contract

- 14.18 Where the Relevant Authority has the right to terminate the Framework Contract it shall be entitled to suspend the Supplier's ability to enter into any new Call Off Contracts during this period. If these circumstances occur, the Supplier must continue to meet its obligations under any existing Call Off Contracts that have been signed.
- 14.19 Where the Relevant Authority or the Buyer has the right to terminate a Call Off Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends a Contract it can provide the Services itself or buy them from a third party.
- 14.20 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose, in the Relevant Authority's reasonable opinion.

14.21 The Parties must agree any necessary variation required by Clause 15.20 using the Variation Procedure, but the Supplier may not either:

14.21.1 reject the variation;

14.21.2 increase the Fixed Price Mobilisation Payment.

14.22 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clauses 14.18 to 14.21

## **15. Right to purchase assets and equipment**

15.1 In the event of termination or expiry of a Call Off Contract, the Buyer shall have the option (exercisable by Notice to be given no later than one (1) month after termination or one (1) month prior to expiry), to purchase (or procure the purchase by an incoming supplier) of any assets and equipment used exclusively by the Supplier for the purposes of the Services. The price to be paid by the Buyer (or other purchase) shall be the lesser of: the market value of the items in question at the termination date and the net book value of the assets in question at the termination date.

15.2 The Supplier shall sell any assets with full title guarantee and free from any encumbrance and the risk of any assets being purchased shall pass to the Buyer (or incoming supplier where applicable) at the time and place agreed between the Buyer and the Supplier (the **Transfer Time**).

15.3 At the Transfer Time, the Supplier shall warrant that all assets being transferred are in good repair and working order, have been regularly and properly maintained in accordance with good industry practice, comply with all relevant health and safety regulations and codes of practice; and are not dangerous, obsolete or in need of renewal or replacement.

## **16. Limitation of Liability**

16.1 Subject to Clauses 16.2, 16.3, 16.5 and 16.7, the Supplier shall indemnify the Authority and Buyer and keep them indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply, or the late or purported supply, of the Services or the performance or nonperformance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Supplier Personnel on the Buyer Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly by any act or omission of the Supplier.

16.2 Each Party's total aggregate liability under this Framework Contract (whether in tort, contract or otherwise) is no more than £[REDACTED] per claim or series of connected claims.

16.3 The aggregate liability of the Supplier under or in connection with each Call Off Contract (whether in contract, tort or otherwise) shall not exceed:

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- 16.3.1 in respect of any breach of Clause 25.6 (*Licence to Occupy*),  
[REDACTED] pounds (£[REDACTED]) for each breach;
  - 16.3.2 in respect of liability for which the Supplier is required by this Contract to be insured, the relevant minimum limit of cover specified in Clause 18 (*Insurance*);
  - 16.3.3 in respect of all other liability, the greater of one hundred thousand pounds (£[REDACTED]) or [REDACTED] of the Call Off Contract Value.
- 16.4 The Buyer's total aggregate liability under or in connection with each Call Off Contract (whether in tort, contract or otherwise) is no more than the greater of fifty thousand pounds (£[REDACTED]) or [REDACTED] of the Call Off Contract Value.
- 16.5 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or Buyer or by breach by the Authority or Buyer of its obligations under the Contract.
- 16.6 The Authority and Buyer may recover from the Supplier the following losses incurred by them to the extent they arise as a result of a Default by the Supplier:
- 16.6.1 any additional operational and/or administrative costs and expenses incurred by the Authority or Buyer, including costs relating to time spent by or on behalf of the Authority or Buyer in dealing with the consequences of the Default;
  - 16.6.2 any wasted expenditure or charges;
  - 16.6.3 the additional costs of procuring a Replacement Supplier for the remainder of the Contract Period and or Replacement Services which shall include any incremental costs associated with the Replacement Supplier and/or replacement Services above those which would have been payable under the Contract;
  - 16.6.4 any compensation or interest paid to a third party by the Authority and or Buyer;
  - 16.6.5 any fine or penalty incurred by the Authority and or Buyer pursuant to Law and any costs incurred by them in defending any proceedings which result in such fine or penalty;
  - 16.6.6 the costs of replacing locks and lost keys (including key cards).
- 16.7 No Party is liable to the other for:
- 16.7.1 any indirect Losses;
  - 16.7.2 Loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 16.8 In spite of Clauses 16.2, 16.3, 16.4 and 16.7 neither Party limits or excludes any of the following:

- 16.8.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors;
  - 16.8.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees;
  - 16.8.3 any liability that cannot be excluded or permitted by Law.
- 16.9 In spite of Clauses 16.2, 16.3 and 16.7, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 11.5 (*Supplier Personnel*), 12.3 (*General Warranties and Indemnities*), 13.5 (*Intellectual Property Rights*), 17 (*Compliance*) or 20.7 (*Data*) or Schedule C1 (*Staff Transfer*) of a Contract.
- 16.10 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.
- 16.11 When calculating the Supplier's liability under Clause 16.2 or 16.3 the following items will not be taken into consideration:
- 16.11.1 any liability that is covered by insurance that the Supplier is obliged to hold under Clause 18.1;
  - 16.11.2 any items specified in Clause 16.9.
- 16.12 If more than one Supplier is party to a Contract, each Supplier party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

## **17. Compliance**

The Supplier indemnifies the Authority and every Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law relating to the performance of its obligations under this Contract.

## **18. Insurance**

- 18.1 The Supplier shall take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract including:
- 18.1.1 professional indemnity insurance in the sum of not less than £[REDACTED] ([REDACTED]);
  - 18.1.2 cover for death or personal injury, loss of or damage to property or any other loss;
  - 18.1.3 employer's liability insurance in the sum of not less than £[REDACTED] ([REDACTED]);
  - 18.1.4 public liability insurance in the sum of not less than £[REDACTED] ([REDACTED]);

- 18.1.5 product liability insurance in the sum of not less than £ [REDACTED] ([REDACTED]); and
- 18.1.6 all insurances required by applicable Law,  
  
such insurance policies shall be maintained for the duration of the Contract and for a minimum of one years following the expiry or termination of the Contract.
- 18.2 The Supplier shall make available, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 18.3 If the Supplier does not have and maintain the insurances required by the Contract, the Buyer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 18.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 18.5 The Supplier shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Supplier, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Supplier is an insured, a co-insured or additional insured person.

## **19. Data Processing**

- 19.1 The Supplier must process Personal Data and ensure that Supplier Personnel process Personal Data only in accordance with this Clause 19.
- 19.2 Only the Relevant Authority can decide what processing of Personal Data a Supplier can do under a Contract.
- 19.3 The Supplier must only process Personal Data if authorised to do so in in the Data Sheet (for the Authority) and Order Form (for the Buyer) (the "**Authorised Processing List**"). Any further written instructions given by the Relevant Authority relating to the processing of Personal Data shall be deemed to be incorporated into the Authorised Processing List.
- 19.4 The Supplier must give all reasonable assistance to the Relevant Authority in the preparation of any Data Protection Impact Assessment before starting any processing, including:
  - 19.4.1 a systematic description of the expected processing and its purpose;
  - 19.4.2 the necessity and proportionality of the processing operations;
  - 19.4.3 the risks to the rights and freedoms of Data Subjects;
  - 19.4.4 the intended measures to address the risks, including safeguards, security measures and mechanisms to protect Personal Data.



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- 19.5 The Supplier must notify the Relevant Authority immediately if it thinks the Relevant Authority's instructions breach the Data Protection Laws.
- 19.6 The Supplier must put in place appropriate Protective Measures to protect against a Data Loss Event which must be approved by the Relevant Authority.
- 19.7 If lawful to notify the Relevant Authority, the Supplier must notify it if the Supplier is required to process Personal Data by Law promptly and before processing it.
- 19.8 The Supplier must take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
  - 19.8.1 are aware of and comply with the Supplier's duties under this Clause 19;
  - 19.8.2 are subject to appropriate confidentiality undertakings with the Supplier or any Subprocessor;
  - 19.8.3 are informed of the confidential nature of the Personal Data and do not provide any of the Personal Data to any third party unless directed in writing to do so by the Relevant Authority or as otherwise allowed by the Contract;
  - 19.8.4 have undergone adequate training in the use, care, protection and handling of Personal Data.
- 19.9 The Supplier must not transfer Personal Data outside of the EU unless all of the following are true:
  - 19.9.1 it has obtained prior written consent of the Relevant Authority;
  - 19.9.2 the Relevant Authority has decided that there are appropriate safeguards;
  - 19.9.3 the Data Subject has enforceable rights and effective legal remedies when transferred;
  - 19.9.4 the Supplier meets its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred;
  - 19.9.5 where the Supplier is not bound by Data Protection Laws it must use its best endeavours to help the Relevant Authority meet its own obligations under Data Protection Laws;
  - 19.9.6 the Supplier complies with the Relevant Authority's reasonable prior instructions about the processing of the Personal Data.
- 19.10 The Supplier must notify the Relevant Authority immediately if it:
  - 19.10.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
  - 19.10.2 receives a request to rectify, block or erase any Personal Data;

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- 19.10.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
  - 19.10.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 19.10.5 receives a request from any third Party for disclosure of Personal Data where compliance with the request is required or claims to be required by Law;
  - 19.10.6 becomes aware of a Data Loss Event.
- 19.11 Any requirement to notify under Clause 19.10 includes the provision of further information to the Relevant Authority in stages as details become available.
- 19.12 The Supplier must promptly provide the Relevant Authority with full assistance in relation to any Party's obligations under Data Protection Laws and any complaint, communication or request made under Clause 19.10. This includes giving the Relevant Authority:
- 19.12.1 full details and copies of the complaint, communication or request;
  - 19.12.2 reasonably requested assistance so that it can comply with a Data Subject Access Request within the relevant timescales in the Data Protection Laws;
  - 19.12.3 any Personal Data it holds in relation to a Data Subject on request;
  - 19.12.4 assistance that it requests following any Data Loss Event;
  - 19.12.5 assistance that it requests relating to a consultation with, or request from, the Information Commissioner.
- 19.13 The Supplier must maintain full, accurate records and information to show it complies with this Clause 19. This requirement does not apply where the Supplier employs fewer than 250 staff, unless either the Relevant Authority determines that the processing:
- 19.13.1 is not occasional;
  - 19.13.2 includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - 19.13.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 19.14 The Supplier must appoint a Data Compliance Officer responsible for observing its obligations in this Clause 19 and give the Relevant Authority their contact details promptly on demand.



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19.15 Before allowing any Subprocessor to process any Personal Data, the Supplier must:

19.15.1 notify the Relevant Authority in writing of the intended Subprocessor and processing;

19.15.2 obtain the written consent of the Relevant Authority;

19.15.3 enter into a written contract with the Subprocessor so that this Clause applies to the Subprocessor;

19.15.4 provide the Relevant Authority with any information about the Subprocessor that the Relevant Authority reasonably requires.

19.16 The Supplier remains fully liable for all acts or omissions of any Subprocessor.

19.17 At any time the Relevant Authority can, with at least thirty (30) Working Days notice to the Supplier, change this Clause 19 to:

19.17.1 replace it with any applicable standard clauses (between the controller and processor) or similar terms forming part of an applicable certification scheme under GDPR Article 42;

19.17.2 ensure it complies with guidance issued by the Information Commissioner.

19.18 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner.

## 20. Data

20.1 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

20.2 The Supplier must make accessible back-ups of all Government Data and copies shall be provided to the Buyer within five (5) Working Days of request.

20.3 The Supplier must ensure that any Supplier system holding any Government Data, including backup data, is a secure system that complies with the Security Policy and any applicable security plan operated by the Supplier.

20.4 If at any time the Supplier suspects or has reason to believe that the Government Data provided under a Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Relevant Authority and immediately suggest remedial action.

20.5 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:

20.5.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Relevant Authority receives notice, or the Supplier finds out about the issue, whichever is earlier;

20.5.2 restore the Government Data itself or using a third party.

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20.6 The Supplier must pay each Party's reasonable costs of complying with Clause 20.5 unless the Authority or the Buyer is at fault.

20.7 The Supplier:

- 20.7.1 must provide the Relevant Authority with all Government Data in an agreed open format within ten (10) Working Days of a written request;
- 20.7.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
- 20.7.3 must securely destroy all devices that are capable of storing and retrieving data that has held Government Data at the end of life of that media using Good Industry Practice;
- 20.7.4 securely erase all Government Data and any copies it holds when asked to do so by the Authority or the Buyer unless required by Law to retain it;
- 20.7.5 indemnifies the Authority and each Buyer against any and all Losses incurred if the Supplier breaches Clause 19 (*Data Processing*), this Clause 20 and/or any Data Protection Laws.

## 21. ICT

- 21.1 Where the Supplier intends to use ICT equipment to process Government Data in connection with the supply of the Services under any Call Off Contract then it shall ensure that it holds a valid Cyber Essentials Plus Certificate from the commencement of the Services under such Call Off Contract and throughout its Term.
- 21.2 The Supplier shall not commence or continue to provide Services under any Contract unless it holds a valid Cyber Essential Plus Certificate. The Supplier shall, on demand provide evidence to the Buyer and the Authority of its compliance with this Clause and Clause 21.1. Any breach this Clause or Clause 21.1 shall entitle the Authority to terminate this Contract for material Default.
- 21.3 The Supplier shall ensure that all Sub-Contracts with Sub-Contractors who use ICT to process Government Data contain provisions no less onerous on the Sub-Contractors than those imposed on the Supplier under this Contract in respect of the Cyber Essentials Scheme under this Clause 21.
- 21.4 Where the Supplier uses ICT services that will hold or process data, or interface (using equipment such as interactive white boards, projectors) with the Buyer's ICT then the Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software. For the avoidance of doubt the equipment referred to in this Clause 21 does not provide authority to connect to network infrastructure. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the

Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Services to its desired operating efficiency.

21.5 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 21.4 shall be borne by the Parties as follows:

21.5.1 by the Supplier, where the Malicious Software originates from the Supplier Software, Third Party Software used by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier;

21.5.2 by the Buyer, if the Malicious Software originates from the Buyer Software or the Government Data (whilst the Government Data was under the control of the Buyer).

## **22. Confidentiality**

22.1 Each Party must:

22.1.1 keep all Confidential Information it receives confidential and secure;

22.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information except for the purposes anticipated under the Contract without the Disclosing Party's prior written consent;

22.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information

22.2 In spite of Clause 22.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

22.2.1 where disclosure is required by applicable Law or by a court of competent jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure required;

22.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;

22.2.3 if the information was given to it by a third party without obligation of confidentiality;

22.2.4 if the information was in the public domain at the time of the disclosure;

22.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;

- 22.2.6 to its auditors or for the purposes of regulatory requirements;
  - 22.2.7 on a confidential basis, to its professional advisers on a need-to-know basis;
  - 22.2.8 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.
- 22.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Personnel on a need-to-know basis to allow the Supplier to meet its obligations under the Contract. The Supplier Personnel must observe the Supplier's confidentiality obligations under the Contract and shall enter into a direct confidentiality agreement with the Relevant Authority at its request.
- 22.4 The Authority or the Buyer may disclose Confidential Information in any of the following cases:
  - 22.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Authority or the Buyer;
  - 22.4.2 on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that the Authority or the Buyer transfers or proposes to transfer all or any part of its business to;
  - 22.4.3 if the Authority or the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
  - 22.4.4 where requested by Parliament;
  - 22.4.5 under Clauses 8.9 (*Pricing and Payment*) and 23 (*Sharing information*).
- 22.5 For the purposes of Clauses 22.2 to 22.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in this Clause 22
- 22.6 Transparency Information and any Information which is exempt from disclosure by Clause 23 is not Confidential Information.
- 22.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Personnel do not either.

