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Date:

A Contract for the Provision of Learning and Skills Services at HMP Berwyn

Between

The Secretary of State for Justice

And

Novus Cambria

Version	Date
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1.1 Engrossment Version	June 2023





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Contract for the Provision of Learning and Skills at HMP Berwyn

This contract is dated:

PARTIES:

- (1) THE SECRETARY OF STATE FOR JUSTICE of 102 Petty France, London, SW1H 9AJ acting as part of the Crown (the “**Authority**”);

AND

- (2) Novus Cambria with registered company number 10401823 whose registered office is C/O Coleg Cambria, Grove Park Road, Wrexham, United Kingdom, LL12 7AB (the “**Contractor**”)

(each a “**Party**” and together the “**Parties**”).

WHEREAS

- (A) On 27 October 2022 the Authority issued an invitation to participate in the procurement for HMP Berwyn of learning and skills services.
- (B) On 8 February 2023 the Contractor submitted a response to the Authority's invitation to tender and was subsequently selected by the Authority to provide the Services (as defined herein).
- (C) The Authority wishes to appoint the Contractor to provide the Services (as defined herein) and the Contractor agrees to provide those services in accordance with these terms and conditions.

NOW IT IS HEREBY AGREED:

A GENERAL

A1 DEFINITIONS AND INTERPRETATION

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

“**Affected Party**” means the Party seeking to claim relief in respect of a Force Majeure Event.

“**Affiliate**” means 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 with, that body corporate from time to time.

“**Allocated Prisoner**” means is a Prisoner who: (a) is learning something through study, instruction, or experience and in the Prison setting and is an end user of the Services; and (b) has had their learning needs assessed and has been identified and enrolled on a course of learning by the Authority in accordance with clause A2.

“**Annual Service Delivery Plan (ASDP)**” means the plan demonstrating how the Contractor will provide Services in the next Contract Year and prepared in accordance with the requirements in Schedule 12 (Governance).

“**Approval**” and “**Approved**” means the prior written consent of the Authority.

“**Approved Sub-Contractor**” means any Sub-Contractor identified as such in Part A of Schedule 15 (Sub-Contracting and Market Stewardship).



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“Associated Person” means as it is defined in section 44(4) of the Criminal Finances Act 2017.

“Authorised Representative” means the Authority representative named in a CCN as authorised to approve Changes.

“Authority Data” means:

- (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, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Authority is the Controller.

“Authority Premises” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services.

“Authority Software” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Services.

“Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services.

“Baseline Security Requirements” means the security requirements in Annex 1 of Schedule 6 (Information Assurance and Security).

“Basware” means Basware eMarketplace, the procurement software used by the Authority for its financial transactions.

“BPSS” means the Government’s Baseline Personnel Security Standard for Government employees.

“Breach of Security” means an occurrence of:

- (a) any unauthorised access to or use of the ICT Environment and/or any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract;
- (b) the loss (physical or otherwise) and/or unauthorised disclosure of any Information Assets and/or Authority Data (including Confidential Information) in connection with the Contract, including copies; and/or
- (c) any part of the Contractor System ceasing to be compliant with the Certification Requirements

“BS 7858” means the standard published by the British Standards Institution to help organisations meet best practices and guidelines for the security screening of individuals employed within a security environment.

“BS 8555” means the standard published to help organisations improve their environmental performance by the British Standards Institution.



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“Careers Wales” means the subsidiary of the Welsh Government which provides an independent and impartial careers information, advice and guidance service for Wales, and any successor organisation from time to time.

“CCN” means a contract change notice in the form set out in Schedule 3 (Change Control).

“Certification Requirements” means the requirements set out in paragraph 5.1 of Schedule 6 (Information Assurance & Security).

“CESG” means of the Government’s Communications Electronics Security Group.

“Change” means a change in any of the terms or conditions of the Contract.

“Change in Law” means any change in Law which affects the performance of the Services which comes into force after the Commencement Date.

“Commencement Date” means the date of this Contract.

“Commercially Sensitive Information” means the information listed in Schedule 4 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to:

- (a) the Price; and/or
- (a) the Contractor’s business and investment plans

which the Contractor has informed the Authority would cause the Contractor significant commercial disadvantage or material financial loss if it was disclosed.

“Comparable Supply” means the supply of services to another customer of the Contractor which are the same or similar to any of the Services.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all Personal Data. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause D3;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Conflict of Interest” means a conflict between the financial or personal duties of the Contractor or the Staff and the duties owed to the Authority under the Contract, in the reasonable opinion of the Authority.



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“Contract” means these terms and conditions, the attached Schedules and any other provisions the Parties expressly agree are included.

“Contract Review Group” has the meaning given to it in Schedule 12 (Governance).

“Contract Year” means:

- (a) a period of 12 months commencing on the Service Commencement Date; or
- (b) thereafter a period of 12 months commencing on each anniversary of the Service Commencement Date;

provided that the final Contract Year shall end on the expiry or termination of the Term.

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 3 of the Regulations.

“Contractor Background IPR” means:

- (a) IPRs owned by the Contractor before the Commencement Date, including IPRs contained in any of the Contractor’s know-how, documentation, processes and procedures; and/or
- (b) IPRs created by the Contractor independently of this Contract; and/or

which in each case is or will be used before or during the Term (or any Termination Assistance Period) for the delivery of the Mobilisation Plan or the Services.

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 5 (Contractor and Third Party Software).

“Contractor System” means the information and communications technology system used by the Contractor in performing the Services including the Contractor Software, the Equipment and related cabling (but excluding the Authority System).

“Contracts Finder” means the Government’s portal for public sector procurement opportunities.

“Control” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** are interpreted accordingly.

“Controller” means as it is defined in the DPA.

“Copyright” means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Credit Score Threshold” means a Dun and Bradstreet credit score of A1 or less.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not



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limited to, Government ministers, Government departments, Government offices and Government agencies and **“Crown Body”** is an emanation of the foregoing.

“Data Loss Event” means any event which results, or may result, in unauthorised access to Personal Data held by the Contractor under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data Breach.

“Data Protection Impact Assessment” means an assessment by the Controller of the effect of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” means:

- (a) the UK GDPR, the LED and applicable implementing Laws;
- (b) the DPA to the extent that it relates to the processing of Personal Data and privacy;
- (c) all applicable Laws relating to the processing of Personal Data and privacy.

“Data Protection Officer” means as it is defined in the DPA.

“Data Subject” means as it is defined in the DPA.

“Data Subject Request” means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Database Rights” means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

“Default” means any breach of the obligations or warranties of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“DPA” means the Data Protection Act 2018 as amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586).

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.

“End Date” means the date specified in clause A5.1.



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“Equipment” means:

- i) **“Inherited Equipment”**, being equipment identified as Inherited Equipment in the Register as provided by the Authority to the Contractor for the provision of the Services;
- ii) **“Authority Funded Equipment”**, being equipment purchased by the Contractor for the provision of the Services but funded by the Authority through the Charges and identified as such in the Register; and
- iii) **“Contractor Equipment”**, being the equipment owned and funded by the Contractor for the provision of the Services and identified as such in the Register.

“Exemption” means any exemption from KPI performance which the Authority specifies from time to time in the KPI Technical Notes;

“Exit Information” has the meaning given to it in Schedule 19 (Exit Management).

“Extension” means as it is defined in clause A5.2.

“Financial Distress Event” means

- (a) the credit rating of the Contractor dropping below the applicable Credit Rating Threshold;
- (b) the Contractor issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Contractor;
- (d) the Contractor committing a material breach of covenant to its lenders;
- (e) an Approved Sub-contractor notifying the Authority that the Contractor has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any of the following:
 - (i) commencement of any litigation against the Contractor with respect to financial indebtedness greater than [REDACTED] or obligations under a service contract with a total contract value greater than [REDACTED];
 - (ii) non-payment by the Contractor of any financial indebtedness;
 - (iii) any financial indebtedness of the Contractor becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect of the Contractor; or



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- (v) the external auditor of the Contractor entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of the Contractor;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with the Contract.

“Financial Response” (or FRT) means the Contractor’s financial response set out in Appendix 1 of Schedule 2 (Payment Mechanism);

“Financial Year” means the period from 1st April each year to the 31st March the following year.

“FOIA” means the Freedom of Information Act 2000 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.

“Force Majeure Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of Government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain, a pandemic or the United Kingdom’s exit from the EU.

“General Anti-Abuse Rule” means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

“General Change in Law” means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which affects or relates to a Comparable Supply.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and 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 in a similar type of undertaking under the same or similar circumstances.