## **23. Sharing information**

- 23.1 The Supplier must tell the Relevant Authority within 48 hours if it receives a Request For Information.
- 23.2 Within the required timescales the Supplier must give the Authority and each Buyer full cooperation and information needed so the Buyer can:

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- 23.2.1 publish the Transparency Information;
  - 23.2.2 comply with any Freedom of Information Act (FOIA) request
  - 23.2.3 comply with any Environmental Information Regulations (EIR) request; and/or
  - 23.2.4 comply with any Data Subject Access Request (where applicable).
- 23.3 The Relevant Authority may talk to the Supplier to help it decide whether to publish information under this Clause 23 and may consider the Commercially Sensitive Information. However, the extent, content and format of the disclosure is the Relevant Authority's decision, which does not need to be reasonable.
- 23.4 The Supplier shall ensure that it has in place such technical and organisation measures as may reasonably required by the Authority or a Buyer to allow the Relevant Authority to respond effectively to any complaints, communications or requests under Data Protection laws.
- 23.5 Where the Supplier is subject to the requirements of the FOIA and/or the EIR:
  - 23.5.1 the Relevant Authority shall notify the Supplier within forty eight (48) hours if it receives a Data Subject Access Request and/or a Request For Information in relation to the Suppliers activities in connection with this Contract;
  - 23.5.2 the Relevant Authority shall provide the Supplier full co-operation, assistance and all information necessary for it to comply with any FOIA and/or EIR request;
  - 23.5.3 the Supplier may consult with the Relevant Authority to inform its decision to publish information disclosable the FOIA and EOI however it shall retain absolute discretion regarding the extent, content and format of the disclosure.
- 23.6 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall, in order to assist the Buyer with its compliance with its obligations under that PPN:
  - 23.6.1 without prejudice to the Supplier's reporting obligations set out elsewhere in this Contract, where requested by the Buyer as soon as reasonably practicable and in any event within one (1) Month of the date of such request submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft transparency reports consistent with the content requirements and format as notified by the Buyer to the Supplier from time to time;

23.6.2 if the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) Working Days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be referred to the Dispute Resolution Procedure.

## **24. Establishments**

### **24.1 Access to Establishments**

- 24.1.1 If Supplier Personnel are required to have a pass for admission to an Establishment the Buyer shall, subject to satisfactory completion of approval procedures (including, as required, vetting), arrange for passes to be issued. Any member of the Supplier Personnel who cannot produce a proper pass when required to do so by any member of the Authority's or the Buyer's personnel (as the case may be), or who contravenes any conditions on the basis of which a pass was issued, may be refused admission to an Establishment or be required to leave an Establishment if already admitted.
- 24.1.2 Supplier Personnel shall promptly return any pass if at any time the Buyer so requires and where any person to whom a pass was issued ceases to be involved in the performance of the Services. The Supplier shall promptly return all passes on expiry or termination of the Contract.
- 24.1.3 Supplier Personnel attending an Establishment may be subject to search at any time. Strip searches shall be carried out only on the specific authority of the Buyer under the same rules and conditions applying to the Buyer's personnel. The Supplier is referred to Rule 71 of Part IV of the Prison Rules 1999 as amended by the Prison (Amendment) Rules 2005 and Rule 75 of Part IV of the Young Offender Institution Rules 2000 as amended by the Young Offender Institution (Amendment) Rules 2005.
- 24.1.4 Searches shall be conducted only on the specific authority of the Buyer under the same rules and conditions applying to the Buyer's personnel and/or visitors. The Supplier is referred to Section 8 of the Prison Act 1952, Rule 64 of the Prison Rules 1999 and PSI 67/2011.



## **24.2 Security**

- 24.2.1 Whilst at Establishments, the Supplier shall ensure that all Supplier Personnel comply with all security measures implemented by the Buyer in respect of staff and other persons attending Establishments. The Buyer shall provide copies of its written security procedures to Supplier Personnel on request. The Supplier and all Supplier Personnel are prohibited from taking any photographs at Establishments unless they have Approval and the Buyer's representative is present so as to have full control over the subject matter of each photograph to be taken. No such photograph shall be published or otherwise circulated without Approval.
- 24.2.2 The Buyer may search vehicles used by the Supplier or Supplier Personnel and which are located at Establishments.
- 24.2.3 The Supplier shall and shall procure that all Supplier Personnel shall co-operate with any investigation relating to security which is carried out by the Buyer or by any person who is responsible for security matters on the Buyer's behalf, and when required by the Buyer they shall:
  - 24.2.3.1 take all reasonable measures to make available for interview by the Buyer any members of Supplier Personnel identified by the Buyer, or by a person who is responsible for security matters, for the purposes of the investigation. Supplier Personnel may be accompanied by and be advised or represented by another person whose attendance at the interview is acceptable to the Buyer;
  - 24.2.3.2 subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind and in whatever form which may be reasonably required by the Buyer, or by a person who is responsible for security matters on the Buyer's behalf, for the purposes of investigation as long as the provision of that material does not prevent the Supplier from performing the Services. The Buyer may retain any such material for use in connection with the investigation and, as far as possible, may provide the Supplier with a copy of any material retained.

## **24.3 Offences and authorisation**

- 24.3.1 In providing the Services the Supplier shall comply with PSI 10/2012 (Conveyance and Possession of Prohibited Items and

Other Related Offences) and other applicable provisions relating to security as published by the Authority and/or the Buyer from time to time.

- 24.3.2 Nothing in a Contract is deemed to provide any "authorisation" to the Supplier in respect of any provision of the Prison Act 1952, Offender Management Act 2007, Crime and Security Act 2010, Serious Crime Act 2015 or other relevant legislation.

## **25. Licence to Occupy**

- 25.1 Any land or Buyer Premises made available from time to time by a Buyer to the Supplier in connection with a Call Off Contract are on a non-exclusive licence basis free of charge and are to be used by the Supplier exclusively for the purpose of performing its obligations under the Call Off Contract. The Supplier shall have use of such land or Buyer Premises as licensee and shall vacate the same immediately upon termination or expiry (as the case may be) of the Contract.
- 25.2 The Supplier shall limit access to the land or Buyer Premises to such Supplier Personnel as is necessary for it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that the Supplier Personnel co-operate) with any other persons working concurrently on such land or Buyer Premises as the Buyer may request.
- 25.3 If the Supplier requests modifications to the land or Buyer Premises such modifications are subject to Approval and shall be carried out by the Buyer at the Supplier's cost. The Buyer shall undertake Approved modification work without undue delay.
- 25.4 The Supplier shall (and shall procure that the Supplier Personnel at the Buyer Premises shall) observe and comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when on the Buyer's Premises as determined by the Buyer.
- 25.5 The Contract shall not create a tenancy of any nature in favour of the Supplier or the Supplier Personnel and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Buyer may use the land and/or Buyer Premises owned or occupied by it in any manner it sees fit.
- 25.6 If keys (to include key cards) to any part of the Buyer Premises are issued to the Supplier, the Supplier shall be deemed by this Contract to have given an undertaking that the keys will not be copied, lent or used by any person other than a person authorised in writing by the Supplier and the Supplier shall supply to the Buyer the names and addresses of such authorised persons. It shall be the responsibility of the Supplier to ensure that the windows, doors or other access points opened or unsecured by the Supplier Personnel be firmly closed and secured where necessary, both while the Services are being provided, and after any part of the Services



have been provided, and that in the event that any failure to do so results in losses or other costs falling upon the Buyer, such losses and costs shall be recoverable from the Supplier by the Buyer. If any keys are lost by the Supplier, or Supplier Personnel, then the Supplier shall immediately notify the Buyer. The Supplier shall be liable for all losses, or other costs falling upon the Buyer as a result of the loss of such keys including the loss or damage to property and the costs of replacing locks and lost keys.

## **26. Invalid parts of the Contract**

If any provision of a 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.

## **27. No other terms apply**

The provisions incorporated into each Contract represent the entire understanding between the Parties in respect of such Contract and supersede and replace all and any prior representations and/or agreement between the Parties (whether written or oral) provided always that nothing in this Clause 27 shall exclude liability for fraud or fraudulent mis-representation.

## **28. Third Party Rights**

No third parties may use the Contracts (Rights of Third Parties) Act 1999 (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 and does not apply to the Crown. Where a third party is given rights to enforce any term then it can only enforce or take any steps to enforce it with the prior written consent of the Relevant Authority (which consent, if given, may be on such terms as the Relevant Authority may decide). The Contract can be varied or terminated by the Parties without the consent of any third party.

## **29. Force Majeure**

29.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:

- 29.1.1 provides a Force Majeure Notice to the other Party;
- 29.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.

29.2 Either party can partially or fully terminate the affected Contract if the provision of the Services is materially affected by a Force Majeure Event which lasts for thirty (30) days continuously.

## Core Terms

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29.3 Where a Party terminates under Clause 29.2:

29.3.1 each party must cover its own Losses;

29.3.2 Clauses 14.11.1 to 14.11.6 applies.

### 30. Relationship of the Parties

No Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and not allow others to represent in a manner contrary to this Clause 30.

### 31. No Waiver

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

### 32. Assignment, Novation and Sub-Contracting

32.1 The Supplier can not assign a Contract without the Relevant Authority's prior written consent.

32.2 The Relevant Authority can at any time 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 Relevant Authority.

32.3 When the Authority or the Buyer uses its rights under Clause 32.2 the Supplier must enter into a novation agreement in the form that the Authority or the Buyer specifies.

32.4 The Supplier can terminate a Contract novated under Clause 32.2 to a private sector body that is experiencing an Insolvency Event.

32.5 The Supplier remains responsible for all acts and omissions of the Supplier Personnel as if they were its own.

32.6 If the Authority or the Buyer asks the Supplier for details about Sub-Contractors, the Supplier must provide details of Sub-Contractors at all levels of the supply chain including:

32.6.1 their name

32.6.2 the scope of their appointment

32.6.3 the duration of their appointment

32.7 The Supplier shall provide the Authority or the Buyer with a copy of any Sub-Contract at the Authority or the Buyer's reasonable request.

32.8 If the Relevant Authority believes there are:

32.8.1 compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Supplier shall replace or not appoint the Sub-Contractor; or

32.8.2 non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Supplier to replace or not appoint the Sub-Contractor and the Supplier shall comply with such requirement.

32.9 The Supplier shall ensure that Key Sub-Contracts include:

- 32.9.1 a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer
- 32.9.2 a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier
- 32.9.3 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer
- 32.9.4 a provision requiring the Key Sub-Contractor not to embarrass the Authority and/or the Buyer or otherwise bring the Authority and/or the Buyer into disrepute
- 32.9.5 a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the Services provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer
- 32.9.6 provisions which have the same effect as the following clauses of the Contract: 10.1.3, 10.1.4 (*Record keeping and reporting*), 19 (*Data Processing*), and 23 (*Sharing information*).

### **33. Changing the Contract**

- 33.1 In the first instance, minor changes to the provision of the Services should, so far as possible, be agreed between the Parties as operational changes to the Services and managed as agreed between the Parties from time to time.
- 33.2 Subject to Clause 33.6 below, the Agreement cannot be varied except in writing signed by a duly authorised representative of all Parties and in the case of the Authority and where the Buyer is the Ministry of Justice, without a signature from MOJ Commercial or such other person as notified by the Authority acting through MOJ Commercial.
- 33.3 Either Party can request a variation to a Contract which is only effective if agreed in writing and signed by both Parties.
- 33.4 The Supplier must provide an impact assessment either:
  - 33.4.1 with the variation request, where the Supplier requests the variation;
  - 33.4.2 within the time limits stated by the Authority or the Buyer where they have requested the variation (or within a reasonable period if no time limits are stated).
- 33.5 If a variation cannot be agreed or resolved by the Parties, the Authority or the Buyer can either:
  - 33.5.1 agree that the Contract continues without the variation;

- 33.5.2 terminate the affected Contract, unless in the case of a Call Off Contract, the Supplier has already provided part or all of the provision of the Services, or where the Supplier can show evidence of substantial work being carried out to provide them;
- 33.5.3 refer the Dispute to be resolved using Clause 42 (*Dispute Resolution*).

33.6 The Authority shall be entitled from time to time, by notice in writing to the Supplier, to vary the terms which will be applicable to future call off contracts. Submission by the Supplier of a tender for a call off contract where its terms have been varied shall be deemed to be acceptance by the Supplier of the terms as varied. Any changes notified by the Authority in accordance with this Clause 33.6 shall not have any effect on call off contracts which have been agreed between a Buyer and the Supplier.

#### **34. Communication and Notices**

- 34.1 All notices under the Contract must be in writing and shall be deemed served on the Working Day of delivery as long as delivered before 5:00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed to be delivered when sent unless an error message is received.
- 34.2 Notices to the Parties must be sent to the address or email address set out in the Data Sheet (for the Authority and Supplier) or in the Order Form (for the Buyer).
- 34.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

#### **35. Preventing fraud, bribery and corruption**

- 35.1 The Supplier must not during any Contract Period:
  - 35.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2)
  - 35.1.2 do or allow anything which would cause the Authority or the Buyer, including any of their employees, consultants, contractors, Sub-Contractors or agents to breach any of the Relevant Requirements or incur any liability under them
- 35.2 The Supplier shall, during the Contract Period [of each Contract]:
  - 35.2.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act

- 35.2.2 keep appropriate records of its compliance with its obligations under Clause 35.2.1 and make such records available to the Relevant Authority on request
  - 35.2.3 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Authority or the Buyer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 35.3 The Supplier must immediately notify the Authority and the Buyer in writing if it becomes aware of any breach of Clauses 35.1 or 35.2 or has any reason to think that it, or any of the Supplier Personnel, has either:
  - 35.3.1 been investigated or prosecuted for an alleged Prohibited Act;
  - 35.3.2 been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
  - 35.3.3 received a request or demand for any undue financial or other advantage of any kind related to a Contract or otherwise suspects ;
  - 35.3.4 suspected that any person or Party directly or indirectly related to a Contract has committed or attempted to commit a Prohibited Act.
- 35.4 If the Supplier notifies the Authority or the Buyer as required by Clause 35.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and any other relevant documentation.
- 35.5 If the Supplier commits any breach of this Clause 35, the Authority or the Buyer may by notice:
  - 35.5.1 Require the Supplier to remove from the performance of each Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - 35.5.2 Immediately terminate the Contract for material Default.
- 35.6 Any notice served by the Authority or the Buyer under Clause 35.5 shall specify:
  - 35.6.1 The nature of the Prohibited Act;
  - 35.6.2 The identity of the party who the Authority or the Buyer believes has committed the Prohibited Act and the action that the Authority or the Buyer has elected to take (including, where relevant, the date on which the Contract shall terminate).

### **36. Equality, diversity and human rights**

- 36.1 The Supplier must follow all applicable equality Law when they perform their obligations under the Contract, including:
- 36.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise;
  - 36.1.2 any other requirements and instructions which the Authority or the Buyer reasonably imposes related to equality Law.
- 36.2 The Supplier must take all necessary steps, and inform the Authority or 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 a Contract.

### **37. Health and safety**

- 37.1 The Supplier must perform its obligations including those in relation to the Services in accordance with:
- 37.1.1 all applicable Law regarding health and safety;
  - 37.1.2 the Buyer's health and safety policy while at the Buyer's Premises, as provided to the Supplier from time to time;
  - 37.1.3 any immunisation requirements in respect of Supplier Personnel.
- 37.2 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 a Contract.

### **38. Environmental Compliance**

- 38.1 When working on the Buyer Premises, the Supplier must perform its obligations in accordance with the Buyer's current Environmental Policy (as provided to the Supplier from time to time).
- 38.2 The Supplier must ensure that Supplier Personnel are aware of the Buyer's Environmental Policy.

### **39. Tax Compliance**

- 39.1 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 Authority and the Buyer cannot terminate a Contract where the Supplier has not paid a minor tax or social security contribution.
- 39.2 Where the Supplier or any Supplier Personnel are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under a Call Off Contract, the Supplier must both:



- 39.2.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax and national insurance, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions;
  - 39.2.2 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 Services by the Supplier or any of the Supplier Personnel.
- 39.3 If any of the Supplier Personnel are Workers who receive consideration relating to the Services, then the Supplier must, in addition to the obligations in Clause 39.2, ensure that its contract with the Worker contains the following requirements:
  - 39.3.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates how the Worker complies with the requirements Clause 39.2, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
  - 39.3.2 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;
  - 39.3.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers is inadequate to demonstrate how the Worker complies with Clause 39.2 or confirms that the Worker is not complying with those requirements;
  - 39.3.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

#### **40. Conflict of interest**

- 40.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the Authority or the Buyer) there is or may be an actual or potential conflict of interest, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the Authority or any Buyer under the provisions of the Framework Contract or any Call Off Contract (a **Conflict of Interest**).
- 40.2 The Supplier must promptly notify and provide full particulars to the Authority and each Buyer if a Conflict of Interest happens or may reasonably be foreseen as arising.



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- 40.3 The Authority and each Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where, in the reasonable opinion of the Authority or the Buyer, there is or may be an actual or potential Conflict of Interest.