“Government” means the government of the United Kingdom.

“Government Buying Standards” means the standards published here:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>



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"Greening Government Commitments" means the Government's policy to reduce its effects on the environment, the details of which are published here:

<https://www.gov.uk/government/collections/greening-government-commitments>

"Guarantor" means the Contractor's guarantor under the Parent Company Guarantee.

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others.

"Health and Safety Policy" means the health and safety policy of the Authority as provided to the Contractor on or before the Commencement Date and as subsequently provided to the Contractor from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

"HMRC" means HM Revenue & Customs.

"Holding Company" shall have the meaning given to it in section 1159 of the Companies Act 2006 and, for the purposes only of the membership requirement in subsections 1159(1)(b) and (c), a company (the "first company") shall be treated as a member of another company (the "second company") if the shares in the second company are registered in the name of (a) another person (or its nominee), where the shares are held by such other person (or its nominee) by way of security or in connection with the taking of security from the first company, or (b) a nominee for the first company.

"ICT Environment" means the Authority System and the Contractor System.

"Improvement Plan" has the meaning given to it in paragraph 5.4 of Schedule 13 (Key Performance Indicators).

"Indemnified Persons" means other Contracting Authorities, the Crown, the Replacement Contractor or to any other third-party supplying goods and/or services to the Authority.

"Information" has the meaning given under section 84 of the FOIA.

"Information Assets" means definable pieces of information stored in any manner which are determined by the Authority to be valuable and relevant to the Services.

"Initial Term" means the period from the Commencement Date to the End Date.

"Insured Losses" means Losses for which the Contractor is required to maintain insurance (and whose value falls within the minimum required financial level of that insurance and disregarding any excess or deductibles that may apply to such insurance) pursuant to clause G1.

"Intellectual Property Rights (or IPRs)" means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

"ISMS" means the Contractor's information and management system and processes to manage information security as set out in paragraph 2.3 of Schedule 6 (Information Assurance and Security).



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“**ISMP**” means the information security management plan prepared by the Contractor which includes the matters in paragraph 3.2 of Schedule 6 (Information Assurance and Security).

“**ISO 14001**” means the family of standards related to environmental management published by the International Organisation for Standardisation.

“**IT Health Check**” means penetration testing of systems under the Contractor's control on which Information Assets and/or Authority Data are held which are carried out by third parties in accordance with the CHECK scheme operated by CESG or to an equivalent standard.

“**ITEPA**” means the Income Tax (Earnings and Pensions) Act 2003.

“**Key Performance Indicators**” or “**KPI**” means the performance indicators set out in Annex A of Schedule 13 (Key Performance Indicators).

“**KPI Technical Notes**” means technical notes describing the measurement and calculation of KPI performance which the Authority shall provide to the Contractor and may update from time to time.

“**Key Personnel**” mean the people named in Schedule 14 (Key Personnel) as key personnel, if any.

“**Know-How**” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“**Law**” means law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.

“**Law Enforcement Purposes**” means as it is defined in the DPA.

“**Learning Area**” mean any area across the Prison where Allocated Prisoners undertake learning provided by the Contractor, peer mentors, library staff or self-guided learning, this includes learning and skills classrooms, 5 vocational workshops, 1 Virtual Campus classroom in industries and the outdoor areas.

“**LED**” means the Law Enforcement Directive (Directive (EU) 2016/680).

“**Local Authority**” has the meaning given to 'local authority' in the Local Government Act 1972.

“**Losses**” means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

“**Malicious Software**” means 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.



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“Management Information” means the management information set out in Schedule 11 (Contract Management and Monitoring).

“Mandatory Guidelines” means the guidelines as set out in section 1 of Schedule 1 (Specification).

“Market Stewardship Principles” means the principles set out in Part B of Schedule 15 (Sub-Contracting and Market Stewardship).

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense including (without limitation):

- (a) those having a serious effect on the benefit which the Authority would otherwise derive from a substantial or otherwise important part of the Contract or the Services; or
- (b) any of the obligations set out in clauses B4 (Equipment), D1 (Authority Data), D2 (Data Protection and Privacy), D3, G3 (Tax Compliance), I4 (Conflicts of Interest) or paragraph 9 of Schedule 8 (Statutory Obligations and Corporate Social Responsibility).

“Maximum Annual Funding” has the meaning given to it in Schedule 2 (Payment Mechanism).

“Minimum Allocated Prisoner Requirement” means the minimum number of Allocated Prisoners to be supported through the Services in any Contract Year which is further set out in part 6.2 of Schedule 1 (Specification);

“Mobilisation and Transition Phase” means:

- i. the Mobilisation Phase, being the 4-month period from the Commencement Date until the Services Commencement Date, during which the Contractor shall carry out any preparatory work required to commence the Services, as more particularly described in the Mobilisation and Transition Plan; and
- ii. the Transition Phase, being the period from Services Commencement Date until the successful delivery to the reasonable satisfaction of the Authority of the Mobilisation and Transition Plan, during which the Contractor shall provide enhanced support to existing Allocated Prisoners as further set out in the Mobilisation and Transition Plan.

“Mobilisation and Transition Plan” means the Contractor’s plan for mobilisation and transition as set out in Schedule 20 (Mobilisation).

“Modern Slavery Helpline” means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available by telephone on 08000 121 700 or online at:

<https://www.modernslaveryhelpline.org/report>

“Month” means calendar month.

“MSA” means the Modern Slavery Act 2015.

“NICs” means National Insurance Contributions.



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"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Contractor 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 Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation 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 Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 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 Commencement Date or to a civil penalty for fraud or evasion.

"Offender" means any person who has been found guilty by a court and who has received a community sentence or a custodial sentence from a court.

"Operational Management Group" has the meaning given to it in Schedule 12 (Governance).

"Other Contractor" means any supplier to the Authority (other than the Contractor) which is notified to the Contractor from time to time including for the avoidance of doubt any Replacement Contractor.

"Parent Company Guarantee" means the guarantee to be entered into in accordance with the terms of this Contract and detailed in Schedule 18 (Parent Company Guarantee).

"Personal Data" means as it is defined in the UK GDPR.

"Personal Data Breach" means as it is defined in the UK GDPR.

"Premises" means the location where the Services are to be supplied as set out in the Specification.

"Prescribed Person" means a legal adviser, an MP, or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', available online at: <https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies>, as updated from time to time;

"Price" means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 2 (Payment Mechanism) for the full and proper performance by the Contractor of its obligations under the Contract.

"Prison" means Her Majesty's Prison Berwyn (HMP Berwyn).

"Prisoner" means:



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- (a) an Offender; or
- (b) a Remand Prisoner,

who is accommodated at the Prison (and includes for the avoidance of doubt any Allocated Prisoners).

"Probation Provider" means the National Probation Service and/or any contractor appointed by the Authority to provide probation services from time to time.

"Processor" means as it is defined in DPA.

"Prohibited Act" means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity;
- (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 the Contract;
- (c) an offence:
 - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - ii) under legislation or common law concerning fraudulent acts; or
 - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Contractor under Part 3 of the Criminal Finances Act 2017);
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

"Property" means the property, other than real property, made available to the Contractor by the Authority in connection with the Contract.

"Protective Measures" means appropriate technical and organisational measures which may include: 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 measures adopted.

"PSI 67/2011" is the Prison Service Instruction published on 1st November 2011 relating to the searching of the person as amended from time to time and available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2011>



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“PSI 10/2012” is the Prison Service Instruction published on 26 March 2012 relating to the Conveyance and Possession of Prohibited Items and other Related Offences as amended from time to time and available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2012>

“PSI 07/2014” is the Prison Service Instruction published on 2nd June 2014 relating to security vetting as amended from time to time and available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014>

“PSI 24/2014” is the Prison Service Instruction published on 1st May 2014 relating to information assurance as amended from time to time and available at:

<https://www.justice.gov.uk/offenders/psis/prison-service-instructions-2014>

“Purchase Order” the Authority’s order for the supply of the Services.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1 (Specification).

“Quarter” means any quarter period of a Financial Year (quarter 1 being April to June; quarter 2 being July to September; quarter 3 being October to December; and quarter 4 being January to March).

“Quarterly Performance Payment” has the meaning given to it in Schedule 2 (Payment Mechanism).

“Register” means the asset register prepared in accordance with and as defined in Schedule 19 (Exit Management);

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102).