### **41. Reporting Concerns and Whistleblowing**

- 41.1 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority or the Buyer any actual or suspected breach of:

- 41.1.1 Law;
- 41.1.2 Clauses 35 to 40.

- 41.2 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in Clause 41.1 to the Buyer or a Prescribed Person.

### **42. Dispute Resolution**

- 42.1 If there is a Dispute, the Parties will, within five (5) Working Days of a written request from one Party, meet in good faith to resolve the Dispute.
- 42.2 If it is not resolved in such five (5) Working Day period then the senior representatives of the Parties who have authority to settle the Dispute will, within five (5) Working Days of the end of such period, meet in good faith to resolve the Dispute.
- 42.3 If the Dispute cannot be resolved by the Parties within one (1) Month of that meeting, the Dispute may by agreement between the Parties be referred to a neutral adviser or mediator chosen by agreement between the Parties. All negotiations connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 42.4 The Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to determine Disputes, grant interim remedies and any other provisional or protective relief
- 42.5 The Supplier cannot suspend the performance of a Contract during any Dispute.

### **43. Governing Law & Jurisdiction**

This Contract and any issues, Disputes or claims arising in connection with it, shall be interpreted in accordance with the laws of England and Wales.

The courts of England and Wales shall have exclusive jurisdiction to settle any Dispute arising under this Contract.

**44. Counterparts**

The Contract may be executed in counterparts, each of which when executed and delivered constitute an original but all counterparts together constitute one and the same instrument.

**THE SECRETARY OF STATE FOR JUSTICE  
AND  
CARVING FUTURES  
THE SUPPLIER  
HMP ACADEMIES**

## Framework Data Sheet

### HMP Academies Data Sheet

This HMP Academies Data Sheet is crucial for the operation of the HMP Academies Contract. It summarises the key features of the procurement and the appointment of the Supplier to the Framework:

1.	<b>The Authority</b>	
2.	<b>Supplier</b>	
3.	<b>HMP Academies Contract</b>	to this contract consisting of the HMP Academies Incorporated Terms for the supply of practical employment related training and services under which the Supplier can be considered for Call-Off Contracts.
4.	<b>Services</b>	to provide the services described in this Contract including specifically those services described in Schedule F1 (Specification)
5.	<b>Categories</b>	to the geographical and subject area categories as recorded on the Sourcing Portal
6.	<b>HMP Academies Start Date</b>	1 <sup>st</sup> December 2023
7.	<b>HMP Academies Incorporated Terms</b>	<p><i>The following documents are incorporated into the HMP Academies Contract. If they conflict, the following order of precedence shall apply:</i></p> <ol style="list-style-type: none"> <li>1. <i>This HMP Academies Data Sheet</i></li> <li>2. <i>The Core Terms (v. 1.0) and Schedule J1 (Definitions)</i></li> <li>3. <i>The following Schedules (each taking equal precedence):</i> <ul style="list-style-type: none"> <li><i>J2 (Contract Management)</i></li> <li><i>F1 (Specification)</i></li> <li><i>F2 (Order Form Template and template Call Off Schedules)</i> including the following Call Off Schedules taking equal precedence: <ul style="list-style-type: none"> <li>• <i>C2 (Charges)</i></li> </ul> </li> </ul> </li> </ol> <p><i>Either:</i></p> <ul style="list-style-type: none"> <li>• <i>C1 (Staff Transfer)</i> <ul style="list-style-type: none"> <li>○ <i>[Part A (Staff Transfer At Start Date – Outsourcing From the Buyer) ]</i></li> <li>○ <i>[Part B (Staff Transfer At Start Date – Transfer From Former Supplier) ]</i></li> <li>○ <i>[Part C (Pensions) ]</i> <ul style="list-style-type: none"> <li>▪ <i>[Annex C1 (CSPS)]</i></li> <li>▪ <i>[Annex C2 (LGPS)]</i></li> <li>▪ <i>[Annex C3 (TPS)]</i></li> </ul> </li> <li>○ <i>Part D (Staff Transfer on Exit)</i></li> </ul> </li> </ul> <p><i>Or:</i></p> <ul style="list-style-type: none"> <li>• <i>C1X (Staff Transfer) (TUPE does not apply)</i></li> </ul> <p><i>F3 (Call Off Procedure and Award Criteria)</i></p>

## Framework Data Sheet

		4. The HMP Academies Response provided that any parts of the HMP Academies Response which offer a better commercial position for the Authority or Buyers (as decided by the Authority) will take precedence over the documents above (together the " <b>HMP Academies Contract</b> ")	
8.	Address for Notices		
9.	Authorised Processing List		
		Processing	
		Subject matter of the processing	The Supplier will offer on the job training in a specified industry to prepare for employment
		Duration of the processing	December 2023- December 2034
		Nature and purposes of the processing	<p>The nature of the processing means any operation such as:</p> <ul style="list-style-type: none"><li>• Data collection</li><li>• Recording of data</li><li>• Organisation of data</li><li>• Appropriate storage of data</li><li>• Dissemination of data to the buyer</li><li>• Destruction or return of data after agreed processing duration.</li></ul> <p>The purpose includes:</p> <ul style="list-style-type: none"><li>• assessment of knowledge and skills</li><li>• tracking learner progression,</li><li>• tracking learner engagement with Academy,</li><li>• gathering learner feedback on Academy.</li></ul>
		Type of Personal Data	<p>Basic personal data including education and work history</p> <p>Criminal data</p> <p>Pseudonymous data (NOMIS ID, PNC ID)</p> <p>Special category data</p> <p>Job information</p>

## Framework Data Sheet

		Categories of Data Subject	Supplier Staff (facilitators of Academy) • People in prison (users of Academy)
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For and on behalf of the Supplier:		For and on behalf of the Authority:	
Signature:			
Name:			
Role:			
Date:			

**Schedule C1: Staff Transfer**

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**THE SECRETARY OF STATE FOR JUSTICE**

**AND**

**THE SUPPLIER**

**HMP ACADEMIES**



## **Schedule C1: Staff Transfer**

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### **SCHEDULE C1**

#### **STAFF TRANSFER**

#### **45. DEFINITIONS**

- 45.1 In this Schedule, the following words have the following meanings and they shall supplement Schedule J1 (*Definitions*):

## Schedule C1: Staff Transfer

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### **“Employee Liabilities”**

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

45.1.1.1 redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

45.1.1.2 unfair, wrongful or constructive dismissal compensation;

45.1.1.3 compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

45.1.1.4 compensation for less favourable treatment of part-time workers or fixed term employees;

45.1.1.5 outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions and also including any payments arising in respect of pensions;

45.1.1.6 claims whether in tort, contract or statute or otherwise;

45.1.1.7 any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

## Schedule C1: Staff Transfer

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<b>“Former Supplier”</b>	a supplier supplying the Services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub Contractor of such supplier (or any Sub Contractor of any such Sub-Contractor);
<b>“Partial Termination”</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clauses 14.19 and 14.20;
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part C: Pensions, shall include the Start Date, where appropriate;
<b>“Supplier’s Final Supplier Personnel List”</b>	a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;
<b>“Supplier’s Provisional Supplier Personnel List”</b>	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

## Schedule C1: Staff Transfer

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**“Staffing Information”** in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:

45.1.1.1 all of the information listed in the employee information spreadsheet annexed to this Schedule (which the Buyer may, acting reasonably, update at any time at its sole discretion);

45.1.1.2 any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

45.1.1.3 details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

45.1.1.4 copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

45.1.1.5 any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**“Transferring Buyer Employees”** those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;

**“Transferring Former Supplier Employees”** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date.

## 46. INTERPRETATION

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- 46.1 Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be and where the Sub-Contractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.
- 46.2 The provisions of Paragraphs 2.1 and 2.3 of Part A, paragraphs 2.1, 2.3, 3.1 and 3.3 of Part B, Paragraphs 4.1 and 4.2, of Part C and Paragraphs 2.4, 3.3 and 3.5 of Part D confer benefits on third parties and are intended to be enforceable by such third parties by virtue of the CRTPA.

### **47. APPLICATION OF THIS SCHEDULE**

- 47.1 The Parts of this Schedule which shall apply to the Contract are specified in the Order Form.

**Part 1PART A: STAFF TRANSFER AT START DATE – OUTSOURCING FROM THE BUYER**

**1. RELEVANT TRANSFERS**

1.1. The Buyer and the Supplier agree that:

1.1.1. the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and

1.1.2. as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-Contractor and each such Transferring Buyer Employee

1.1.3. The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

**2. BUYER INDEMNITIES**

2.1. Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of any act or omission by the indemnifying party in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date.

2.2. The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.

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2.3. Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:

2.3.1. the Supplier will, within five (5) Working Days of becoming aware of that fact, notify the Buyer in writing;

2.3.2. the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within ten (10) Working Days of receipt of notice from the Supplier;

2.3.3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;

2.3.4. if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within five (5) Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer will indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3.

2.4. The indemnity in Paragraph 2.3 shall not apply to any claim:

2.4.1. for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

2.4.2. any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure.



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- 2.5. The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than three (3) Months from the Relevant Transfer Date.
- 2.6. If the Supplier and/or any Sub-Contractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Sub-Contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

### **3. SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1. Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date.
- 3.2. The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
- 3.3. The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and any other sums due under Part C: Pensions.

### **4. INFORMATION**

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1. The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2. The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised in 2007 and in 2013; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal, as updated or replaced from time to time.
- 5.3. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

## **6. PENSIONS**

- 6.1. The Supplier shall comply with:
- 6.1.1. all statutory pension obligations in respect of all Transferring Buyer Employees; and
- 6.1.2. the provisions in Part C: Pensions.

**Part 2PART B: STAFF TRANSFER AT START DATE – TRANSFER FROM FORMER SUPPLIER ON REPROCUREMENT**

**1. RELEVANT TRANSFERS**

1.1. The Buyer and the Supplier agree that:

1.1.1. the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2. as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-Contractor and each such Transferring Former Supplier Employee.

1.2. The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

**2. FORMER SUPPLIER INDEMNITIES**

2.1. Subject to Paragraph 2.2, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

2.2. The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.

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2.3. Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:

2.3.1. the Supplier will within five (5) Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing;

2.3.2. the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within ten (10) Working Days of receipt of notice from the Supplier;

2.3.3. if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;

2.3.4. if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within five (5) Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 2.3.

2.4. The indemnity in Paragraph 2.3 shall not apply to any claim:

2.4.1. for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Supplier and/or any Sub-Contractor; or

2.4.2. the termination of employment was unfair because the Supplier and/or Sub-Contractor neglected to follow a fair dismissal procedure.

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- 2.5. The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than three (3) Months from the Relevant Transfer Date.
- 2.6. If the Supplier and/or any Sub-Contractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Sub-Contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

### **3. SUPPLIER INDEMNITIES AND OBLIGATIONS**

- 3.1. Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date.
- 3.2. The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3. The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due under Part C: Pensions.

### **4. INFORMATION**

The Supplier shall promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier in writing such

information as is necessary to enable the Supplier and any Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

## **5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1. The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised in 2007 and in 2013; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
- 5.2. Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

## **6. PROCUREMENT OBLIGATIONS**

Notwithstanding any other provisions of this Part B, where in this Part B the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **7. PENSIONS**

- 7.1. The Supplier shall comply with:
- 7.1.1. all statutory pension obligations in respect of all Transferring Former Supplier Employees; and
- 7.1.2. the provisions in Part C: Pensions.

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### **Part 3PART C: PENSIONS**

#### **1. DEFINITIONS**

In this Part C, the following words have the following meanings and they shall supplement Schedule J1 (*Definitions*), and shall be deemed to include the definitions set out in the Annexes:



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<b>"Actuary"</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>"Admission Agreement"</b>	means either or both of the CSPS Admission Agreement (as defined in Annex C1: CSPS) or the LGPS Admission Agreement) as defined in Annex C2: LGPS), as the context requires;
<b>"Broadly Comparable"</b>	<p>47.1.1.1 in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>47.1.1.2 in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and <b>"Broad Comparability"</b> shall be construed accordingly;</p>
<b>"CSPS"</b>	the schemes as defined in Annex C1 to this Part C;

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### **“Fair Deal Employees”**

those:

- (a) Transferring Buyer Employees; and/or
- (b) Transferring Former Supplier Employees; and/or
- (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B;
- (d) where the Former Supplier becomes the Supplier those employees;

who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;

### **“Fair Deal Schemes”**

means the relevant Statutory Scheme, the TPS or a Broadly Comparable pension scheme;

### **“Fund Actuary”**

means Fund Actuary as defined in Annex C2 to this Part C;

### **“New Fair Deal”**

the revised Fair Deal position set out in the HM Treasury guidance: "Fair Deal for Staff Pensions: Staff Transfer from Central Government" issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and
- (b) any similar pension protection, in accordance with the subsequent Annex C1 and C2 inclusive including The Best Value Authorities Staff Transfer (Pensions) Direction 2007 (as amended from time to time), as notified to the Supplier by the Authority or Buyer;

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**“Statutory Schemes”** means the CSPS or LGPS or the TPS; and

**“TPS”** the schemes as defined in Annex C3 to this Part C.

### **2. PARTICIPATION**

- 2.1. In respect of all or any Fair Deal Employees each of Annex C1: CSPS and/or Annex C2: LGPS shall apply, as appropriate.
- 2.2. The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3. The Supplier undertakes:
  - 2.3.1. to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
  - 2.3.2. to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

### **3. PROVISION OF INFORMATION**

- 3.1. The Supplier undertakes to the Buyer:
  - 3.1.1. to provide all information which the Buyer may reasonably request concerning matters referred to in this Part C as expeditiously as possible; and
  - 3.1.2. not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part C without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed).

### **4. INDEMNITIES**

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- 4.1. The Supplier undertakes to the Buyer to indemnify and keep indemnified the Authority, the Buyer and/or any Replacement Supplier and/or any Replacement Sub-Contractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part C, and/or the CSPA Admission Agreement and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- 4.2. The Supplier hereby indemnifies the Authority, the Buyer and/or any Replacement Supplier and/or Replacement Sub-Contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
- 4.2.1. relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
- 4.2.2. arise out of the failure of the Supplier and/or any relevant Sub-Contractor to comply with the provisions of this Part C before the date of termination or expiry of this Contract.
- 4.3. The indemnities in this Part C and its Annexes:
- 4.3.1. shall survive termination of this Contract; and
- 4.3.2. shall not be affected by the caps on liability contained in Clause 16 (Limitation of Liability).

## **5. DISPUTES**

- 5.1. The Dispute Resolution Procedure will not apply to this Part C and any dispute between the Authority and/or the Buyer and/or the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part C and its Annexes shall in the absence of agreement between the Authority and/or the Buyer and/or the Supplier be referred to an independent Actuary:

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- 5.1.1. who will act as an expert and not as an arbitrator;
- 5.1.2. whose decision will be final and binding on the Authority and/or the Buyer and/or the Supplier; and
- 5.1.3. whose expenses shall be borne equally by the Authority and/or the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

## **6. THIRD PARTY RIGHTS**

- 6.1. The Parties agree Clause 28 (Third Party Rights) does not apply and that the CRTPA applies to this Part C to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it by the Supplier under this Part C, in his or her or its own right under section 1(1) of the CRTPA.
- 6.2. Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in his or her or its own right under section 1(1) of the CRTPA.

## **7. BREACH**

- 7.1. The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part C and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:
  - 7.1.1. commits an irremediable breach of any provision or obligation it has under this Part C; or
  - 7.1.2. commits a breach of any provision or obligation it has under this Part C which, where capable of remedy, it fails to remedy within a reasonable time and in any event within twenty eight (28) days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

## **8. TRANSFER TO ANOTHER EMPLOYER/ SUB- CONTRACTORS**

- 8.1. Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the

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Employment Regulations) the Supplier shall and shall procure that any relevant Sub-Contractor shall:

8.1.1. consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and

8.1.2. procure that the employer to which the Fair Deal Employees are transferred (the "New Employer") complies with the provisions of this Part C and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer, references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

### **9. PENSION ISSUES ON EXPIRY OR TERMINATION**

The provisions of Part D: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

### **10. BROADLY COMPARABLE PENSION SCHEMES**

10.1. If either:

10.1.1. the terms of any of Paragraphs 2.2 of Annex C1: CSPS and/or 4 of Annex C2: LGPS apply; and/or

10.1.2. the Buyer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-Contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Sub-Contractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

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10.2. Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 10.1, the Supplier shall (and shall procure that any of its Sub-Contractors shall):

- 10.2.1. supply to the Buyer details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Relevant Transfer Date;
- 10.2.2. fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
- 10.2.3. instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or the Authority and/or CSPA and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 10.2.4. provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-Contractor's Broadly Comparable pension scheme is terminated;
- 10.2.5. allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("Shortfall"), the Supplier or the Sub-Contractor (as



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agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-Contractor, the Shortfall shall be paid by the Supplier; and

- 10.2.6. indemnify the Authority and/or the Buyer and/or CSPA and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 10.2.5 above.