“Regulatory Body” means a Government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

“Related Third Party(ies)” means any third parties that the Authority and/or the Contractor shall be required to liaise with from time to time in the provision of the Services including any Government or statutory agency, HMPPS (including its public and private Prisons and the Probation Provider), Police Authorities & Services, Her Majesty’s Courts and Tribunals Services (HMCTS), Magistrates’ Courts Committees, Civilian Enforcement Officers, Bailiffs and accredited offices of a Court, HM Revenue & Customs, UK Border Agency, HM Coroners, the Local Authority, Other Service Providers and other contractors providing the same or similar services to the Services in a different area or for other contracting authorities and the National Health Service (for mental health hospitals) or such other parties as set out in the Contract

“Relevant Conviction” means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority.



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"Relevant Requirements" means 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. **"Relevant Tax Authority"** means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

"Remand Prisoner" means any person who has been:

- (a) remanded in custody by a court pending a further court appearance; or
- (b) found guilty by a court, but has been remanded in custody pending sentencing.

"Replacement Contractor" means any third-party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

"Replacement Services" means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Authority internally and/or by any third party.

"Request for Information" means a request for information under the FOIA or the EIR.

"Restricted Country" means a country, territory or jurisdiction outside the United Kingdom.

"Results" means any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

- (a) prepared by or for the Contractor for the purpose of its performance of its obligations under the Contract; or
- (b) the result of any work done by the Contractor or any Staff in relation to the provision of the Services.

"Security Policy Framework" means the Government's Security Policy Framework (available from the Cabinet Office's Government Security Secretariat) as updated from time to time.

"Security Test" means a test carried out by the Contractor, the Authority or a third party to validate the ISMS and the security of all relevant processes and systems on which Information Assets and/or Authority Data are held.

"Services" means the services set out in Schedule 1 (Specification) (including any modified or alternative services) and in each Contract Year as further described in the relevant Annual Delivery Plan.

"Services Commencement Date" means the date on which the Contractor commences provision of the Services in accordance with the terms of this Contract, which shall be 5 October 2023.

"Service Integration Group" means the meeting where the Contractor and other relevant parties meet to improve the integration, efficiency and effectiveness of the Services to meet the requirements of an integrated learning environment that increases Prisoner's employment potential on release.



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“**SME**” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission’s Recommendation of 6 May 2003 available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF>

“**Specific Change in Law**” means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.

“**Specification**” means the description of the Services to be supplied under the Contract as set out in Schedule 1 (Specification) including, where appropriate, the Premises and the Quality Standards.

“**SSCBA**” means the Social Security Contributions and Benefits Act 1992.

“**Staff**” means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any of its Sub-Contractors engaged in the performance of the Contractor’s obligations under the Contract.

“**Sub-Contract**” means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and “**Sub-Contractor**” shall be construed accordingly.

“**Sub-processor**” means any third party appointed to process Personal Data on behalf of the Contractor related to the Contract.

“**Tender**” means the Contractor’s tender submitted in response to the Authority’s invitation to suppliers for offers to supply the Services and set out in Schedule 21 (Contractor’s Tender).

“**Term**” means the period from the Commencement Date to:

- (a) the End Date; or
- (b) following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

“**TFEU**” means the Treaty on the Functioning of the European Union.

“**Third Party Funding**” means any funding secured by the Contractor and to be used for the benefit of Allocated Prisoners in connection with the Services;

“**Third Party IP Claim**” has the meaning given to it in clause E1.6.

“**Third Party IPRs**” means Intellectual Property Rights owned by a third party and including any Third-Party Software.

“**Third-Party Software**” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 5 (Contractor and Third-Party Software).

“**Transfer**” means a planned move within the wider Youth Justice Secure Estate.



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“Transferring Contractor Employees” has the meaning given to it in Part 1 of Schedule 16 (TUPE, Employees and Pensions).

“Treaties” means the TFEU and the Treaty on European Union.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“Uninsured Losses” means Losses which are not Insured Losses (and for the avoidance of doubt, any deductibles and excesses of loss shall not be treated as an uninsured loss (which are dealt with in accordance with clause G1)).

“Updated FRT” means the Financial Response as updated by agreement in writing between the parties in accordance with the Updated FRT Principles and the process for renewing and updating the Annual Service Delivery Plan as set out in Schedule 12 (Governance);

“Updated FRT Principles” means the principles set out in Appendix 2 to Schedule 2 (Payment Mechanism);

“UK GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679) as incorporated into UK law under the UK European Union (Withdrawal) Act 2018), and amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586).

“Valid Invoice” means an invoice containing the information set out in clause C1.3 or C1.4.

“VAT” means value added tax charged or regulated in accordance with the Value-Added Tax Act 1994.

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

“Virtual Campus” has the meaning given to it in Schedule 1 (Specification).

“Vulnerability Correction Plan” means a remedial plan prepared by the Contractor to address vulnerabilities identified in an IT Health Check report.

“Welsh Language Scheme” means the Authority’s Welsh language scheme as amended from time to time and available at:

<http://www.justice.gov.uk/publications/corporate-reports/moj/2010/welsh-language-scheme>

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa unless the context requires otherwise;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;



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- (d) references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” 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”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) the Schedules form an integral part of the Contract and have effect as if set out in full in the body of the Contract. A reference to the Contract includes the Schedules;
- (h) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (i) references to the Contract are references to the Contract as amended from time to time.
- (j) any reference in the Contract to (as it has effect from time to time):
 - i) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (“EEA”) agreement (“**EU References**”) which forms part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - ii) any EU institution or EU authority or other such EU body shall be read as a reference to the UK institution, authority or body to which its functions were transferred.

A2 AUTHORITY OBLIGATIONS

A2.1 Save as otherwise expressly provided, the Authority’s obligations under the Contract are the Authority’s obligations in its capacity as a contracting counterparty and nothing in the Contract operates as an obligation upon, or in any other way fetters or constrains, the Authority in any other capacity.

A2.2 The Authority shall at its discretion following an assessment as further described in the Specification (or as otherwise determined by the Authority from time to time) identify and notify to the Contractor which Prisoners shall be enrolled as Allocated Prisoners from time to time. The Authority shall ensure that the total number of Allocated Prisoners does not exceed the number of Allocated Prisoners to be supported in any Contract Year (as set out in the relevant Annual Delivery Plan).

A3 CONTRACTOR’S STATUS

A3.1 The Contractor is an independent contractor and nothing in the Contract creates a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the Contract.



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- A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead another person to believe that the Contractor is acting as the agent or employee of the Authority.
- A3.3 The Contractor must comply at all times with the Mandatory Guidelines whilst carrying out its obligations under the Contract.
- A3.4 The Contractor shall:
- (a) co-operate with any Other Contractor notified to the Contractor by the Authority from time to time by providing: (i) reasonable information (including any documentation); (ii) advice; and (iii) reasonable assistance,
 - (b) in connection with the Services collaborate and work in good faith with any Other Contractor to enable such Other Contractor to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Contractor in accordance with the following collaborative working principles:
 - (i) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
 - (ii) being open, transparent and responsive in sharing relevant and accurate information with such Other Contractors;
 - (iii) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with such Other Contractors;
 - (iv) providing reasonable cooperation, support, information and assistance to such Other Contractors in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
 - (v) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

A4 MISTAKES IN INFORMATION

The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A5 TERM

- A5.1 The Contract starts on the Commencement Date and ends on 4 October 2027 (the "**End Date**") unless it is terminated early or extended in accordance with the Contract.



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- A5.2 The Parties may by mutual agreement extend the term of the Contract. The first Extension shall continue for a period of 2 years and, if required, the second Extension shall continue for a period of 12 Months subject to a maximum overall Extension of 3 years (each an “**Extension**”). The terms of the Contract will apply throughout the period of any Extension.
- A5.3 The Authority shall notify the Contractor after the 2nd anniversary of the Services Commencement Date if it wishes to agree with the Contractor the first Extension to the Contract. The Parties shall discuss the Extension in good faith and shall agree the Extension by no later than the Contract Review Group meeting in the second quarter of the third Contract Year.
- A5.4 The Authority shall notify the Contractor after the 5th anniversary of the Services Commencement Date if it wishes to agree with the Contractor the second Extension to the Contract. As with the first Extension, the Parties shall discuss the Extension in good faith and shall agree the Extension by no later than the Contract Review Group meeting in the third quarter of the fifth Contract Year.