## **Appendix AAnnex C1: CSPS**

### **1 DEFINITIONS**

In this Annex C1: CSPS to Part C: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (*Definitions*):

<b>"CSPS Admission Agreement"</b>	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
<b>"CSPS Eligible Employee"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
<b>"CSPS"</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

### **2 FUTURE SERVICE BENEFITS**

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

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- 2.2 The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

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## **Annex C2: LGPS**

### **1 DEFINITIONS**

- 1.1 In this Annex C2: LGPS to Part C: Pensions, the following words have the following meanings and they shall supplement Schedule J1 (*Definitions*):

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<b>"Administering Authority"</b>	in relation to the Fund [insert name], the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
<b>"Fund Actuary"</b>	the actuary to a Fund appointed by the Administering Authority of that Fund;
<b>"Exit Amount"</b>	any cost or charge issued to a Supplier or Subcontractor by an Administering Authority on the Supplier or Subcontractor ceasing to be a LGPS Admission Body under clause [insert relevant clause] of the LGPS Admission Agreement or regulation 68 and 74 of the LGPS Regulations in relation to PP Employees;
<b>"Fund"</b>	[insert name], a pension fund within the LGPS;
<b>"LGPS"</b>	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme
<b>"LGPS Admission Agreement"</b>	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
<b>"LGPS Admission Body"</b>	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
<b>"LGPS Eligible Employees"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS;

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**“LGPS Regulations”** the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS; and

**“PP Employees”** any LGPS Eligible Employees who was an employee of People Plus Group Ltd, and set out in the attached Annex C2 Appendix.

## 2 SUPPLIER TO BECOME AN LGPS ADMISSION BODY

- 2.1 Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.
- 2.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
- 2.3 The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
- 2.4 The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

## 3 RIGHT OF SET-OFF

The Buyer shall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Sub-Contractor) under

an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

#### **4 SUPPLIER CEASES TO BE AN LGPS ADMISSION BODY**

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

#### **5 DISCRETIONARY BENEFITS**

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

#### **6 FUNDING**

6.1 The Buyer hereby undertakes that it shall procure that the funding of the accrued rights of PP Employees in the LGPS in respect of pensionable service up to the first Relevant Transfer Date under the Contract shall be calculated on the basis that the LGPS had assets equal to its liabilities, as at that Relevant Transfer Date, based on the LGPS' ongoing actuarial valuation basis.

6.2 Subject to Paragraph 6.3 of this Annex C2, any Exit Amount shall be the sole responsibility of the Buyer and shall be dealt with as set out in Paragraphs 6.4 to 6.7 of this Annex C2.

6.3 Nothing in Paragraph 6.2 of this Annex C2 shall require the Buyer to be responsible for any Exit Amount to the extent that such Exit Amount has arisen as a result of:

6.3.1 a decision or exercise of discretion by the Supplier or any Subcontractor which:

(a) increases the pensionable pay of PP Employees above the greater of:

## Schedule C1: Staff Transfer

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- (A) the increases assumed in the relevant actuarial valuations of the LGPS; and
    - (B) the increases the Supplier and/or any Subcontractor are contractually bound to provide on the Relevant Transfer Date;
  - (b) otherwise increases the benefits payable to a PP Employee and in particular:
    - (A) the immediate payment of benefits with:
      - (i) the Supplier's or Subcontractors' consent under Regulation 30 of the LGPS Regulations, including waiving any reduction of benefits under Regulation 30(8) of the LGPS Regulations or otherwise; or
      - (ii) the Supplier or Subcontractors waiving any reduction of benefits on compassionate grounds under Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014); and/or
    - (A) an award to additional pension under Regulation 31 of the LGPS Regulations;
- 6.3.2 the early retirement of PP Employees due to dismissal or termination of employment under Regulation 30(7) of the LGPS Regulations;
- 6.3.3 the early retirement of PP Employees under the provisions of regulations 35 to 39 of the LGPS Regulations;
- 6.3.4 any contribution required by the Administering Authority towards the cost of the administration of the Fund relating to the Supplier that are not met through the Supplier's or Subcontractors' payments under the applicable rates and adjustment certificate under regulation 62 of the LGPS Regulations, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the LGPS Regulations and the costs of any reports and advice requested by the Supplier from an actuary appointed by the Administering Authority; and/or



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- 6.3.5 any interest payable under the LGPS Regulations or LGPS Administration Agreement.
- 6.4 Within ten (10) Working Days of receipt of the Exit Amount from the Administering Authority the Supplier shall notify the Buyer in writing of any Exit Amount together with a reasonable summary of how the Supplier has arrived at its calculation of such amount.
- 6.5 On receipt of the Supplier's calculation in accordance with Paragraph 6.4 of this Annex C2 the Buyer shall either:
- 6.5.1 notify the Supplier in writing of acceptance of the Exit Amount;
  - 6.5.2 request further information/evidence; and/or
  - 6.5.3 request a meeting to discuss/clarify the evidence provided.
- 6.6 Where the Exit Amount notified under Paragraph 6.4 of this Annex C2 is agreed following the receipt of further information/evidence or following a meeting, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the Exit Amount, they shall follow the Dispute Resolution Procedure.
- 6.7 Any Exit Amount agreed by the Buyer shall be paid within timescales as agreed between Buyer and Supplier. In respect of any Exit Amount the amount to be paid by the Buyer shall be an amount equal to the Exit Amount (less an amount equal to any corporation tax relief which has been claimed in respect of the Exit Amount by the Supplier or its Subcontractors).

### **Annex C2 Appendix (PP Employees)**

**[Details to be inserted]**

## **Appendix BAnnex C3: TPS**

### **1 DEFINITIONS**

In this Annex C3: TPS to Part C: Pensions, the following words have the following meanings and they shall supplement Schedule J1 (*Definitions*):

<b>"TPS Participation Agreement"</b>	a participation agreement in the form available on the Teachers' Pension Scheme website immediately prior to the Relevant Transfer Date to be entered into for the TPS in respect of the Services;
<b>"TPS Eligible Employee"</b>	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the TPS Participation Agreement; and
<b>"TPS"</b>	means the Teachers' Pension Scheme, which is a scheme made under the powers of section 9 of the Superannuation Act 1972 and provided for in The Teachers' Pensions Regulations 2010 and/or a scheme made under the powers of section 1 of the Public Service Pensions Act 2013 and provided for in The Teachers' Pension Scheme Regulations 2014.

### **2 FUTURE SERVICE BENEFITS**

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the TPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the TPS for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the TPS for whatever reason at a time when it has TPS Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a TPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the TPS on the date the TPS Eligible Employees ceased to participate in the TPS.

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### **3 TPS**

- 3.1 The Supplier shall comply with all of its obligations under The Teachers' Pensions Regulations 2010 and The Teachers' Pension Scheme Regulations 2014 (in each case as amended from time to time) in respect of the TPS Eligible Employees.
- 3.2 If the Supplier is an employer listed in Schedule 2, Part 2 of The Teachers' Pensions Regulations 2010 or Schedule 1, Part 3 of the Teachers' Pension Scheme Regulations 2014 (in each case as amended from time to time), the Supplier must, within one (1) month of the Relevant Transfer Date, inform any of the Fair Deal Employees who are members of or are eligible to be members of the TPS of their right to request participation in the TPS and thereafter must comply with all of its obligations under The Teachers' Pensions Regulations 2010 and The Teachers' Pension Scheme Regulations 2014 (in each case as amended from time to time), and the relevant TPS Participation Agreement.

## **PART D: STAFF TRANSFER ON EXIT**

### **1. DEFINITIONS**

In this Part D, the terms "Broadly Comparable", "Fair Deal Employees", "Fair Deal Schemes" and "New Fair Deal" shall have the same meanings as set out in Part C.

### **2. PRE-SERVICE TRANSFER OBLIGATIONS**

2.1. The Supplier agrees that within twenty (20) Working Days of the earliest of:

2.1.1. receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;

2.1.2. receipt of the giving of notice of early termination or any Partial Termination of the Contract;

2.1.3. the date which is twelve (12) Months before the end of the Contract Period; and

2.1.4. receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any six (6) Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer .

2.2. At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-Contractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

2.3. The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 2.1 and 2.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.

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- 2.4. The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 2.1 and 2.2 shall be true and accurate in all material respects at the time of providing the information.
- 2.5. From the date of the earliest event referred to in Paragraph 2.1.1, 2.1.2 and 2.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):
- 2.5.1. not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
  - 2.5.2. not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);
  - 2.5.3. not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
  - 2.5.4. not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
  - 2.5.5. not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
  - 2.5.6. not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;

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- 2.5.7. not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Sub-Contractor;
- 2.5.8. give the Buyer and/or the Replacement Supplier and/or Replacement Sub-Contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Sub-Contractor in respect of persons expected to be Transferring Supplier Employees;
- 2.5.9. co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 2.5.10. promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;
- 2.5.11. not for a period of twelve (12) Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer(acting reasonably));
- 2.5.12. not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 2.5.13. fully fund any Broadly Comparable pension schemes set up by the Supplier;
- 2.5.14. maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);

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- 2.5.15. promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part C: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
- 2.5.16. fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.
- 2.6. On or around each anniversary of the Start Date and up to four times during the last twelve (12) Months of the Contract Period, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within twenty (20) Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 2.6.1. the numbers of employees engaged in providing the Services;
- 2.6.2. the percentage of time spent by each employee engaged in providing the Services;
- 2.6.3. the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part C: Pensions); and
- 2.6.4 a description of the nature of the work undertaken by each employee by location.
- 2.7. The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person

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on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- 2.7.1. the most recent month's copy pay slip data;
- 2.7.2. details of cumulative pay for tax and pension purposes;
- 2.7.3. details of cumulative tax paid;
- 2.7.4. tax code;
- 2.7.5. details of any voluntary deductions from pay; and
- 2.7.6. bank/building society account details for payroll purposes.

### **3. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 3.1. A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 3.2. The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part C: Pensions).
- 3.3. Subject to Paragraph 3.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the



## **Schedule C1: Staff Transfer**

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Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.

3.4. The indemnity in Paragraph 3.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date.

3.5. Subject to Paragraphs 3.6 and 3.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations then:

3.5.1. the Replacement Supplier and/or Replacement Sub-Contractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;

3.5.2. the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within ten (10) Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-Contractor;

3.5.3. if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-Contractor shall immediately release the person from its employment;

3.5.4. if after the period referred to in Paragraph 3.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-Contractor may within five (5) Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Sub-Contractor's compliance with Paragraphs 3.5.1 to 3.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 3.5.

3.6. The indemnity in Paragraph 3.5 shall not apply to:

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- 3.6.1. any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor, or
- 3.6.2. any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure.
- 3.7. The indemnity in Paragraph 3.5 shall not apply to any termination of employment occurring later than three (3) Months from the Service Transfer Date.
- 3.8. If at any point the Replacement Supplier and/or Replacement Sub-contract accepts the employment of any such person as is described in Paragraph 3.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 3.5 shall cease to apply to such person.
- 3.9. The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 3.10. Subject to Paragraph 3.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its Sub-Contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

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- 3.11. The indemnity in Paragraph 3.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 3.5 (and subject to the limitations set out in Paragraphs 3.6 and 3.7 above).

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### **Annex: Employee Information Spreadsheet**

**THE SECRETARY OF STATE FOR JUSTICE**

**AND**

**THE SUPPLIER**

**HMP ACADEMIES**

**SCHEDULE C1X**  
**STAFF TRANSFER**

**48. DEFINITIONS**

- 48.1 In this Schedule, the following words have the following meanings and they shall supplement Schedule J1 (*Definitions*):

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**“Admission Agreement”** an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the Civil Service Pension Scheme in respect of the Services and/or an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013 as applicable;

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### **“Employee Liabilities”**

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

48.1.1.1 redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

48.1.1.2 unfair, wrongful or constructive dismissal compensation;

48.1.1.3 compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

48.1.1.4 compensation for less favourable treatment of part-time workers or fixed term employees;

48.1.1.5 outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions and also including any payments arising in respect of pensions;

48.1.1.6 claims whether in tort, contract or statute or otherwise;

48.1.1.7 any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;



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<b>“Former Supplier”</b>	a supplier supplying the Services to the Buyer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub Contractor of such supplier (or any Sub Contractor of any such Sub-Contractor);
<b>“New Fair Deal”</b>	the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
<b>“Partial Termination”</b>	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clauses 14.19 and 14.20;
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part C: Pensions, shall include the Start Date, where appropriate;
<b>“Supplier’s Final Supplier Personnel List”</b>	a list provided by the Supplier of all Supplier Personnel whose will transfer under the Employment Regulations on the Service Transfer Date;
<b>“Supplier’s Provisional Supplier Personnel List”</b>	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

## Schedule C1X: Staff Transfer

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**“Staffing Information”** in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Laws), but including in an anonymised format:

48.1.1.8 all of the information listed in the employee information spreadsheet annexed to this Schedule (which the Buyer may, acting reasonably, update at any time at its sole discretion);

48.1.1.9 any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

48.1.1.10 details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

48.1.1.11 copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

48.1.1.12 any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**“Transferring Buyer Employees”** those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date;

**“Transferring Former Supplier Employees”** in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to the Relevant Transfer Date.

## 49. INTERPRETATION

25 January 2024

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- 49.1 Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be and where the Sub-Contractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.
- 49.2 The provisions of Paragraphs 4.4, 5.3 and 5.5 confer benefits on third parties and are intended to be enforceable by such third parties by virtue of the CRTPA.

### **50. EMPLOYMENT REGULATIONS ON THE START DATE**

The Parties believe that the Employment Regulations do not apply to this Call-Off Contract on the Start Date. In the event that the Employment Regulations do apply to this Call-Off on the Start Date, the Supplier must comply with its obligations under the Employment Regulations and (if applicable) New Fair Deal (including entering into an Admission Agreement) and will indemnify the Buyer or any Former Supplier for any loss arising from any failure to comply.

### **51. PRE-SERVICE TRANSFER OBLIGATIONS**

- 51.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 51.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
  - 51.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract;
  - 51.1.3 the date which is twelve (12) Months before the end of the Contract Period; and
  - 51.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any six (6) Month period),
- it shall provide in a suitably anonymised format so as to comply with the Data Protection Laws, the Supplier's Provisional Supplier Personnel List, together

## Schedule C1X: Staff Transfer

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with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Buyer .

- 51.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Sub-Contractor (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 51.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 4.1 and 4.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 51.4 The Supplier warrants, for the benefit of the Buyer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 4.1 and 4.2 shall be true and accurate in all material respects at the time of providing the information.
- 51.5 From the date of the earliest event referred to in Paragraph 4.1.1, 4.1.2 and 4.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall, unless otherwise instructed by the Buyer (acting reasonably):
- 51.5.1 not replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- 51.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);

## Schedule C1X: Staff Transfer

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- 51.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 51.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 51.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
- 51.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process;
- 51.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Sub-Contractor;
- 51.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Sub-Contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Sub-Contractor in respect of persons expected to be Transferring Supplier Employees;
- 51.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 51.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;

## Schedule C1X: Staff Transfer

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- 51.5.11 not for a period of twelve (12) Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Sub-Contractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer(acting reasonably));
- 51.5.12 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract;
- 51.5.13 fully co-operate (and procure that the trustees of any broadly comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.
- 51.6 On or around each anniversary of the Start Date and up to four times during the last twelve (12) Months of the Contract Period, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within twenty (20) Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 51.6.1 the numbers of employees engaged in providing the Services;
- 51.6.2 the percentage of time spent by each employee engaged in providing the Services;
- 51.6.3 a description of the nature of the work undertaken by each employee by location; and
- 51.6.4 in respect of each employee identified at Paragraph 4.6 above:
- (i) the full name of the pension scheme or pension arrangements which each employee participates in or is eligible to participate in; and in respect of such scheme whether:
    - (A) the employee participates or has opted out; and

## Schedule C1X: Staff Transfer

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- (B) there are any special terms relevant to that employee;
- (ii) whether any employee is eligible to participate in more than one pension scheme, and if so full details as set out below for each;
- (iii) whether the pension scheme is a defined benefit (final salary, etc.) (DB) or defined contribution (money purchase) (DC) arrangement;
- (iv) If a DB scheme, whether it is:
  - (A) 'broadly comparable' to a public sector scheme, and if so supply a copy of the certificate of 'Broad Comparability';
  - (B) a public sector scheme, and if so please supply details of the administering authority; or
  - (C) another scheme;
- (v) If a DC scheme, whether it is an occupational pension, scheme, a group personal pension scheme, a personal pension scheme or some other arrangement;
- (vi) In respect of all pension schemes (DB and DC), please supply:
  - (A) employer pension contribution rates;
  - (B) other regular employer contributions, administration charges, payments, etc.; and
  - (C) any other charges due from or contributions payable by the participating employees; and
- (vii) whether any of the pension schemes (DB or DC) include any benefits not linked to 'old age, invalidity or survivor' benefits.

51.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as

## Schedule C1X: Staff Transfer

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appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

51.7.1 the most recent month's copy pay slip data;

51.7.2 details of cumulative pay for tax and pension purposes;

51.7.3 details of cumulative tax paid;

51.7.4 tax code;

51.7.5 details of any voluntary deductions from pay; and

51.7.6 bank/building society account details for payroll purposes

## 52. EMPLOYMENT REGULATIONS EXIT PROVISIONS

52.1 A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier agree that where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disappplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.

52.2 The Supplier shall comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

52.3 Subject to Paragraph 5.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of any act or omission of the



## Schedule C1X: Staff Transfer

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Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.

52.4 The indemnity in Paragraph 5.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date.

52.5 Subject to Paragraphs 5.6 and 5.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations then:

52.5.1 the Replacement Supplier and/or Replacement Sub-Contractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;

52.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within ten (10) Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-Contractor;

52.5.3 if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-Contractor shall immediately release the person from its employment;

52.5.4 if after the period referred to in Paragraph 5.5.2 no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-Contractor may within five (5) Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Sub-Contractor's compliance with Paragraphs 5.5.1 to 5.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 5.5.

## Schedule C1X: Staff Transfer

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52.6 The indemnity in Paragraph 5.5 shall not apply to:

52.6.1 any claim for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor, or

52.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure.

52.7 The indemnity in Paragraph 5.5 shall not apply to any termination of employment occurring later than three (3) Months from the Service Transfer Date.

52.8 If at any point the Replacement Supplier and/or Replacement Sub-contract accepts the employment of any such person as is described in Paragraph 5.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 5.5 shall cease to apply to such person.

52.9 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

52.10 Subject to Paragraph 5.9, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its Sub-Contractors against any Employee Liabilities arising from or as a result of any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier

## **Schedule C1X: Staff Transfer**

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Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

52.11 The indemnity in Paragraph 5.10 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph 5.5 (and subject to the limitations set out in Paragraphs 5.6 and 5.7 above).

**Annex: Employee Information Spreadsheet**

**THE SECRETARY OF STATE FOR JUSTICE**  
**AND**  
**THE SUPPLIER**  
**HMP ACADEMIES**

## **SCHEDULE C2**

### **CHARGES**

#### **53. DEFINITIONS**

53.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule J1 (*Definitions*):

**"Service Month"** each Monthly period (or part of a Month at the start and end of the Contract Period where applicable) during the Contract Period when the Supplier provides Services;

#### **54. FIXED PRICE MOBILISATION PAYMENT**

54.1 The Parties acknowledge that there is no on-going payment due from the Authority to the Supplier in exchange for the Services under the Framework Contract.

54.2 Under a Call-Off Contract, the Supplier shall only be paid by the Buyer to the extent it is agreed that the Supplier is entitled to a one-off fixed mobilisation payment (the **Fixed Price Mobilisation Payment**). The Fixed Price Mobilisation Payment amount shall be detailed in the Order Form as agreed between the Buyer and the Supplier. The Buyer shall not be obliged to pay any charge, costs or expense where they are incurred in excess of the Fixed Price Mobilisation Payment.

#### **55. INVOICING AND PAYMENT**

55.1 The Supplier shall be entitled to issue an invoice to the Buyer for the Fixed Price Mobilisation Payment [within the first Service Month of the Service Commencement Date]. The Fixed Price Mobilisation Payment shall be invoiced in arrears. The Supplier shall submit its invoice to the Buyer at the Invoicing Address no earlier than five (5) Working Days and no later than sixty (60) Working Days after the end of the relevant Service Month.

## SCHEDULE F1 – SPECIFICATION

Version	Date
1.0 Initial version	February 2023

### DEFINITIONS

For the avoidance of doubt, all references to applicable laws and regulations, policies, guidelines, codes of practices and notes in this Specification shall, in each case include any amendments made from time to time.

Unless the context otherwise requires the following terms shall have the meanings given to them below:

**“Equality Act 2010”** The Equality Act 2010 is an Act of Parliament of the UK. The Act codifies previous anti-discrimination laws, primarily the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and three major statutory instruments protecting discrimination in employment on the grounds of religion or belief, sexual orientation and age.

**“Protected Characteristics”** The personal characteristics that are protected by law in the Equality Act 2010. They are (in alphabetical order):

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion and belief;
- sex; and

**“Qualifications”** sexual orientation.  
Formally recognised and accredited. The majority are on Regulated Qualifications Framework (RQF), Credit and Qualifications Framework for Wales (CQFW) and the Qualifications in Wales (QiW) database.



# Ministry of JUSTICE

“ROTL”

Release on Temporary Licence, which has the meaning given to it in the "Release on Temporary Licence Policy Framework" (as amended from time to time).

## EXPLANATION OF SPECIFICATION

The Specification follows the structure set out below. The Specification is outcome/output focussed.

<b>Purpose</b>	A summary of Service to be commissioned.
<b>Outcome</b>	The outcomes to be achieved in this specific area by the Supplier.
<b>Service Elements in Scope</b>	<p>Elements of the Service requirement that the Supplier has full responsibility for. i.e.</p> <ul style="list-style-type: none"><li>(a) providing the day to day running of a HMP Academy (including a defined programme of learning and a unique in-prison facility);</li><li>(b) marketing and providing branding within the HMP Academy;</li><li>(c) collecting and distributing data on the efficacy of the HMP Academy;</li><li>(d) offering guaranteed interviews upon release to prisoners who completed the course; and</li><li>(e) 'Through the gate' support for prisoners.</li></ul>
<b>Service Elements Out of Scope</b>	<p>Elements of the Service requirement that the Supplier has limited responsibility of. i.e.</p> <ul style="list-style-type: none"><li>(a) the main learning and skills provision under the existing curriculum (not part of the HMP Academy Programme); and</li><li>(b) delivery of services which are already provided under an existing contract (BAU).</li></ul>
<b>Operational Requirements</b>	The minimum requirements of the Supplier achieving each outcome. The Supplier has the flexibility and is encouraged to deliver innovative solutions that will achieve, but may go over and above, the minimum requirements specified in this section.

## OPERATIONAL SPECIFICATION

The Supplier shall provide the Services set out in this Specification. The Services shall be delivered in accordance with the mandatory guidance set out within Annex 1 (*Operational Requirements*), as applicable.





# Ministry of JUSTICE

The Supplier shall at all times ensure that the Services comply with, and meet all the requirements of, and that the Supplier performs its other obligations arising under or in connection with, the Call-Off Contract, the Specification, Prison Service Instructions and Law, with effect from the Call Off Start Date.

This Specification sets out the services required to deliver the Services in the Prison.

In broad terms the service includes a HMP Academy within a prison which is hosted by an employer or consortia of businesses and employers that provides sector specific skills training and creates pathways to jobs on release, preferably with the employer/s involved in the HMP Academy. The core elements of this would be:

- A defined programme of learning that prepares the prisoners for work with the employer/s after release;
- A unique in-prison facility which resembles, as much as possible, the facility as it would be in the community. Including branding and signage, uniforms for prisoners, and a focus on company values;
- marketing the HMP Academy;
- reporting/monitoring and evaluating;
- guaranteed interviews for all participants completing the programme upon release; and
- "through the gate" support to enhance the likelihood of prisoners settling in well to the new role and having an immediate positive impact upon release.

The Specification will be subject to ongoing review and development by both Authority and Supplier to take note of emerging best practice and changes in approach. There is a clear expectation that the Supplier will strive to continuously improve service delivery and provide a flexible service which can readily respond to changing learning and skills needs of prisoners.



## HMP Academies

### Specification for HMP Academies

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#### Purpose

We are seeking to establish and operate a number of new HMP Academies that meet the following criteria:

- enable employers to provide 'on the job' training tailored to their specific organisation's needs;
- engage with a flexible cohort of prisoners to prepare people for employment in their business on release; and
- invest in fixed prison training spaces which will be hosted and branded by employers.

#### Outcome

The Authority know that employment for prison leavers helps cut crime, prevents further victims and reduces the £18 billion total estimated economic and social cost of reoffending. Prison leavers who find employment after release are up to nine percentage points less likely to reoffend. Getting more prison leavers into work also has a role to play in promoting economic growth by helping employers with skills shortages.

In the year to March 2022, 17.3% of prison leavers were employed 6 Months post release (excluding cases where the status was unknown), this is up from 14.0% in the previous year.

Our ambition is to deliver a step-change in the number of prison leavers who secure employment on release.

As this is part of the Employability Innovation Fund, we are keen to establish robust data around the efficacy of HMP Academies in achieving the Authority's objectives of increasing the number of prisoners in employment post release.

MoJ and HMPPS will develop a set of core KPIs which all suppliers must report on to help monitor the delivery and success of the project. These shall include: a minimum number of prisoners enrolled into the HMP Academy programme each quarter; prisoner attendance rate being maintained at eighty-five per cent (85%) or above throughout the HMP Academy programme; a minimum percentage who start the HMP Academy programme complete it; one-hundred per cent (100%) of those who complete the HMP Academy programme are



## HMP Academies

offered an interview for a live vacancy; a minimum percentage of interviewees are offered a job start and one hundred per cent (100%) of agreed data is shared with the Authority every month.

### Service Elements in Scope

Suppliers are responsible for the planning, mobilisation (which may include fit-out of the HMP Academy facilities in the prison) and delivery of each HMP Academy.

Suppliers are responsible for creating and delivering an HMP Academy programme that reflects, as far as possible within a prison environment, a typical work environment and provides a potential pipeline of new recruits with the right skills into employment. Additionally, where appropriate, arrange participants to sit formal Qualifications if part of proposed programme.

Suppliers are responsible for collecting and reporting data in relation to the HMP Academy – in accordance with the Authority's requirements and any Call Off Contract.

Suppliers are responsible for ensuring effective 'Through the gate' support to the HMP Academy participants.

There will be a social value criterion as part of the call off competition.

Suppliers are responsible for marketing the HMP Academy within the prison.

### Service Elements with Shared Responsibility

The supplier has shared responsibilities for the following services:

- identifying and selecting appropriate candidates to participate in the HMP Academy programme.

### Service Elements Out of Scope

The following services are excluded from the scope of the HMP Academies Programme:

- managing and providing services within the existing curriculum;
- delivery of services which are already provided under contract (BAU);
- escorting to education settings; and
- initial screening and assessment (formal).



## HMP Academies

### Annex 1 - Operational Requirements

#### Operational Requirements

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##### **The Participants**

HMP Academies will benefit prisoners aged 18 or over of working age regardless of Protected Characteristics and with a good work ethos who are motivated to engage with longer-term, higher skilled sector specific training in work environments.

People will be identified and selected by the Prison with support from the Supplier and HMPPS partner organisations (such as those providing Career Information, Advice and Guidance services (CIAG)). They will generally be serving the final period of their custodial sentence and expected to spend this time in the HMP Academy, learning new skills.

The core minimum eligibility criteria for participants for this type of intervention are:

- Have at least 3 months<sup>1</sup> left of their custodial sentence remaining and likely to stay at the prison for the duration until time of release.
- Have demonstrated achievement of soft skills including having a good work ethos and motivated to engage.
- Have a right to work in the UK.

##### **The Facility / Facilities**

The facilities available will be detailed in the call off competition and are specific to each prison (see Annex 2 (*Prison Specific Information*) for examples of what may be provided in terms of information during the call-off competition).

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<sup>1</sup> This is flexible and will generally reflect the needs of the employer and the proposed programme length.



## HMP Academies

### **Sustainability and adaptability**

HMPPS want academies to be an integral part of prison operations, not just over the period of this Call-Off Contract but for the long term. HMPPS is investing in new infrastructure by refurbishing existing facilities and equipping them with modern industry standard equipment to support start up, and making them available to suppliers without charges, along with a pool of available prisoners at no cost to suppliers.

This will enable suppliers to utilise the facility and equipment to provide a pipeline of trained new recruits, using the businesses own expert resources to provide specialist skills to prisoner participants, equipping them for employment on release from custody.

### **Mobilisation**

Suppliers will be expected to mobilise their resources quickly as soon as contracts are awarded and the designated prison facility becomes available for use. The Order Form within the Call Off Contract will set out the mobilisation time.

### **Creating a positive learning environment**

HMP Academies should be safe, inclusive, respectful and supportive spaces with a clear sense of belonging for prisoners with little or no ambiguity about what its function and purpose is. The supplier will be required to take an active part in setting standards and behaviours of the prisoners participating. The prison will provide any necessary security and other appropriate 'prison' training to the suppliers' staff in accordance with local protocols. The supplier will be expected to create and sustain a professional learning environment that resembles, as much as possible, a similar learning and work environment they provide in the community.



## HMP Academies

### Learning Opportunities

HMP Academies are intended to be places of learning for the prisoners that participate where trade skills are aligned to the needs of the employer hosting the facility and to the sector the supplier operates in – making participants ‘job ready’ in preparation for future employment on release from prison. The scope, content and pace of learning will be at the discretion of the employer, but participants are expected to attend the HMP Academy full time for a period of months leading up to their release. Suppliers will be required to work closely with managers in the prison to consider and agree selection criteria over and above any minimum standards, to identify and select the right people to participate and the prison will be required to put the best candidates forward.

This is an opportunity for the employer to inspire potential recruits to become happy and productive team members. The range of skills available to participants may include specialist / technical knowledge and learning (accredited and non-accredited) as well as valuable ‘people skills’ such as adaptability, communication, creativity, initiative, organisation, planning, problem solving, reliability, team working and timekeeping. Learning about the employer is also significant – reflecting established company induction programmes to help new recruits fit in quickly by understanding how the employer operates such as information about systems and procedures, company strategy and services (such as company values and behaviours), alongside job specific information (e.g., department information, job requirements and objectives).

There may also be opportunities to develop numeracy and literacy skills for participants in association with the prison and its specialist providers, along with utilising other local existing education and learning provision in the prison (subject to local funding agreement).



## HMP Academies

### Employment Opportunities

HMP Academies shall be places where the supplier is expected to provide stable, sustainable and meaningful employment opportunities in the community – both for prison leavers and, where possible, for those ROTL for the purpose of work.

### Through the gate support

Suppliers and their partners are expected to collaborate with the prison to support prisoners into employment to aid the transition from life inside a prison into the community. This support might extend to meeting them at the prison gate, providing some temporary financial support, particularly in the early days, help with finding accommodation and adopting a buddy system to support onboarding and knowledge sharing to orient new employees. Providing mentors prior to leaving custody and taking up employment is one example of good practice - making the transition easier and making some allowances in the first few weeks to help them settle in often works too. This support is expected to begin inside the prison and follow individuals 'through the gate'.

Suppliers might want to collaborate to gain support from other employers, organisations (including charities) already working with prison leavers to create wraparound support. This is seen as adding value to the 'through the gate' experience and will enhance the likelihood of an individual settling well into the new role and having an immediate positive impact. There may be opportunities for employers to collaborate with charities and other third sector organisations to enhance their offer.

**HMP Academies****Marketing and promoting HMP Academies inside the prison, HMPPS and externally**

Suppliers will be expected to raise awareness and promote the HMP Academy and all that it offers inside the prison to prisoners and staff and maintain a good level of engagement, interest and participation on an ongoing basis. Suppliers are also expected to work with HMPPS to promote the initiative across other parts of HMPPS and Ministry of Justice including by way of individual case studies where appropriate.

Suppliers will also be encouraged to promote HMP Academies to others outside of HMPPS, including publicly and within existing employer and trade networks to help raise awareness and future employer interest.