A6 PRECEDENCE OF DOCUMENTATION

- A6.1 If there is any inconsistency or conflict between the provisions of the main body of this Contract and the Schedules and/or any Appendices or Annexes to the Schedules, the inconsistency or conflict shall be resolved in accordance with the following descending order of precedence:
- (a) the main body of this Contract (which shall be deemed to include the recitals and clauses A1 to I12 (inclusive));
 - (b) the Specification as set out in Schedule 1 (Specification);
 - (c) any other Schedules and their Appendices or Annexes (other than Schedule 21 (Contractor's Tender)); and
 - (d) the Annual Service Delivery Plan as set out in Schedule 12 (Governance)
 - (e) the Tender as set out in Schedule 21 (Contractor's Tender).
- A6.2 In the event of any inconsistency or conflict between the Specification and the Tender or any documents produced in accordance with the provisions of this Contract, the Specification shall take precedence.

B THE SERVICES

B1 BASIS OF THE CONTRACT

- B1.1 In consideration of the Contractor's performance of its obligations under the Contract the Authority shall pay the Contractor the Price in accordance with clause C1.
- B1.2 Subject to the terms of this Contract, the Contractor shall provide the Services on and from the Services Commencement Date and at all times during the remainder of the Term. Mobilisation shall commence from the Commencement Date in accordance with the provisions of clause B2.



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- B1.3 The terms and conditions in the Contract apply to the exclusion of any other terms and conditions the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

B2 MOBILISATION

- B2.1 During the Mobilisation and Transition Phase, the Contractor shall comply with all mobilisation and transition obligations as set out in Schedule 20 (Mobilisation).
- B2.2 The Contractor shall receive payment during the Mobilisation and Transition Phase in accordance with the relevant provisions in Schedule 2 (Payment Mechanism).

B3 DELIVERY OF THE SERVICES

- B3.1 From the Services Commencement Date, the Contractor shall provide the Services in accordance with the Specification, the Tender and the relevant Annual Service Delivery Plan. The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Services and the performance of the Contractor's obligations under the Contract.
- B3.3 The Contractor shall:
- (a) ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services;
 - (b) ensure that all Staff are properly managed and supervised;
 - (c) comply with the requirements in relation to Staff as set out in the Specification and PSI 07/2014; and
 - (d) comply with the standards and requirements set out in Schedule 8 (Statutory Obligations and Corporate Social Responsibility).
 - (e) If the Specification includes installation of equipment the Contractor provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Services and shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:
 - (f) accept the installation; or
 - (g) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.



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- B3.4 If the Authority rejects the installation pursuant to clause B3.3(g), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 5 Working Days or such other period agreed by the Parties, comply with the Specification, the Authority may terminate the Contract with immediate effect.
- B3.5 The installation is complete when the Contractor receives a notice issued by the Authority in accordance with clause B3.3(f). Notwithstanding acceptance of any installation in accordance with clause B3.3(f), the Contractor is solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.
- B3.6 During the Term, the Contractor shall:
- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the Services, including but not limited to the relevant software and other IP licences;
 - (b) not, in delivering the Services, in any manner endanger the safety or convenience of the public.
- B3.7 The Authority may inspect the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice. The Contractor shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection. In this clause B3, Services include planning or preliminary work in connection with the supply of the Services.
- B3.8 If reasonably requested to do so by the Authority, the Contractor shall co-ordinate its activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.
- B3.9 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- B3.10 In delivering the Services, the Contractor is required to visit the Prison and shall comply with Schedule 7 (Prisons).

B4 EQUIPMENT

- B4.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services. For the avoidance of doubt, where the Authority reimburses the cost of any Equipment (either through the Price or otherwise), such Equipment shall be deemed to be Authority Funded Equipment.
- B4.2 The Services shall include the provision of any consumables, spares or replacement parts as necessary for the provision of the Services, and the Contractor shall not be entitled to make any additional charge for the supply of such items, except where expressly agreed between the parties.
- B4.3 The Contractor shall not deliver any Equipment to, or begin any work on, the Premises without Approval.



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- B4.4 The Contractor shall provide for the haulage or carriage of all Equipment and consumables to the Premises at its sole cost.
- B4.5 All Equipment used in the delivery of the Services remains the property of the Contractor during the Term and is at the Contractor's own risk and the Authority has no liability for any loss of or damage to any Equipment unless the Contractor demonstrates that such loss or damage was caused or contributed to by the Authority's Default..
- B4.6 The Contractor shall comply with its requirements in Schedule 19 (Exit Management), and shall provide an updated copy of the Register to the Authority not less than annually and upon request.
- B4.7 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition, in particular, the Contractor shall refresh and replace IT equipment at regular intervals for the duration of the Term so that it remains in good working order (and meeting any requirements for such Equipment in the Specification) for the delivery of the Services and in accordance with the relevant Annual Service Delivery Plan, at no additional cost to the Authority
- B4.8 To the extent that the Contractor can evidence that loss or damage to Equipment is caused by the Authority's Default, the Authority may (at its discretion):
- (a) procure replacement Equipment as soon as reasonably possible, and may transfer the title in such Equipment to the Contractor for £1 (and such Equipment shall be Inherited Equipment); or
 - (b) request that the Contractor procures replacement Equipment as soon as reasonably possible and the Authority will as soon as reasonably possible reimburse the Contractor for such costs following receipt of the appropriate undisputed invoice with any additional information as the Authority may reasonably require (and such Equipment shall be Funded Authority Equipment).
- B4.9 The Contractor shall, at the Authority's written request, at its own cost and as soon as reasonably practicable:
- (a) remove immediately from the Premises any Equipment which is, in the Authority's opinion, hazardous, noxious, a danger to persons or not supplied in accordance with the Contract and Good Industry Practice; and
 - (b) replace such item with a suitable substitute item of Equipment, as approved by the Authority acting reasonably.
- B4.10 Inherited Equipment
- (a) On the Services Commencement Date, (and subject to clause B4.8(c) below) the Authority shall assign or procure the assignment of and the Contractor shall accept the assignment of any Inherited Equipment for the sum of £1, hereby acknowledged. Risk in title to the Equipment shall therefore vest or pass to the Contractor on the Services Commencement Date.



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- (b) The Contractor acknowledges that it has had a reasonable opportunity to inspect the Inherited Equipment to satisfy itself as to the condition of the same and the suitability and sufficiency of the Inherited Equipment, to perform the Services. As such, the Authority makes the Inherited Equipment available “as is” and the Authority hereby excludes its liability in relation to such Inherited Equipment, in respect of all representations (unless fraudulent), warranties and conditions and other contractual terms howsoever arising (whether by statute, common law or otherwise) to the maximum extent permitted by Law.
- (c) The Contractor accepts that some of the Inherited Equipment may be leased to the Authority by an agreement with a third party (**Inherited Third-Party Agreement**). The Authority shall use reasonable endeavours to assign, novate or transfer each of the Inherited Third-Party Agreements with effect from the Services Commencement Date. If any consent of any third party is required to the assignment, novation or transfer of any Inherited Third-Party Agreement and has not been obtained at or prior to the Services Commencement Date, the Authority and the Contractor shall each use all reasonable endeavours to obtain that consent as soon as possible after the Services Commencement Date. Unless or until any Inherited Third-Party Agreement is assigned, novated or transferred or any necessary consent is obtained, the Parties shall work together in good faith, to agree an alternative solution which may include the Contractor finding an alternative source of supply and/or the Authority holding the benefit of the relevant Inherited Third-Party Agreement as agent for the Contractor.
- (d) The Contractor undertakes to observe and fulfil all of the Authority’s obligations under any Inherited Third-Party Agreement and undertakes to perform any Inherited Third-Party Agreement with effect from the Commencement Date and shall indemnify the Authority against any loss or damage which it may suffer as a result of the Contractor’s breach of any of the terms of the Inherited Third Party Agreement.

B4.11 The terms of Schedule 19 (Exit Management) shall apply to the Equipment at the end of the Term.

B5 KEY PERSONNEL

- B5.1 The Contractor acknowledges that Key Personnel are essential to the proper provision of the Services.
- B5.2 Key Personnel shall not be released from supplying the Services without Approval except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.
- B5.3 The Authority may interview and assess any proposed replacement for Key Personnel and any replacements to Key Personnel are subject to Approval. Such replacements shall be of at least equal status, experience and skills to Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- B5.4 The Authority shall not unreasonably withhold approval under clauses B5.2 or B5.3 and such approval is conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.



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B6 STAFF

B6.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.

B6.2 The Authority shall maintain the security of the Authority Premises in accordance with its standard security requirements, including Prison Rules 1999 Part III, the Prison (Amendment) Rules 2005, available to the Contractor on request. The Contractor shall comply with all security requirements of the Authority while on the Authority Premises and ensure that all Staff comply with such requirements.

B6.3 The Authority may search any persons or vehicles engaged or used by the Contractor at the Authority Premises.