**Monitoring and Evaluation**

The main aim of the programme is to increase the number of offenders going into employment upon release. This includes any type of paid work regardless of whether this is permanent or temporary, full time or part time, employed or self-employed including apprenticeships. We will collect data separately about employment at 6 weeks and 6 months after release. To assess the success of HMP Academies in achieving this aim we aim to conduct: a) Data Monitoring and Metrics gathering; b) A Process Evaluation; and c) An Impact and Economic (Value-for-Money) Evaluation. . Suppliers will be required to provide data on participating prisoners to facilitate these monitoring and evaluation activities. These will be agreed and confirmed with the suppliers upon project inception.

Data Monitoring and Metrics gathering will provide early and regular indications of the progress and success of the HMP Academies programme. We aim to gather data about the prisoners participating in HMP Academics, such as the number and demographic characteristics of learners, to determine whether the target groups have been reached. We also aim to gather data about the success of the programme to help HMPPS evaluate the effectiveness of the HMP Academies initiative and to monitor performance of the contract.





## HMP Academies

Information is likely to extend to the number of prisoners (including names and unique ID numbers) enrolled, number of dropouts (including names and unique ID number), numbers completing the programme, numbers being offered an interview (if not guaranteed) or a job (if interviews are guaranteed), name of employer, type of employment, number of offenders who do not show up despite being offered jobs, number of offenders who continue to work with employers after 6 weeks and 6 months.

Through a process, impact, and value-for-money evaluation of the HMP Academies, we will assess how the programme was delivered, whether (and to what extent) it was successful in increasing the number of offenders finding employment upon release and the estimated value for money or economic benefits of this publicly funded intervention. The process evaluation will focus on lessons learnt from the delivery of the intervention which can be used to improve future HMP Academy programmes. We will also focus on factors that appear to influence the success of the intervention, and on any unintended consequences or outcomes. We aim to use the impact evaluation to compare the employment of learners in the HMP Academies programme with similar offenders who have not been involved in the programme. This will enable us to estimate attribution and additionality (that is, the extent to which any improvement to offenders' employment prospects on release can be attributed to HMP Academies, as opposed to other factors, and evidence that this improvement is additional to outcomes expected to occur through 'business as usual', without HMP Academies.)

### **The Equality Act 2010**

Suppliers must ensure their materials and training style is inclusive and upholds the statutory duties under the Equality Act 2010 at all times. This will include keeping reasonable adjustments under review and being able to demonstrate that relevant barriers



## HMP Academies

to participation have been removed and providing reasonable adjustments to Participants with additional needs. Suppliers should ensure any staff, mentors or volunteers are appropriately trained in working with vulnerable adults with learning needs.

### Security

Suppliers must:

- monitor any security issues according to the requirements of HMPPS;
- ensure staff and volunteers have the required security clearances and are monitored appropriately to ensure they are working appropriately with prisoners and delivering the service required;
- If providing a digital service deliver the Services in a manner that fully complies with PSI 25/2014 IT Security Policy and PSI 24/2014 Information Assurance Policy;
- make sure there are robust pre-employment checks in place, namely vetting in line with PSI 07/2014 Security Vetting;
- ensure all the Staff have been through the correct vetting process (or are prepared to provide assurances that the requirements will be met). It is a prerequisite to undertake vetting checks for those employed on a prison site or those with a professional relationship with the prisoners. This will be at the Supplier's cost;
- report any security concerns – physical, procedural, or dynamic, using the appropriate reporting system, and record these in the education and workshop observation book;
- must always know the number of prisoners they have under their supervision and be aware, at all times, of where the prisoners they are responsible for are and what tasks they are completing;
- ensure compliance with health and safety in the HMP Academy;



## HMP Academies

- if the supplier becomes aware of anything which endangers the health, safety, or security of any person at the Prison, they must:
  - a. immediately take steps to warn others of and alleviate the danger; and
  - b. promptly notify the Prison of that danger and the steps taken.
- In the event of an accident or incident, the Prison health and safety advisor shall be fully informed by the Supplier of the details of their investigation. If the incident is serious or has resulted in hospitalisation, the Prison health and safety advisor shall also complete an investigation of the incident which shall review the circumstances of the incident and make recommendations to the Supplier as to the actions to take to ensure the likelihood of similar incidents is minimised in the future.
- there is full compliance with health and safety at work legislation and ensure that Safe Systems of Work are in place for all identified risks
- they understand their role and responsibility in executing contingency plans for fire and emergencies, which shall be provided for each learning area by the Prison;
- they investigate all incidents and accidents within the HMP Academy, identify trends and invest in rectifying common incidents and share these with the Authority within 28 days of the incident or accident occurring;
- they report any security concerns whether physical, procedural, or dynamic using the appropriate Intelligence Reporting (IR) system. The security concerns shall also be recorded in the appropriate Observation Book for that area;
- uniforms shall not contain offensive words, slogans, or badges;
- they comply with section 22 of the Offender Management Act 2007 and the Prison Service Instruction 10/2012 Conveyance and Possession of Prohibitive Items and Other Related Offences and any others that come into force;
- all staff are made available to attend all adjudications as required.



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## HMP Academies

### Annex 2 - Prison Specific Information

For the purposes of making offers for individual prison facilities under the Framework or any Call Off Contracts, suppliers will be provided with the following types of data and other information. This list is not exhaustive and is likely to vary a little from prison to prison:

#### **About the Prison and Cohort of Prisoners:**

- Postal address, telephone number and other contact information, including key personnel, their contact details and their roles
- An overview of the role, function and purpose of the prison and any relevant information about future plans and ambitions, particularly in relation to employment
- Prisoner population / capacity and breakdown of the cohort in terms of prisoner type
- Breakdown of prisoner demographics, sentence lengths, release numbers and areas being released into
- List of relevant contracted providers, including education and IAG (Information, Advice and Career) services
- List of other relevant partner organisations and their roles
- Any anticipated changes to the role and function of the prison or the cohort

#### **About the HMP Academy facility itself:**

- Location within the prison and availability of mains services
- Size and other descriptive information about the facility generally and any specific facilities or equipment to note



## HMP Academies

- Inventory of any tools and other equipment (fixed or otherwise) available to use including the availability of any Mechanical Handling Equipment (e.g., access to a forklift truck)
- Indication of the safe minimum and maximum prisoner numbers suited to the facility
- Technical drawings with details of power points, welfare and office facilities
- Inventory of all fixtures and fittings
- Access to telephony and IT
- Vehicular access routes and any restrictions (including entry/ exit to/from the prison)
- Potential opening hours and availability throughout the year
- Access doors (including goods in/out), storage facilities, any outdoor space (including secure storage) and facilities
- Goods lift if applicable
- Any anticipated changes to the facility or the prison generally that might impact on mobilisation and operations

### About other resources available from HMPPS:

- HMP Staff availability (in potentially assisting delivering the HMP Academy for example: as a trainer) – job title, grade and role
- Access to any contracts and funding of those services
- Tools, equipment and other workshop resources available to the supplier

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## **SCHEDULE F2:**

### **ORDER FORM TEMPLATE AND CALL OFF SCHEDULES**

#### **Part A - Order Form Template**

**Contract Number:** [ ]

**From the (“Buyer”):** [ ]

**For delivery of the Services to the following Establishment:** [ ]

**To the (“Supplier”)**

**Name:** [ ]

**Registered Address:** [ ]

**Registered Number:** [ ]

This Order Form, when completed and executed by both Parties, forms a Call Off Contract. Completion and execution of a Call Off Contract may be achieved using an equivalent document or electronic purchase order system. The text below should be copied into any electronic order forms.

#### **FRAMEWORK CONTRACT:**

This Order Form is issued in accordance with and subject to the provisions of the HMP Academies Contract with reference number **[insert]** and dated **[insert]** for the provision of HMP Academies.



## **CALL OFF INCORPORATED TERMS**

The following documents shall be incorporated into this Call Off Contract. If they conflict, the following order of precedence shall apply:

1. This Order Form, other than the paragraph entitled "Call Off Tender".
2. The Core Terms (v.1.0) and Schedule J1 (Definitions).
3. The following Schedules (each taking equal precedence):

J2 (Contract Management)

C2 (Charges)

*Either:*

[C1 (Staff Transfer) (TUPE Applies) ]

[C1: Part A (Staff Transfer at Start Date – Outsourcing from the Buyer) ]

[C1: Part B (Staff Transfer at Start Date – Transfer from Former Supplier) ]

[C1: Part C (Pensions) ]

[ - Annex C1 (CSPS) ]

[ - Annex C2 (LGPS) ]

[ - Annex C3 (TPS) ]

C1: Part D (Staff Transfer on Exit)

*Or*

[C1X (Staff Transfer) (TUPE does not apply)]

4. The paragraph of this Order Form titled "Call Off Tender" and Part C (*Call Off Tender*) provided that any parts of the Call Off Tender which offer a better commercial position for the Buyer (as decided by the Buyer) will take precedence over the documents above.

No other terms whether written on the back of, appended to this order, or presented at the time of delivery shall form part of the Call Off Contract.

**CALL OFF START DATE:** [   ]

**CALL OFF EXPIRY DATE:** [   ]

**CALL OFF SERVICES:**

The Services to be provided under this Call Off Contract are set out below [to be inserted]

Requirement
<i>[Buyer to insert Specification and requirement for the services including any background information]</i>

<b>Delivery Information (non-evaluated) –</b> this is for the Bidders information but will form part of the Call Off Contract	
<b>Timescale (including duration and any milestones)</b>	<b>Start Date [   ] End Date [   ]</b>
<b>Learner numbers</b>	<i>[Insert details of how may learners the provision may be for, with any minimum or maximum numbers]</i>
<b>Delivery hours</b>	<i>[State the proposed requirements giving precise details ie hours per day, days per week etc]</i>
<b>Cohort requirements</b>	<i>[Set out details of the proposed learning cohort]</i>
<b>Relevant local policies and procedures/formalities.</b>	<i>[List any specific key policies and procedures at the Establishment that need to be understood and adhered to]</i>  <i>[See Clause 4.3 of Core Terms – local data recording systems]</i> <i>[See Clause 10.1.1 (Record keeping and reporting) of the Core Terms – include reference to any required Progress meetings and reports]</i>
<b>Buyer Assets</b>	<i>[Insert details of any assets to be provided to the Supplier to help with the Service]</i> <i>[See Clause 6.2 (Assets) of Core Terms]</i>
<b>Delivery Plan:</b>	Suppliers shall submit a detailed delivery plan to cover all aspects of mobilisation, set-up and delivery following the Contract Start Date. This shall include:

	<ul style="list-style-type: none"> <li>[set out required details]</li> </ul>
<b>Management Information required</b>	<p>Suppliers shall provide MI on the progress of Learners as requested by the Buyer and specifically the following information:</p> <ul style="list-style-type: none"> <li>Number of jobs starts remaining in employment after 6 weeks</li> <li>Number of jobs starts remaining in employment after 6 months</li> <li>Number of jobs starts remaining in employment after 12 months</li> </ul>
<b>Fixed Price Mobilisation Payment</b>	<p>See Clause 8 (Pricing and Payment) and Schedule C2 (Charges) [OPTIONAL]</p>

## KEY PERFORMANCE INDICATORS (KPIs)

[X] prisoners enrolled onto the programme each quarter	[custom KPIs to be inserted here]
Prisoner attendance rate at 85% or above throughout the programme	[custom KPIs to be inserted here]
A minimum of [X]% of those who start the programme, complete it	[custom KPIs to be inserted here]
100% of those who complete the programme are offered an interview for a live vacancy (evidenced)	[custom KPIs to be inserted here]
[X]% of interviewees are offered a job start	[custom KPIs to be inserted here]
100% of agreed data to be shared with MoJ analysts every month	[custom KPIs to be inserted here]

## METHOD OF PAYMENT

[BACS to account [ ] at [ ] [Bank/Building Society]]

## BUYER INVOICING ADDRESS:

[Name] [Position] [Email Address]

### ADDRESS FOR NOTICES TO THE BUYER

As set out at the top of this Order Form or email address: **[ ]**

And the Supplier shall send a copy of all notices to the Authority

### BUYER SECURITY POLICY:

<https://www.justice.gov.uk/downloads/offenders/psipso/psi-2014/psi-25-2014-it-security-policy.pdf>

### SUPPLIERS SECURITY REPRESENTATIVE:

**[Name] [Position] [Email Address]**

### CALL OFF TENDER

Requirement (Evaluated)
<i>[Buyer to set out evaluation questions]</i>

For and on behalf of the Supplier		For and on behalf of the Buyer	
Signature		Signature	
Name		Name	
Role		Role	
Date		Date	

### Part B

### Call Off Schedules

***[Insert Schedules C1, C1X and C2]***

**Part C**

**Call Off Tender**

**TO BE FILLED IN BY THE SUPPLIER**

**Supplier's Call Off Tender Response**

***Please include the response to evaluation questions***

**Key Sub Contractors (where used)**

Name	Company Number/Registered Office	Role/Percentage

**Authorized Processing List**

Description of Processing	Details
Subject Matter	
Duration	
Nature and Purpose	
Type of Personal Data	
Categories of Data Subject	

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## SCHEDULE F3

### CALL OFF ORDER PROCEDURE AND AWARD CRITERIA

#### 56. Introduction

- 56.1 The Secretary of State for Justice (the **Authority**) and any prison in England and Wales (including private prisons) that have decided to take part in the Framework are authorised and enabled to use this Contract in order to source Services ("**Authorised Buyers**").
- 56.2 If an Authorised Buyer decides to source Services through this Contract then it will award its requirement for the Services in accordance with the procedures set out in this Schedule, Volumes 3 and 4 of the ITT, and the requirements of the Regulations.
- 56.3 For the avoidance of doubt it is explicitly agreed that an Authorised Buyer shall be entitled to conclude more than one Call Off Contract. Authorised Buyers may also carry out joint / collaborative procurements provided that the basis of the procurement is made clear at the point of the competition for the Call Off Contract.
- 56.4 The potential scope of each Call Off Contract will be made clear in the tender documents which are used as part of the call off process.
- 56.5 This Schedule F3 should be read in conjunction with:
- 56.5.1 ITT Volume 3 – which sets out general instructions in relation to Call Off Competition, and
  - 56.5.2 ITT Volume 4 – which sets out evaluation methodology, evaluation categories and evaluation criteria to be applied in relation to the Call Off Competition and Call Off Tender.

#### 57. Call Off Order Procedure

##### **Buyer's Obligations**

- 57.1 A Buyer awarding a Call Off Contract under this Contract shall:
- 57.1.1 conduct a Call Off Competition and shall:
  - 57.1.2 develop a Call Off Contract Specification (and/or state any changes to the Specification) where it will refine its requirements for the Services;

57.1.3 set out its specific requirements for the Call Off Contract in the Order Form only to the extent permitted by and in accordance with the requirements of the Regulations;

57.1.4 complete Volumes 3 and 4 of the ITT with the specifics of the Call Off Competition;

57.1.5 undertake competition in accordance with the Regulations and by:

57.1.5.1 inviting Potential Suppliers to submit a tender in writing for the proposed Call Off Contract to be awarded by the Buyer;

57.1.5.2 setting a time limit for the receipt by it of the Call Off Tenders; and

57.1.5.3 keeping each Call Off Tender confidential until the time limit set out for the return of Call Off Tenders has expired;

57.1.6 apply the evaluation methodology set out in Volume 4 of the ITT and apply evaluation criteria set out in Annex 1 to this Schedule to the compliant tenders submitted as the basis of its decision to award a Call Off Contract for its Services.

57.1.7 on the basis set out in Paragraph 2.1.1 above, award its Call Off Contract to the successful potential Supplier in accordance with Paragraph 5 (Call Off Award Procedure). The Call Off Contract shall:

57.1.7.1 state the Services in the applicable Call Off Contract Specification;

57.1.7.2 state the Call Off Tender submitted by the successful Potential Supplier;

57.1.7.3 state the charges (if any) payable for the Services in accordance with the Call Off Tender; and

57.1.7.4 incorporate the terms of the Order Form and Contract applicable to the Services; and

57.1.8 provide unsuccessful Potential Suppliers with written feedback in relation to the reasons why their tenders were unsuccessful.

#### Supplier's Obligations

57.2 Following an invitation to submit a tender pursuant to Paragraph 2.1 above, each Potential Supplier shall be entitled (but not obliged) to submit to the Buyer a Call Off Tender in respect of the proposed Call Off Contract.