B6.4 At the Authority's written request, the Contractor shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all people who may require admission to the Authority Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority, may reasonably request.

B6.5 The Contractor shall ensure that all Staff who have access to the Authority Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

B6.6 The Contractor shall co-operate with any investigation relating to security carried out by the Authority or on behalf of the Authority and, at the Authority's request:

- (a) use reasonable endeavours to make available any Staff requested by the Authority to attend an interview for the purpose of an investigation; and
- (b) provide documents, records or other material in whatever form which the Authority may reasonably request or which may be requested on the Authority's behalf, for the purposes of an investigation.

B6.7 The Contractor shall comply with PSI 10/2012 as amended from time to time and available from the Authority on request.

B6.8 Notwithstanding clauses B6.1– B6.7, the Contractor will comply with the vetting and staffing requirements set out in the Operational Requirements within the Specification.

B7 DUE DILIGENCE

Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises, Property and any Inherited Equipment before submitting its Tender and to have completed due diligence in relation to all matters connected with the performance of its obligations under the Contract.



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B8 LICENCE TO OCCUPY

- B8.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract are on a non-exclusive licence basis free of charge and are used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor has the use of such land or Premises as licensee and shall vacate the same on termination of the Contract. The Contractor shall keep the Premises subject to this licence to occupy clean and tidy and shall remove waste from the Premises in accordance with the Specification and the Authority's reasonable instructions.
- B8.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with other persons working concurrently on such land or Premises as the Authority may reasonably request.
- B8.3 The Authority shall maintain the Premises in accordance with paragraph 7.3 of the Schedule 1 (Specification). If the Contractor requires modifications to the Authority Premises such modifications are subject to Approval and shall be carried out by the Authority at the Contractor's cost.
- B8.4 The Contractor shall (and shall ensure that any Staff on the Authority 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 Authority Premises as determined by the Authority.
- B8.5 The Contract does not create a tenancy of any nature in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority may use the Premises owned or occupied by it in any manner it sees fit.

B9 PROPERTY

- B9.1 All Property is and remains the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property.
- B9.2 The Contractor does not have a lien or any other interest on the Property and the Contractor at all times possesses the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B9.3 The Property is deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- B9.4 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.



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B9.5 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time and in accordance with the Specification.

B9.6 The Contractor is liable for and shall indemnify and keep indemnified the Authority against all loss of or damage to the Property and Premises arising from acts, events or omissions of the Contractor or Contractor's Staff or from the Contractor's failure to deliver the Services in accordance with the terms of this Contract. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property and Premises.

B10 OFFERS OF EMPLOYMENT

B10.1 Neither Party shall, directly or indirectly, solicit or procure (otherwise than by general advertising or under TUPE, any employees or contractors (including the Staff) of the other Party 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 6 Months thereafter.

B10.2 If either Party breaches the clause B10.1, it shall pay the other Party a sum equivalent to 20% of the annual base salary payable by the Party in breach in respect of the first year of person's employment.

B10.3 The Parties hereby agree that the sum specified in clause B10.2 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 B10.1.

B11 EMPLOYMENT

B11.1 The Parties shall comply with the provisions of Schedule 16 (TUPE, Employees and Pensions).

C PAYMENT

C1 PAYMENT AND VAT

C1.1 The Contractor shall submit invoices to the Authority in accordance with this clause C1 and Schedule 2 (Payment Mechanism).

C1.2 The Authority issues Purchase Orders using Basware and, unless Approved otherwise, the Contractor shall, when invited, register on Basware.

C1.3 If the Contractor registers on Basware, a Valid Invoice is an invoice issued through Basware, unless the invoice contains:

- (a) additional lines not included in the relevant Purchase Order;
- (b) line descriptions which have been materially altered so that they no longer match the equivalent description in the relevant Purchase Order; or
- (c) Prices and/or volumes which have been increased without Approval.



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- C1.4 If, with Approval, the Contractor does not register on Basware, a Valid Invoice is an invoice which includes the information set out in paragraph 11 of Schedule 2 (Payment Mechanism) and, if requested by the Authority:
- (a) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
 - (b) the name of the individuals to whom the timesheet relates and hourly rates for each;
 - (c) identification of which individuals are Contractor's staff and which are Sub-Contractors' staff;
 - (d) the address of the Premises and the date on which work was undertaken;
 - (e) the time spent working on the Premises by the individuals concerned;
 - (f) details of the type of work undertaken by the individuals concerned; and
 - (g) if appropriate, details of journeys made and distances travelled.
- C1.5 The Authority shall not pay an invoice which is not a Valid Invoice.
- C1.6 The Authority shall not pay the Contractor's overhead costs or any other expenses unless Approved and overhead costs include, without limitation: facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- C1.7 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment is on account of and deductible from the next payment to be made.
- C1.8 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor are on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C1.
- C1.9 The Contractor shall:
- (a) add VAT to the Price at the prevailing rate as applicable and show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Authority is not, at any later date, liable to pay the Contractor any additional VAT;
 - (b) ensure that a provision is included in all Sub-Contracts which requires payment to be made of all sums due to Sub-Contractors within 30 days from the receipt of a valid invoice; and
 - (c) not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money.
- C1.10 The Contractor indemnifies the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made



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to the Contractor under the Contract. Any amounts due under this clause C1.10 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C1.11 The Authority shall:

- (a) in addition to the Price and following receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract; and
- (b) pay all sums due to the Contractor within 30 days of receipt of a Valid Invoice unless an alternative arrangement has been Approved.

C1.12 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank.

C2 RECOVERY OF SUMS DUE

C2.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement with the Authority or the Crown.

C2.2 Any overpayment by either Party, whether of the Price 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.

C2.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

C2.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C3 PRICE DURING EXTENSION

Subject to Schedule 2 (Payment Mechanism) and clause F4 (Change), the Price applies for the Initial Term and until the end of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

D PROTECTION OF INFORMATION

D1 AUTHORITY DATA

D1.1 The Contractor shall:

- (a) not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise Approved;



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- (b) preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data;
- (c) not delete or remove any proprietary notices contained within or relating to the Authority Data;
- (d) to the extent that Authority Data is held and/or processed by the Contractor, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification or otherwise requested by the Authority;
- (e) perform secure back-ups of all Authority Data and ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request;
- (f) ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework;
- (g) identify, and disclose to the Authority on request those members of Staff with access to or who are involved in handling Authority Data;
- (h) on request, give the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of Personal Data, and its procedures for reducing risk;
- (i) notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take if it has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason; and
- (j) comply with Schedule 6 (Information Assurance and Security).

D1.2 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

- (a) require the Contractor (at the Contractor's cost) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
- (b) itself restore or procure the restoration of Authority Data, and be repaid by the Contractor any reasonable costs incurred in doing so.

D2 DATA PROTECTION AND PRIVACY

D2.1 The Parties shall comply with their respective obligations under the Data Protection Legislation and comply with their respective obligations set out in Schedule 9 (Data Processing).

D3 CONFIDENTIAL INFORMATION

D3.1 Except to the extent set out in this clause D3 or if disclosure or publication is expressly allowed elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.



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- D3.2 The Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time-to-time agreed changes to the Contract, to the general public.
- D3.3 If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause D3.3.
- D3.4 If requested by the Authority, the Contractor shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.
- D3.5 The Contractor may disclose the Authority's Confidential Information only to Staff who are directly involved in providing the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- D3.6 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- D3.7 Clause D3.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
 - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - (c) such information was obtained from a third party without obligation of confidentiality;
 - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - (e) it is independently developed without access to the other Party's Confidential Information.
- D3.8 Nothing in clause D3.1 prevents the Authority disclosing any Confidential Information obtained from the Contractor:
- (a) for the purpose of the examination and certification of the Authority's accounts;
 - (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - (c) to Parliament and Parliamentary committees;
 - (d) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all Government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other Government



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departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Government department or any Contracting Authority; or

- (e) to any consultant, contractor or other person engaged by the Authority,

provided that in disclosing information under clauses D3.8(d) and D3.7(e) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- D3.9 Nothing in clauses D3.1 to D3.6 prevents either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- D3.10 The Authority shall use reasonable endeavours to ensure that any Government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause D3.8 is made aware of the Authority's obligations of confidentiality.
- D3.11 If the Contractor does not comply with clauses D3.1 to D3.8 the Authority may terminate the Contract immediately on notice.
- D3.12 To ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- D3.13 The Contractor shall:
- (a) immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches;
 - (b) use best endeavours to recover such Confidential Information or data however it may be recorded;
 - (c) co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data; and
 - (d) at its own expense, alter any security systems at any time during the Term at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause D3.12.

D4 FREEDOM OF INFORMATION

- D4.1 Each Party acknowledges that the other is subject to the requirements of the FOIA and the EIR and shall each provide all assistance as reasonably requested by the other in respect of any Request for Information.



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- D4.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:
- (a) give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
 - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
 - (c) not respond directly to a Request for Information unless authorised to do so in writing by the Authority.
- D4.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the FOIA and/or the EIR.

D5 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- D5.1 The Contractor shall not:
- (a) make any press announcements or publicise the Contract or its contents in any way;
 - (b) use the Authority's name, brand or logo in any publicity, promotion, marketing or announcement of order; or
 - (c) use the name, brand or logo of any of the Authority's agencies or arms-length bodies in any publicity, promotion, marketing or announcement of orders
- without Approval.
- D5.2 Each Party acknowledges that nothing in the Contract either expressly or impliedly constitutes an endorsement of any products or services of the other Party (including the Services and the ICT Environment) and each Party shall not conduct itself in such a way as to imply or express any such approval or endorsement.
- D5.3 The Contractor shall use reasonable endeavours to ensure that its Staff and professional advisors comply with clause D5.1.

E INTELLECTUAL PROPERTY

E1 INTELLECTUAL PROPERTY RIGHTS

- E1.1 Save as expressly provided in the remainder of this clause E1:
- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, namely: Contractor Software, Contractor Background IPR, Third-Party IPR.



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- (b) The Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, namely: Authority Data, Authority Software, Authority System or any other IPR which is owned or licensed by the Authority.

E1.2 All Intellectual Property Rights in:

- (a) the Results, which shall include any learning materials created by the Contractor; or
- (b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material or Intellectual Property Rights which is furnished to or made available to the Contractor by or on behalf of the Authority (together with the Results but excluding Contractor Background IPR and Third-Party IPR, the **"IP Materials"**),

shall vest in the Authority (save for Copyright and Database Rights which shall vest in His Majesty the King) and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract or in accordance with the licence granted under clause E1.12.

E1.3 The Contractor hereby assigns:

- (a) to the Authority, with full title guarantee, all Intellectual Property Rights (save for Copyright and Database Rights) which may subsist in the IP Materials. This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor; and
- (b) to His Majesty the King, with full title guarantee, all Copyright and Database Rights which may subsist in the IP Materials

and shall execute all documents and do all acts as are necessary to execute these assignments.

E1.4 The Contractor shall:

- (a) waive or procure a waiver of any moral rights held by it or any third party in the IP Materials arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) (where the Contractor is not able to procure an assignment in accordance with clause E1.10) ensure that the third party owner of any Third Party IPR which are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and include the right for the Authority to sub-license, transfer, novate or assign to any Indemnified Persons.
- (c) not infringe any Intellectual Property Rights of any third party in supplying the Services; and



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- (d) during and after the Term, indemnify and keep indemnified the Authority and Indemnified Persons from and against:
- (i) all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority and Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E1.4 or clause E1.11
 - (ii) any Third-Party IP Claim (as more particularly described at clause E1.6).
- E1.5 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority or Indemnified Person for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.
- E1.6 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority, the Contractor or Indemnified Person) arising from the performance of the Contractor's obligations under the Contract, or by the use of the Results by the Authority or any third party ("**Third Party IP Claim**"), provided that the Contractor shall at all times:
- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
 - (b) take due and proper account of the interests of the Authority; and
 - (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).
- E1.7 The Authority shall, at the request of the Contractor, afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.
- E1.8 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.
- E1.9 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and any relevant Indemnified Person, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E1.4(b) and G2.1(g)) use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or
 - (b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority



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and if the Contractor is unable to comply with clauses E1.9(a) or E1.9(b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

- E1.10 The Contractor grants to the Authority and, if requested by the Authority, to a Replacement Contractor, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use the Contractor Software, the Third Party Software and any other Contractor Background IPR and which the Authority (or the Replacement Contractor) reasonably required in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).
- E1.11 The Authority grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Systems, the IP Materials and the Authority Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
- (a) any relevant Sub-Contractor has entered into a confidentiality undertaking with the Contractor, the form of such undertaking to be provided by the Authority; and
 - (b) the Contractor shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- E1.12 The Authority grants to the Contractor a royalty-free, irrevocable, worldwide, non-exclusive, transferable perpetual licence (with a right to sub-license) to use the Results subject to the Contractor:
- (a) removing any and all Authority or Prison specific content or branding from the Results; and
 - (b) ensuring that any such use of the Results complies with the obligations in respect of Confidential Information in clause D3.
- E1.13 Subject to the requirements of clauses E1.12(a) and E1.12(b), the Contractor may:
- (a) distribute or license the Results (or any part of them);
 - (b) translate, adapt, make any modifications, additions or enhancements to the Results (or any part of them);
 - (c) combine, merge or otherwise permit the Results (or any part of them) to become incorporated with any other work, or arrange or create derivative works based on them;
 - (d) copy the Results (or any part of them); and
 - (e) use the Results on behalf of or make the same available to any third party or allow or permit a third party to do so.

For the avoidance of doubt, the parties agree and acknowledge that the Results may be modified, updated or amended by the Authority or by an Authority authorised third party at any time. Any such modifications, updates or amendments shall not be subject to the licence or permissions set out in clauses E1.12, and E1.13 above.



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- E1.14 In the event of the termination or expiry of this Contract, the licence granted pursuant to clause E1.11 and any sub-licence granted by the Contractor in accordance with clause E1.11 shall terminate automatically on the date of such termination or expiry and the Contractor shall (subject to clauses E1.12 and E1.13):
- (a) immediately cease all use of the Authority Software, Authority Systems, IP Materials and Authority Data (as the case may be);
 - (b) at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, Authority Systems, IP Materials and Authority Data, provided that if the Authority has not made an election within 6 Months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any of the Authority Software, Authority Systems, IP Materials and Authority Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Authority Software, Authority Systems, IP Materials and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Contractor computer, word processor, voicemail system or any other Contractor device containing such Authority Software, Authority Systems, IP Materials and Authority Data.

F CONTROL OF THE CONTRACT

F1 CONTRACT PERFORMANCE

- F1.1 The Contractor shall immediately inform the 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.
- F1.2 At or around 6 Months from the Commencement Date and each anniversary of the Services Commencement Date thereafter, the Authority may carry out a review of the performance of the Contractor (a **"Review"**). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to):
- (a) the Contractor's delivery of the Services;
 - (b) the Contractor's contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services;
 - (c) a review of future requirements in relation to the Services; and
 - (d) progress against key milestones.
- F1.3 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform Reviews including the provision of data and information.
- F1.4 The Authority may produce a report (a **"Review Report"**) of the results of each Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where



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there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under the Contract.

- F1.5 The Authority shall give the Contractor a copy of the Review Report (if applicable). The Authority shall consider any Contractor comments and may produce a revised Review Report.
- F1.6 The Contractor shall, within 10 Working Days of receipt of the Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Review Report.
- F1.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under the Contract identified by the Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra cost to the Authority.

F2 REMEDIES

- F2.1 If the Authority reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - (c) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or
 - (d) terminate the Contract in accordance with clause H2.
- F2.2 Without prejudice to its right under clause C2 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.
- F2.3 If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or Good Industry Practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.



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- F2.4 If the Contractor has been notified of a failure in accordance with clause F2.3 the Authority may:
- (a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or
 - (b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- F2.5 If the Contractor has been notified of a failure in accordance with clause F2.3, it shall:
- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
 - (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F2.5 and the progress of those measures until resolved to the satisfaction of the Authority.
- F2.6 If, having been notified of any failure, the Contractor does not remedy it in accordance with clause F2.5 in the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

F3 TRANSFER AND SUB-CONTRACTING

- F3.1 Except where both clauses F3.11 and F3.12 apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such actions shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract does not relieve the Contractor of any of its obligations or duties under the Contract.
- F3.2 The provisions of clause F3.1 do not apply to the entry into by the Contractor or relevant Sub-Contractor of the Sub-Contracts with the Approved Sub-Contractors.
- F3.3 The Contractor shall comply with the Market Stewardship Principles when providing the Services and shall ensure that each Sub-Contract shall also comply with the Market Stewardship Principles.
- F3.4 The Contractor is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F3.5 The Contractor shall ensure that Sub-Contractors retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with clause F5 (Audit). If any Sub-Contractor does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor.