57.3 All Call Off Tenders which are submitted shall:



57.3.1 include as a minimum:

- 57.3.1.1 a proposal covering the Services i.e. responding to the questions 1 - 6 in Appendix 1;
- 57.3.1.2 the proposed prices (if any) which are applicable to its tender;
- 57.3.1.3 confirmation no deterioration from financial standing as set out in the Framework Response;

57.3.2 be submitted in writing by the time and date specified by the Buyer,

and any Call Off Tenders which do not meet the above requirements and any other mandatory requirements specified by the Buyer shall be deemed to be non-compliant and shall not be considered by the Buyer.

57.4 Each Potential Supplier agrees that:

57.4.1 all Call Off Tenders submitted shall remain open for acceptance by the Buyer for ninety (90) Working Days (or such other period specified in the invitation to tender issued by the Buyer in accordance with the Call Off Procedure); and

57.4.2 all Call Off Tenders submitted are made and will be made in good faith and the Potential Supplier represents that it has not fixed or adjusted and will not fix or adjust the price of the Call Off Tender by or in accordance with any agreement or arrangement with any other person. The Supplier certifies that it has not and undertakes that it will not:

57.4.2.1 communicate to any person, other than the person requesting the tender, the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and

57.4.2.2 enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.

## **58. No Award**

58.1 Notwithstanding the fact that the Buyer has followed a procedure as set out above in Paragraph 2, the Potential Supplier acknowledges and agrees that the Buyer shall be entitled at all times to decline to make an award for its Services and that nothing in this Contract shall oblige the Buyer to award any Call Off Contract.

## **59. Responsibility For Awards**

59.1 The Supplier acknowledges that the Buyer is independently responsible for the conduct of its award of Call Off Contracts under this Contract and that the Authority is not responsible or accountable for and shall have no liability whatsoever (except where it is the same person as the Buyer), in relation to:

59.1.1 the conduct of Buyer in relation to this Contract; or

59.1.2 the performance or non-performance of any Call Off Contracts between the Supplier and Buyer entered into pursuant to this Contract.

## **60. Call Off Award Procedure**

60.1 Subject to Paragraphs 1 to 4 above, a Buyer may award a Call Off Contract to the Supplier by sending (including electronically) a signed order form substantially in the form of the Order Form Template set out in Schedule F2 (Order Form Template and Call Off Schedules).

60.2 The Parties agree that any document or communication (including any document or communication in the apparent form of a Call Off Contract) which is not as described in this Paragraph 5 shall not constitute a Call Off Contract under this Contract.

60.3 On receipt of an order form as described in Paragraph 5.1 from a Buyer the Supplier shall accept the Call Off Contract by promptly signing and returning (including by electronic means) a copy of the order form to the Buyer concerned.

60.4 On receipt of the signed order form from the Supplier, the Buyer shall send (including by electronic means) a written notice of receipt to the Supplier within two (2) Working Days and a Call Off Contract shall be formed.

## **61. Suspension From Award Procedure**

61.1 Where a Buyer has exercised any right of termination in relation to a Call Off Contract due to Default or breach by the Supplier, the Buyer shall be entitled to exclude the Supplier who was a party to the terminated Call Off Contract from re-competing for any future Call Off Contract until further notice.

## **Annex 1 - Evaluation Criteria**

A Call Off Contract shall be awarded on the basis of most economically advantageous tender from the point of view of the Buyer. This shall be the Call Off Tender that is the Most Economically Advantageous Tender (**MEAT**) (as defined by Price Per Quality Point (**PQP**)) and accepts the Call Off Contract as issued without condition or qualification.

To determine the winning Call Off Tender the Buyer shall evaluate compliant tenders based on the Quality Score and assess whether the overall Quality Score meets or exceeds the Quality Threshold of 50. Any tender which falls below the overall Quality Score will be excluded. The Buyer will then calculate the Price Per Quality Point for all tenders which meet the Quality Threshold.

PQP shall be calculated in the following manner:  $\text{Price/Quality Score} = \text{PQP}$

The Bid with the lowest PQP is the MEAT.

Individual questions will be evaluated and allocated a score between 0 and 100. The Buyer will then apply the relevant question weightings to each score and add the resulting scores to give the overall Quality Score for that tender. Further details of the evaluation methodology and scoring are set out in Volume 4 of the ITT.

The Quality Score will be determined via the following questions and weightings:

### **Question 1: Understanding the Prison**

**Weighting: 25%**

**Page Limit: 3**

Question: How will you ensure your academy programme and employment outcomes are appropriate to the prison and the needs of its population?

#### Response Requirements

- How is the academy suitable for this prison's cohort?
- How is the academy suited to the prisoners' predicted release areas?

- What size will each Academy Cohort be and please explain how this supports safe group learning.
- How will you collaborate with existing programmes and stakeholders within the prison?

## **Question 2: Mobilisation**

**Weighting: 10%**

**Page Limit: 7**

Question: How will you establish an HMP Academy prior to it commencing operations and taking on its first participants?

### Response Requirements

A fully detailed plan, including timelines for mobilisation leading to commencement of full operations for the HMP Academy. This plan should illustrate the programme of activities and milestones to be managed during the Mobilisation period alongside assurance measures in place to manage the programme include critical milestones, interdependencies and deliverables within the Mobilisation and transition period including a Mobilisation Action Plan in the form of a Gantt Chart (or equivalent) that identifies when within these phases these activities will take place.

Considerations include, but are not limited to:

- The time necessary for any facility modifications / adaptations that might be required
- The time it will take to equip and test the facility
- How staff will be recruited, vetted and trained
- Any launch (including communication) plans

## **Question 3: Facilities**

**Weighting: 15%**

**Page Limit: 3**

Question: How would you best utilise the specific facilities available to create a positive learning environment where participants flourish?

### Response Requirements

Set out your plan for setting up the physical academy, including:

- Any requirement for specialist plant and equipment including any fixed assets
- Any specialist adaptations to the facilities
- Proposed branding
- How you will promote the academy
- How you will use the facilities and branding to foster a sense of belonging and create an experience that reflects that which employees experience in the community

#### **Question 4: Employment**

**Weighting: 25%**

**Page Limit: 5**

Question: What quantity and quality of employment opportunities will be guaranteed for participants completing the programme?

#### Response Requirements

- What employment opportunities will be available and what evidence can you share to provide confidence that HMP Academy participants will be offered and placed into employment upon their release from prison e.g., evidence to support high levels of demand from the supplier or other employers in the regions the participants will be released into.
- Use the table format below, set out the quantity of employment opportunities to be provided by the supplier for **year 1** (or part thereof, from commencement of operations to 31st March 2023, and **year 2** from 1 April 2023 to 31st March 2024):

For Prison Leavers:

Industry Sector	Type of employment <sup>2</sup>	Description of job role	Employed by Supplier or Another <sup>3</sup>	Name of employer (if known)	Number of employment starts available per annum

<sup>2</sup> e.g., permanent, temporary, self-employed, apprenticeship etc.

<sup>3</sup> Including supply chain partners or other employers

For RoTL work placements:

Industry Sector	Description of job role	Employed by Supplier or Another	Name of employer (if known)	Number of employment starts available per annum	Apprenticeship – Yes / No

If any employment opportunities are to be provided by other employers, please explain who they might be and how you as a supplier will ensure that they are achieved.

- How sustainable are the employment opportunities? What evidence can you share to provide assurance that participants could take up employment in the knowledge that the job offers a sustainable career and is one that can grow with the individual throughout the years, has meaning and purpose and that makes good use of participants skills and experience?

## **Question 5: Staffing**

**Weighting: 15%**

**Page Limit: 3**

Question: How will you ensure the intervention is staffed and/or resourced appropriately?

Response Requirements:

- How your programme will be delivered, including use of own staff or utilising other resources.
- How you will ensure you are able to deliver the Services if experience staff shortages which may impact delivery.
- If recruiting, how you will recruit, train, pay and manage staff to deliver this service, if needed. This should include:
- How you will ensure any new staff, mentors or volunteers are appropriately trained in working with vulnerable adults with learning needs.
- How you will ensure any new staff, mentors or volunteers are trained in data collection and analysis, including Data Protection Law

- How you will ensure all staff have been through the correct vetting processes (typically takes 3-months) and prison security training.
- If using prison staff to deliver the academy, what training will you provide them and how will the collaboration between the supplier and the prison staff work in practice.

**Question 6: Social Value**

**Weighting: 10%**

**Page Limit: 3**

The social value question will be decided by the Buyer from the menu of questions provided by Cabinet Office as part of PPN 06/20. More information can be found here:

Procurement Policy Note 06/20 – taking account of social value in the award of central government contracts - GOV.UK ([www.gov.uk](http://www.gov.uk))

**Schedule J1: Definitions**

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**SCHEDULE J1  
DEFINITIONS**

- 61.2 In each Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule J1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 61.3 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 61.4 In each Contract, unless the context otherwise requires:
- 61.4.1 the singular includes the plural and vice versa
  - 61.4.2 reference to a gender includes the other gender and the neuter
  - 61.4.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body
  - 61.4.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time
  - 61.4.5 the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation"
  - 61.4.6 references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly
  - 61.4.7 references to "representations" shall be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under the Contract
  - 61.4.8 references to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses and schedules of the Contract and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear

## Schedule J1: Definitions

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61.4.9 references to "Paragraphs" are, unless otherwise provided, references to the clauses the paragraph of the appropriate Schedules unless otherwise provided; and

61.4.10 the headings in each Contract are for ease of reference only and shall not affect the interpretation or construction of a Contract

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

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

**"Annex"** extra information which supports a Schedule

**"Approval"** the prior written consent of the Buyer and **"Approve"** and **"Approved"** shall be construed accordingly

**"Audit"** the Relevant Authority's right to:

- (a) verify the accuracy of the Charges and any other amounts payable by a Buyer under a Call Off Contract (including proposed or actual variations to them in accordance with the Contract)
- (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services
- (c) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law
- (d) identify or investigate actual or suspected breach of Clauses 35 to 40 (inclusive) and/or security provisions of Schedule F1 (Specification), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Relevant Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations
- (e) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, and/or any Sub-Contractors or their ability to provide the Services
- (f) obtain such information as is necessary to fulfil the Relevant Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative

## Schedule J1: Definitions

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	purposes including the supply of information to the Comptroller and Auditor General
	(g) review any books of account and the internal contract management accounts kept by the Supplier in connection with each Contract
	(h) carry out the Relevant Authority's internal and statutory audits and to prepare, examine and/or certify the Relevant Authority's annual and interim reports and accounts
	(i) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Relevant Authority has used its resources
	(j) verify the accuracy and completeness of any Management Information delivered or required by the HMP Academies Contract
<b>"Auditor"</b>	<p>(a) the Buyer's internal and external auditors</p> <p>(b) the Buyer's statutory or regulatory auditors</p> <p>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office</p> <p>(d) HM Treasury or the Cabinet Office</p> <p>(e) any person formally appointed by the Buyer to carry out audit or similar review functions and</p> <p>(f) successors or assigns of any of the above</p>
<b>"Authorised Buyer"</b>	has the meaning given to it in Paragraph 1 of Schedule F3 (Call Off Procedure and Award Criteria)
<b>"Authorised Processing List"</b>	has the meaning given to it in Clause 19.3 ( <i>Data Processing</i> )
<b>"Authority"</b>	the Secretary of State for Justice
<b>"Authority Cause"</b>	any breach of the obligations of the Relevant Authority or any other default, act, omission, negligence or statement of the Relevant Authority, of its employees, servants, agents in connection with or in relation to the subject-matter of the

## Schedule J1: Definitions

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	Contract and in respect of which the Relevant Authority is liable to the Supplier
<b>"BACS"</b>	the Bankers' Automated Clearing Services, which is a scheme for the electronic processing of financial transactions within the United Kingdom
<b>"Buyer"</b>	the relevant purchaser identified as such in the Order Form
<b>"Buyer Assets"</b>	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Services including those things (if any) identified as such in the Order Form
<b>"Buyer Premises"</b>	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Services (or any of them)
<b>"Buyer ICT"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services
<b>"Buyer Software"</b>	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Services
<b>"Buyer System"</b>	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services;
<b>"Call Off Contract"</b>	the contract between the Buyer and the Supplier (entered into pursuant to the provisions of the Framework Contract), which consists of the terms set out and referred to in the Order Form
<b>"Call Off Contract Value"</b>	the total Charges paid or payable under a Contract where all obligations are met by the Supplier
<b>"Call Off Expiry Date"</b>	the date of the end of a Call Off Contract as stated in the Order Form

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<b>"Call Off Contract Period"</b>	means the duration of the Call Off Contract from the Call Off Start Date to the Call Off Expiry Date as stated in the Order Form
<b>"Call Off Procedure"</b>	the process for awarding a Call Off Contract pursuant to Clause 2 and Schedule F3 (Call Off Procedure and Award Criteria)
<b>"Call Off Start Date"</b>	the date of start of a Call Off Contract as stated in the Order Form
<b>"Call Off Tender"</b>	the tender submitted by the Supplier in respect of a Call Off Contract as set out in the Order Form
<b>"Central Government Body"</b>	<p>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:</p> <ul style="list-style-type: none"><li>(a) Government Department</li><li>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal)</li><li>(c) Non-Ministerial Department or</li><li>(d) Executive Agency</li></ul>
<b>"Change of Control"</b>	a change of Control within the meaning of Section 450 of the Corporation Tax Act 2010
<b>"Commercially Sensitive Information"</b>	the Confidential Information notified by the Supplier from time to time (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss
<b>"Confidential Information"</b>	the Relevant Authority's Confidential Information and/or the Supplier's Confidential Information, as the context specifies
<b>"Conflict of Interest"</b>	a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to the Authority or any Buyer under a Contract, in the reasonable opinion of the Buyer or the Authority;
<b>"Contract"</b>	either the Framework Contract or the Call Off Contract, as the context requires:
<b>"Contract Period"</b>	the term of either the Framework Contract or a Call Off Contract from the earlier of the:

## Schedule J1: Definitions

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	(a) applicable Start Date or
	(b) the Effective Date,
	until the applicable End Date
<b>"Control"</b>	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly
<b>"Core Terms"</b>	the Authority's standard terms and conditions for training and education services which govern how the Supplier must interact with the Authority and Buyers under Framework Contracts and Call Off Contracts
<b>"Crown Body"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>"CRTPA"</b>	the Contract (Rights of Third Parties) Act 1999
<b>"Data Compliance Officer"</b>	the designated individual with the responsibility for data protection and privacy to act as the point of contact for the purpose of observing the Data Protection Laws and associated obligations under each Contract
<b>"Data Controller"</b>	has the meaning given to it in the Data Protection Laws
<b>"Data Loss Event"</b>	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
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Laws
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
<b>"Data Protection Laws"</b>	(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

## Schedule J1: Definitions

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<b>"Data Sheet"</b>	the document outlining the Incorporated Terms and crucial information required for the HMP Academies Contract, to be executed by the Supplier and the Authority
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Laws
<b>"Data Subject Access Request"</b>	a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access their Personal Data
<b>"Default"</b>	any breach of the obligations of the Supplier (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Supplier, of its Sub-Contractors or any Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Supplier is liable to the Relevant Authority
<b>"Delivery"</b>	delivery of the relevant Service in accordance with the terms of a Call Off Contract as confirmed and accepted by the Buyer by confirmation in writing to the Supplier and "Deliver" and "Delivered" shall be construed accordingly
<b>"Delivery Plan"</b>	has the meaning given to it in Paragraph 1.1 of Schedule J2 (Contract Management)
<b>"Disclosing Party"</b>	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 22 (Confidentiality)
<b>"Dispute"</b>	any claim, dispute or difference arises out of or in connection with the Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts
<b>"Dispute Resolution Procedure"</b>	the dispute resolution procedure set out in Clause 42 (Dispute Resolution)
<b>" Incorporated Terms"</b>	the contractual terms applicable to the HMP Academies Contract specified in the Data Sheet
<b>" Response"</b>	the response submitted by the Supplier in respect of the HMP Academies Contract
<b>" Start Date"</b>	the date of start of the HMP Academies Contract as stated in the Data Sheet

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<b>"Due Diligence Information"</b>	any information supplied to the Supplier by or on behalf of the Authority or Buyer prior to the Start Date
<b>"Effective Date"</b>	the date on which the final Party has signed the Contract
<b>"EIR"</b>	the Environmental Information Regulations 2004
<b>"Employment Regulations"</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC
<b>"End Date"</b>	the earlier of:  (a) the Expiry Date or  (b) if a Contract is terminated before the date specified in (a) above, the date of termination of the Contract
<b>"Environmental Policy"</b>	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer
<b>"Establishment"</b>	a place operated by a Buyer at which the Services are to be performed, including prisons, adult and young offender institutions, and immigration removal centres (as may be listed in the Order Form)
<b>"Existing IPR"</b>	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the Start Date or otherwise)
<b>"Expiry Date"</b>	the Framework Expiry Date or the Call Off Expiry Date (as the context dictates)
<b>"Extension Period"</b>	means the two year extension of the Contract Period of the Framework Contract.
<b>"Fixed Price Mobilisation Payment"</b>	has the meaning given to it in paragraph 2.2 of Schedule C2 ( <i>Charges</i> )
<b>"FOIA"</b>	the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation



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<b>"Force Majeure Event"</b>	<p>any event, occurrence, circumstance, matter or cause affecting the performance by either the Relevant Authority or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none"><li>(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract</li><li>(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare</li><li>(c) acts of a Crown Body, local government or regulatory bodies</li><li>(d) fire, flood or any disaster or</li><li>(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:<ul style="list-style-type: none"><li>(i) any industrial dispute relating to the Supplier, the Supplier Personnel (including any subsets of them) or any other failure in the Supplier or the Sub-Contractor's supply chain; and</li><li>(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</li></ul></li></ul>
<b>"Force Majeure Notice"</b>	<p>a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event</p>
<b>"Framework"</b>	<p>the framework and procurement system for establishing and operating HMP Academies Programme which comprises the framework contracts to be awarded by the Authority to successful Suppliers following this procurement which consists of the terms set out in the Data Sheet</p>
<b>"Framework Contract"</b>	<p>the agreement established between the Authority and the Supplier by the Data Sheet for the Framework pursuant to the OJEU Notice</p>
<b>"Framework Expiry Date"</b>	<p>the date of the end of the Framework Contract as stated in the Data Sheet.</p>
<b>"Framework Response"</b>	<p>the Supplier's response to the invitation to tender to join the Framework</p>

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<b>"GDPR"</b>	General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
<b>"Good Industry Practice"</b>	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
<b>"Goods"</b>	goods made available by the Supplier as part of the provision of the Services
<b>"Government"</b>	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>"Government Data"</b>	<p>(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 Relevant Authority's Confidential Information, and which:</p> <p>(i) are supplied to the Supplier by or on behalf of the Relevant Authority or</p> <p>(ii) the Supplier is required to generate, process, store or transmit pursuant to a Contract</p> <p>any Personal Data for which the Relevant Authority is the Data Controller or</p> <p>(a) any Personal Data for which the Supplier is Data Controller which has been generated, processed, stored or transmitted pursuant to a Contract</p>
<b>"HMP Academies Programme"</b>	the programme of academies to be established and operated in prisons that will offer practical employment related training to prisoners, as more particularly described in Volume 2 of the invitation to tender
<b>"HMP Academies Contract"</b>	the agreement established between the Authority and the Supplier by the Data Sheet for the provision of the Services to

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	Buyers by the Supplier pursuant to the OJEU Notice (this includes the Framework Contract and any Call Off Contract)
<b>"HMRC"</b>	Her Majesty's Revenue and Customs
<b>"ICT"</b>	information and communication technology
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000
<b>"Information Commissioner"</b>	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
<b>"Insolvency Event"</b>	<p>in respect of a person any of the following:</p> <ul style="list-style-type: none"><li>(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors</li><li>(b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation)</li><li>(c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986</li><li>(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets</li><li>(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given</li><li>(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986</li><li>(g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes</li></ul>

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	into force pursuant to Schedule A1 of the Insolvency Act 1986
	(h) where the person is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership
	(i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction
<b>"Intellectual Property Rights" or "IPR"</b>	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction</p>
<b>"Invoicing Address"</b>	the address to which the Supplier shall invoice the Buyer as specified in the Order Form
<b>"IPR Claim"</b>	any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Relevant Authority in the fulfilment of its obligations under a Contract
<b>"Key Performance Indicators" or "KPIs"</b>	the performance measurements and targets in respect of the Supplier's performance of a Call Off Contract set out in the associated Order Form (if any)
<b>"Key Sub-Contract"</b>	each Sub-Contract with a Key Sub-Contractor
<b>"Key Sub-Contractor"</b>	<p>any Sub-Contractor:</p> <p>(a) listed in the Order Form if applicable and/or</p>

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	<p>(b) which, in the opinion of the Authority or the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Services and/or</p> <p>(c) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under the Call Off Contract, or 10% of the aggregate value of the Call Off Contract</p>
<b>"Law"</b>	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply
<b>"Learner"</b>	a person subject to detention by HMPPS engaged in learning and skills activities with the Supplier
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680)
<b>"Lockdown"</b>	a disruption which requires the prisoners to remain in their cells
<b>"Losses"</b>	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and <b>"Loss"</b> shall be interpreted accordingly
<b>"Malicious Software"</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence
<b>"Management Information"</b>	has the meaning given to it in Paragraph 2.1 of Schedule J3 (Contract Management)
<b>"Month"</b>	a calendar month and <b>"Monthly"</b> shall be interpreted accordingly
<b>"New IPR"</b>	(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of a Contract and updates and amendments of these items including database schema and/or

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- (b) IPR in or arising as a result of the performance of the Supplier's obligations under a Contract and all updates and amendments to the same

but shall not include the Supplier's Existing IPR

### "Occasion of Tax Non-Compliance"

where:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or

any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;

### "OJEU Notice"

means the OJEU notice referred to in section 3 of the Data Sheet

### "Order Form"

a completed Order Form Template (or equivalent information issued by the Buyer) used to create a Call Off Contract

### "Order Form Template"

the template in Schedule F2 (Order Form Template and Call Off Schedules)

### "Other Suppliers"

other persons appointed by the Buyer from time to time to provide goods and/or services to it

### "Party"

in the context of the Framework Contract, the Authority or the Supplier, and in the in the context of a Call Off Contract the Buyer or the Supplier and "**Parties**" shall mean both of them where the context permits

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<b>"Personal Data"</b>	personal data (as defined in the Data Protection Laws) which is Processed by the Supplier or any Sub-Contractor on behalf of the Authority or a Central Government Body pursuant to or in connection with the Contract
<b>"Personal Data Breach"</b>	has the meaning given to it in the Data Protection Laws
<b>"Potential Supplier"</b>	a potential supplier of the Services who has entered into a Framework Contract
<b>"Prescribed Person"</b>	<p>a legal adviser, an MP or an appropriate body which a whistleblower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies',</p> <p>30 November 2022 available online at:</p> <p><a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies</a></p>
<b>"Processed"</b>	has the meaning given to it in the Data Protection Laws
<b>"Prohibited Acts"</b>	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by a Buyer or any other public body a financial or other advantage to:</p> <p class="list-item-l1">(i) induce that person to perform improperly a relevant function or activity or</p> <p class="list-item-l1">(ii) reward that person for improper performance of a relevant function or activity</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with each Contract or</p> <p>(c) committing any offence:</p> <p class="list-item-l1">(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act) or</p> <p class="list-item-l1">(ii) under legislation or common law concerning fraudulent acts or</p> <p class="list-item-l1">(iii) defrauding, attempting to defraud or conspiring to defraud a Buyer or other public body or</p>

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	(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK
<b>"Protective Measures"</b>	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none"><li>(a) the nature of the data to be protected</li><li>(b) harm that might result from a Data Loss Event</li><li>(c) state of technological development</li><li>(d) the cost of implementing any measures</li></ul> <p>including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it</p>
<b>"Recipient Party"</b>	the Party which receives or obtains directly or indirectly Confidential Information
<b>"Rectification Plan"</b>	<p>the Supplier's plan to rectify its breach which shall include:</p> <ul style="list-style-type: none"><li>(a) full details of the Default that has occurred, including a root cause analysis</li><li>(b) the actual or anticipated effect of the Default and</li><li>(c) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable)</li></ul>
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time
<b>"Relevant Authority"</b>	either the Authority or the Buyer (whichever is party to the Contract to which a right or obligation is owed) as the context requires
<b>"Relevant Authority's Confidential Information"</b>	(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Relevant Authority (including all Relevant Authority Existing IPR and New IPR)



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	<p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Relevant Authority's attention or into the Relevant Authority's possession in connection with a Contract and</p> <p>(c) information derived from any of the above</p>
<b>"Relevant Tax Authority"</b>	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
<b>"Relevant Requirements"</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010
<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the Call Off Contract End Date, whether those goods are provided by the Buyer internally and/or by any third party
<b>"Replacement Sub-Contractor"</b>	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor)
<b>"Replacement Supplier"</b>	any third party provider of Replacement Services appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Services for its own account, shall also include the Buyer
<b>"Request for Information"</b>	a request for information or an apparent request relating to a Contract for the provision of the Services or an apparent request for such information under the FOIA or the EIRs
<b>"Schedules"</b>	any attachment to a Framework Contract or Call Off Contract which contains important information specific to each aspect of buying and selling
<b>"Security Policy"</b>	the Buyer's security policy, referred to in the Order Form in force as at the Call Off Start Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier
<b>"Service Transfer"</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor

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<b>"Service Transfer Date"</b>	the date of a Service Transfer
<b>"Services"</b>	services and goods made available by the Supplier as specified in the HMP Academies Contract including Schedule F1 (Specification) and in relation to a Call Off Contract as specified in the Order Form
<b>"Sourcing Portal"</b>	the portal operated by the Authority from time to time in connection with the establishment and operation of the Framework
<b>"Specification"</b>	the specification set out in Schedule F1 (Specification), as may, in relation to a Call Off Contract, be supplemented by the Order Form
<b>"Standards"</b>	<p>any:</p> <ul style="list-style-type: none"><li>(a) standards published by British Standards Institution (BSI), the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with</li><li>(b) standards detailed in Schedule F1 (Specification)</li><li>(c) standards detailed by the Buyer in the Order Form or agreed between the Parties from time to time</li><li>(d) relevant Government codes of practice and guidance applicable from time to time</li></ul>
<b>"Standstill"</b>	when a prison requires the prisoners to remain where they are and a roll call is undertaken
<b>"Start Date"</b>	in the case of the Framework Contract, the date specified on the Data Sheet, and in the case of a Call Off Contract, the date specified in the Order Form
<b>"Sub-Contract"</b>	<p>any contract or agreement (or proposed contract or agreement), other than a Call Off Contract or the Framework Contract, pursuant to which a third party:</p> <ul style="list-style-type: none"><li>(a) provides the Services (or any part of them)</li><li>(b) provides facilities or services necessary for the provision of the Services (or any part of them) and/or</li></ul>

## Schedule J1: Definitions

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	(c) is responsible for the management, direction or control of the provision of the Services (or any part of them)
<b>"Sub-Contractor"</b>	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to a Contract
<b>"Supplier"</b>	the person, firm or company identified in the Data Sheet
<b>"Supplier Non-Performance"</b>	where the Supplier has failed to:  (a) provide the Goods and/or Services in accordance with the KPI's and/or  (b) comply with an obligation under a Contract
<b>"Supplier Personnel"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of the Supplier's obligations under a Contract
<b>"Supplier Software"</b>	any software which is proprietary to the Supplier (or an Affiliate of the Supplier) together with all other such software which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Buyer to receive the benefit of and/or make use of the Services
<b>"Supplier System"</b>	the information and communications technology system used by the Supplier in supplying the Services, including the Supplier Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System)
<b>"Supplier's Confidential Information"</b>	(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier  (b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with a Contract and  (c) information derived from any of the above

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<b>"Termination Notice"</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate a Contract on a specified date and setting out the grounds for termination
<b>"Third Party Software"</b>	any software identified as such together with all other software which is proprietary to any third party (other than an Affiliate of the Supplier) which is or will be used by the Supplier for the purposes of providing the Services)
<b>"Transferring Supplier Employees"</b>	those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date
<b>"Transparency Information"</b>	the content of the Contracts and the Transparency Reports unless it is commercially sensitive information as determined by the Relevant Authority at its sole discretion
<b>"Transparency Reports"</b>	the information relating to the Services and performance of the Contracts which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Clause 22.5
<b>"Variation Procedure"</b>	the procedure set out in Clause 33 ( <i>Changing the Contract</i> )
<b>"VAT"</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>"Worker"</b>	any one of the Supplier Personnel which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Services and
<b>"Working Day"</b>	any day other than a Saturday or Sunday or public holiday in England and Wales

## **Schedule J2: Contract Management**

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**THE SECRETARY OF STATE FOR JUSTICE**

**AND**

**THE SUPPLIER**

**HMP ACADEMIES**

## **SCHEDULE J3**

### **CONTRACT MANAGEMENT**

#### **62. DELIVERY PLAN**

- 62.1 The Supplier shall, where indicated in an Order Form, provide a detailed and costed description of how the Services commissioned by the Buyer shall be provided by the Supplier (the "**Delivery Plan**"). The Delivery Plan shall be provided by such time as notified by the Buyer.
- 62.2 The Buyer shall consider the draft Delivery Plan and where the Buyer rejects it then the Supplier shall amend it to reflect any reasonable comments provided by the Buyer and resubmit it to the Buyer for approval and shall continue to update it until such time as it is approved by the Buyer. Upon approval, the Delivery Plan shall be adopted and the Supplier shall deliver the Services in accordance with it.
- 62.3 The Buyer and the Supplier may agree changes to a Delivery Plan as needed. Any agreed changes will be recorded in writing in an updated version of the Delivery Plan. Where the Buyer requires changes then the Supplier shall consider them in good faith and the Supplier will use all reasonable endeavours to include any substantive changes requested by the Buyer in the Delivery Plan.

#### **63. REPORTING**

- 63.1 The Buyer shall measure the Supplier's performance in the delivery of the Services against the KPIs and collect management information ("**Management Information**") in accordance with the requirements set out in the Schedule F1 (Specification) and the Order Form.
- 63.2 The Supplier shall maintain a record of all data required to calculate the KPIs and Management Information for each month.
- 63.3 When invoicing the Buyer, the Supplier shall provide information that supports the amounts invoiced to the reasonable satisfaction of the Buyer.

#### **64. USE OF INFORMATION**

- 64.1 The Supplier grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:

## **Schedule J2: Contract Management**

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64.1.1 use and to share with the Authority and Other Contracting Authorities;  
and/or

64.1.2 publish (subject to any information that is exempt from disclosure in  
accordance with the provisions of FOIA and/or the EIRs being  
redacted),

any Management Information supplied to the Buyer for the Buyer's normal  
operational activities including administering Call Off Contracts, monitoring  
public sector expenditure, identifying savings or potential savings and planning  
future procurement activity.

64.2 The Buyer may consult with the Supplier to inform its decision to publish  
information however the Buyer shall retain absolute discretion regarding the  
extent, content and format of any disclosure.

### **65. DEFECTIVE MANAGEMENT INFORMATION**

65.1 If the Supplier fails to provide any required Management Information  
(including any delayed, non complete, inaccurate information) then:

65.1.1 the Buyer may issue reminders to the Supplier requiring the Supplier to  
rectify it and the Supplier shall rectify the failure as soon as possible  
and not more than five (5) Working Days following receipt of any such  
reminder; and

65.1.2 where requested by the Buyer, the Supplier shall attend additional  
meetings in person with the Buyer to discuss the circumstances of the  
failure and where such a meeting is requested then the Supplier shall  
propose and document in advance measures to ensure that the failures  
will be rectified will not occur again in the future.

### **66. UNDER PERFORMANCE**

66.1 The Supplier shall proactively identify and notify the Buyer of any actual or  
anticipated occurrences of under performance when compared to the  
standard as required by the Call Off Contract.

66.2 Where the Supplier has notified or the Buyer has identified any actual or  
anticipated under performance (including any which arise from any Ofsted  
inspection) then Supplier shall submit a report to the Buyer which shall include

## **Schedule J2: Contract Management**

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the Supplier's assessment of the reasons for such occurrences and the steps it will take to under performance and prevent it from reoccurring.

- 66.3 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Supplier's failure to meet its obligations or those which result from the Supplier's failure to meet the Buyer's expectations notified to the Supplier or of which the Supplier ought reasonably to have been aware) shall be implemented at no extra cost to the Buyer.