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F3.6 If the Authority has consented to the award of a Sub-Contract, the Contractor shall ensure that:

- (a) the Sub-Contract contains:
 - (i) a right for the Contractor to terminate if the Sub-Contractor does not comply with its legal obligations in connection with Data Protection Legislation, environmental, social or labour law; and
 - (ii) obligations no less onerous on the Sub-Contractor than those on the Contractor under the Contract in respect of data protection in clauses D1, D2, D3, D4 and D5 and Schedule 8 (Statutory Obligations);
 - (iii) obligations no less onerous on the Sub-Contractor than those on the Contractor under the Contract in respect of security as set out in Schedule 6 (Information Assurance & Security);
- (b) the Sub-Contractor includes a provision having the same effect as set out in this clause F3.6(a) in any Sub-Contract which it awards;
- (c) the Sub-Contract shall include:
 - (i) the right for the Contractor or, as appropriate, Sub-Contractor to terminate the Sub-Contract voluntarily on terms no more onerous than the Authority's right to terminate this Contract voluntarily;
 - (ii) the right for the Authority (acting by itself or with or through a third party) to take Required Action as contemplated by clause F10;
 - (iii) the right to enable the Contractor or, as appropriate, Sub-Contractor to assign or novate its rights and obligations under the Sub-Contract to the Authority or any Replacement Contractor free of charge in connection with the termination or expiry of this Contract pursuant to an Authority request in accordance with Schedule 19 (Exit Management);
 - (iv) a provision which requires payment by the Contractor to the Sub-Contractor within a specified period not exceeding 30 days from receipt of a valid invoice in respect of any amount which has fallen due and payable as required by the provisions of such Sub-Contract;
 - (v) a requirement for a provision to be included in the contracts between the Sub-Contractor and its contractors which requires payment by the Sub-Contractor to its contractors within a specified period not exceeding 30 days from receipt of a valid invoice in respect of any amount which has fallen due and payable as required by the provisions of such contract;
 - (vi) provisions regarding the right of Contractor to monitor the performance of the Sub-Contractor that are relevant and proportionate to the particular service the particular Sub-Contractor is to provide on terms based upon those performance measures placed upon the Contractor by the Authority under this Contract;



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(vii) provisions for the Sub-Contractor to provide such information as necessary for the Contractor to comply with its obligations in respect of Exit Information required pursuant to Schedule 19 (Exit Management) and employee information required pursuant to Schedule 16 (TUPE, Employees and Pensions); and

(d) copies of each Sub-Contract are sent to the Authority immediately after their execution.

F3.7 Unless Approved otherwise, if the total value of the Contract over the Term is, or is likely to be, in excess of [REDACTED], the Contractor shall, in respect of Sub-Contract opportunities arising during the Term from or in connection with the provision of the Services:

(a) advertise on Contracts Finder those that have a value in excess of [REDACTED];

(b) within 90 days of awarding a Sub-Contract, update the notice on Contracts Finder with details of the Sub-Contractor;

(c) monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder and awarded during the Term;

(d) provide reports on the information in clause F3.7(c) to the Authority in the format and frequency reasonably specified by the Authority;

(e) promote Contracts Finder to its suppliers and encourage them to register on Contracts Finder; and

(f) ensure that each advertisement placed pursuant to clause F3.7(a) includes a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder.

F3.8 The Contractor shall, at its own cost, supply to the Authority by the end of April each year for the previous Financial Year:

(a) the total revenue received from the Authority pursuant to the Contract;

(b) the total value of all its Sub-Contracts;

(c) the total value of its Sub-Contracts with SMEs; and

(d) the total value of its Sub-Contracts with VCSEs.

F3.9 The Authority may from time to time change the format and the content of the information required pursuant to clause F3.8.

F3.10 If the Authority believes there are:

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



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- (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 57 of the Regulations, the Authority may require the Contractor to replace or not appoint the Sub-Contractor and the Contractor shall comply with such requirement.
- F3.11 Notwithstanding clause F3.1, the Contractor may assign to a third party (the “**Assignee**”) the right to receive payment of the Price or any part thereof due to the Contractor (including any interest which the Authority incurs under clause C1 (Payment and VAT)). Any assignment under this clause F3.11 is subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C2 (Recovery of Sums Due);
 - (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - (c) the Authority receiving notification under both clauses F3.12 and F3.13.
- F3.12 If the Contractor assigns the right to receive the Price under clause F3.11, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F3.13 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority can make payment.
- F3.14 Clause C1 continues to apply in all other respects after the assignment and shall not be amended without Approval.
- F3.15 Subject to clause F3.16, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F3.16 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F3.17, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F3.17 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F3.15 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):



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- (a) the rights of termination of the Authority in clauses H1 and H2 are available to the Contractor in respect of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F3.18 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F3.19 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the Contract.

F4 CHANGE

F4.1 After the Commencement Date, either Party may request a Change subject to the terms of this clause F4.

F4.2 Either Party may request a Change by notifying the other Party in writing of the Change by completing the Change Request Form set out in Schedule 3 (Change Control). The Party requesting the Change shall give the other Party sufficient information and time to assess the extent and effect of the requested Change. If the receiving Party accepts the Change it shall confirm it in writing to the other Party and in costing any change the Contractor shall follow the Updated FRT Principles save for where otherwise determined by the Authority.

F4.3 If the Contractor is unable to accept a Change requested by the Authority or if the Parties are unable to agree a change to the Price, the Authority may:

- (a) allow the Contractor to fulfil its obligations under the Contract without the Change; or
- (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure detailed in clause I2 (Dispute Resolution).

F4.4 A Change takes effect only when it is recorded in a CCN validly executed by both Parties.

F4.5 The Contractor is deemed to warrant and represent that the CNN has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.



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F4.6 Clauses F4.4 and F4.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Change in order to address the emergency. In an emergency, Changes may be approved by a different representative of the Authority. However, the Authorised Representative may review such a Change and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Change.

F5 AUDIT

F5.1 The Contractor shall:

- (a) keep and maintain until 6 years after the end of the Term, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority;
- (b) on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract during the Term and for a period of 18 months thereafter ;
- (c) make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services;
- (d) shall provide the Authority with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-Contractors) in relation to each audit.
- (e) allow authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and provide such copies and oral or written explanations as may reasonably be required; and
- (f) allow the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

F5.2 The Authority may, at its discretion, instruct the Contractor to carry out its own audit and provide such records to the Authority from time to time as the Authority reasonably requests.

F5.3 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Contractor and/or any of the Sub-Contractors for the purposes of and pursuant to applicable Law.

F5.4 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph F5, unless the audit identifies a material Default by the Contractor in which case the Contractor shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit. The Authority may, at its discretion, rely on any



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remedies in accordance with clause F2 (or any other remedies in accordance with the remainder of this Contract) in the event that a Default is discovered during an audit.

F6 CONTRACT MANAGEMENT

- F6.1 The Contractor shall provide the Management Information in accordance with Schedule 11 (Contract Management and Monitoring).

F7 GOVERNANCE

- F7.1 The Parties shall comply with their respective obligations in relation to governance arrangements to be adopted by the Parties in meeting the requirements of the Contract as set out in Schedule 12 (Governance).

F8 KEY PERFORMANCE INDICATORS

- F8.1 The Contractor shall perform its obligations under this Contract in accordance with, and at all times shall ensure that the Services comply with and meet all the requirements of the Key Performance Indicators.
- F8.2 The Parties shall comply with their respective obligations in relation to the Key Performance Indicators as set out in Schedule 13 (Key Performance Indicators).

F9 BUSINESS CONTINUITY AND DISASTER RECOVERY

- F9.1 The Parties shall comply with their respective obligations in relation to business continuity and disaster recovery arrangements as set out in Schedule 10 (Business Continuity and Disaster Recovery).

F10 AUTHORITY STEP-IN

- F10.1 If the Authority reasonably believes that it needs to take action in connection with the Services:
- (a) because a serious risk exists to the health or safety of persons or property or to the environment; and/or
 - (b) to discharge a statutory duty or where the Authority is advised by a regulatory body that the exercise by the Authority of its rights under this clause F10 is necessary; and/or
 - (c) following a Default by the Contractor;
- then the Authority shall be entitled to take action in accordance with clauses F10.2 to F10.6.
- F10.2 If clause F10.1 applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:
- (a) the action it wishes to take;
 - (b) the reason for such action;



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- (c) the date it wishes to commence such action;
- (d) the time period which it believes will be necessary for such action; and
- (e) to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.

F10.3 Following service of such notice, the Authority shall (acting by itself or with or through a third party) take such action as notified under clause F10.2 and any consequential additional action as it reasonably believes is necessary (together, the **"Required Action"**) and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

F10.4 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify and keep indemnified in full the Contractor against all direct Losses where it fails to do so.

F10.5 If the Contractor is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

- (a) the Contractor shall be relieved from its obligations to provide such part of the Services; and
- (b) in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

F10.6 If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

- (a) the Contractor shall be relieved of its obligations to provide such part of the Services; and
- (b) in respect of the period in which the Authority is taking the Required Action, the Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

F10.7 The Authority may, at any time during the period of the Required Action, provide notice (a **"Step-Out Notice"**) to the Contractor stating that the Authority wishes to cease the Required Action with effect from such date as is reasonable in the circumstances (a **"Step-Out Date"**).

F10.8 Where the Authority exercised its rights to take the Required Action as a result of a breach of the obligations of the Contractor under this Contract then the Authority shall issue the Contractor with a



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Step-Out Notice as soon as is reasonably practicable following the Contractor having demonstrated to the Authority, to the Authority's reasonable satisfaction, that:

- (a) the Contractor is capable of resuming the provision of the Services; and
- (b) the circumstances which gave rise to the Required Action are not continuing and are unlikely to recur.

F10.9 On the Step-Out Date:

- (a) the Authority shall be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action; and
- (b) the Contractor shall resume the provision of all or any relevant part of the Services which were the subject of the Required Action.

F11 FINANCIAL DISTRESS EVENTS

F11.1 The Contractor warrants and represents to the Authority for the benefit of the Authority that as at the Commencement Date it is not subject to (and is not aware it is reasonably likely to become subject to) a Financial Distress Event.

F11.2 During the Term, the Contractor shall promptly notify the Authority if it is, or is reasonably likely to become, subject to a Financial Distress Event.

F11.3 If a Financial Distress Event occurs (or is reasonably likely to occur) then (whether notified to it by the Contractor or otherwise identified by the Authority):

- (a) the Contractor shall immediately provide the Authority with such additional information and/or documentation it reasonably requires in order to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract;
- (b) the Contractor shall take such actions as the Authority may reasonably require in order to remedy the relevant Financial Distress Event and/or ensure the continued provision of the Services in accordance with the terms of this Agreement; and
- (c) the Contractor shall provide the Authority with regular updates on the Financial Distress Event as the Authority may reasonably request from time to time.

F11.4 The Authority shall be entitled to terminate this Agreement for Material Breach under clause H3 if:

- (a) the Contractor fails to comply with clause F11.3; and/or
- (b) the Authority, acting reasonably, considers that the Financial Distress Event will have a material impact on the continued performance and delivery of the Services in accordance with this Contract.



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G LIABILITIES

G1 LIABILITY, INDEMNITY AND INSURANCE

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) any breach of any obligation implied as to title by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

G1.2 The Contractor's liability in respect of any breach of Schedule 6 (Information Assurance and Security) and Schedule 8 (Statutory Obligations and Corporate Social Responsibility) and the indemnities in C1.10, D3 (Confidential Information), E1.4, paragraph 3.4(b) of Schedule 2 (Payment Mechanism), Schedule 6 (Information Assurance and Security), 8 (Statutory Obligations and Corporate Social Responsibility) and Schedule 16 (TUPE) shall be unlimited.

G1.3 The Authority's liability in respect of the indemnities in Schedule 16 (TUPE) shall be unlimited.

G1.4 Subject to clause G1.5 and G1.6, the Contractor indemnifies the Authority 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 non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the 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 Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

G1.5 Subject to Clauses G1.1, G1.2 and G1.8:

- (a) the Contractor's aggregate liability in respect of loss of or damage to the Premises or other Property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority Data or any other data) that is caused by Defaults of the Contractor occurring in each and any Contract Year shall in no event exceed [REDACTED]; and
- (b) the Contractor's aggregate liability in respect of loss of or damage to Authority Data or Losses incurred by the Authority due to breach of Data Protection Legislation and Schedule 9 (Data Processing) that is caused by Default of the Contractor occurring in each and any Contract Year shall in no event exceed [REDACTED].

G1.6 The Contractor's aggregate liability in respect Uninsured Losses incurred by the Authority under or in connection with the Contract as a result of Defaults by the Contractor (other than damage to Property,



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Premises, or loss or damage to Data or breach of Data Protection Legislation or Schedule 9 (Data Processing), where the caps in clause G.1.5 shall apply) shall not exceed:

- (i) in relation to Defaults occurring during the period from the Commencement Date to the end of the first Financial Year, an amount equal to one hundred and fifty per cent (150%) of the Maximum Annual Funding for the first Financial Year;
- (ii) in relation to Defaults occurring during any subsequent Financial Year, an amount equal to one hundred and fifty per cent (150%) of the Maximum Annual Funding for the relevant Financial Year; and
- (iii) in relation to Defaults occurring after the end of the Term, an amount equal to one hundred and fifty per cent (150%) of the Maximum Annual Funding for the final Financial Year of the Term
- (iv) provided that where any Losses referred to this Clause have been incurred by the Authority as a result of the Contractor's abandonment of this Contract or the Contractor's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to 150% shall be deemed to be references to 200%; and for the avoidance of doubt and without prejudice to or limitation of any other liability the Contractor may have under this Contract, this clause shall not apply in respect any Insured Losses (which shall be capped at the minimum required financial level (being the level required for each and every claim) of that insurance pursuant to clause G1.10 disregarding any excess or deductibles that may apply to such insurance, with any remaining Losses being recoverable subject to the other provisions of this clause G1).

G1.7 Notwithstanding clause G1.3, the Authority's aggregate liability in respect of all Losses incurred by the Contractor under or in connection with the Contract shall not exceed:

- (a) in relation to Defaults occurring during the period from the Commencement Date to the end of the first Financial Year, an amount equal to the Maximum Annual Funding for the first Financial Year;
- (b) in relation to Defaults occurring during any subsequent Financial Year, an amount equal to the Maximum Annual Funding for the relevant Financial Year; and
- (c) in relation to Defaults occurring after the end of the Term, an amount equal to the Maximum Annual Funding for the final Financial Year of the Term.

G1.8 Subject to clauses G1.1, G1.2, and G1.3, neither Party is liable to the other Party for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential Loss.



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- G1.9 Notwithstanding Clause G1.8 but subject to Clause G1.5, the Contractor acknowledges that the Authority may, amongst other things, recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:
- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - (b) any wasted expenditure or charges;
 - (c) the additional costs of procuring Replacement Services for the remainder of the Term and or replacement deliverables which shall include any incremental costs associated with the Replacement Services and/or replacement deliverables above those which would have been payable under the Contract;
 - (d) any compensation or interest paid to a third party by the Authority; and
 - (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.
- G1.10 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, 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 Contractor, arising out of the Contractor's performance of its obligations under the Contract including:
- (a) the insurances required to be taken out pursuant to Schedule 17 (Insurances);
 - (b) cover for death or personal injury, loss of or damage to property or any other loss; and
 - (c) employer's liability insurance in respect of Staff.
- Such insurance policies shall be maintained for the period set out in Schedule 17 (Insurances) or the duration of the Term and for a minimum of 6 years following the end of the Term.
- G1.11 The Contractor shall give the Authority, 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.
- G1.12 If the Contractor does not have and maintain the insurances required by the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.13 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.14 The Contractor 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 Contractor, which would entitle



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any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

- G1.15 Where any insurance referred to in this clause G1 and Schedule 17 (Insurances) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the insurances whether under the terms of this Contract or otherwise.

G2 WARRANTIES AND REPRESENTATIONS

G2.1 The Contractor warrants and represents on the Commencement Date and for the Term that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract, it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence if the Contractor has not been in existence for 3 years) prior to the date of the Contract:



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- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (k) it has notified the Authority 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.

G2.2 The Contractor confirms that in entering into the Contract it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Authority in connection with the subject matter of the Contract except those expressly set out in the Contract and the Contractor hereby waives and releases the Authority in respect thereof absolutely.

G3 TAX COMPLIANCE

G3.1 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly give the Authority:
 - (i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

G3.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:

- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, NICs (including secondary contributions), apprenticeship levies, and social security contributions and any other liability, deduction, contribution, assessment or claim (including any interest, fines, penalties and/or expenses thereon) arising from or made in connection with the provision of the Services by the



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Contractor or any Staff, including where the Authority is required to pay or account for to the relevant taxing authority any sums (of whatever type and nature) due to the engagement by the Contractor of any individual(s) engaged through a limited company or partnership which meets the conditions specified in sections 61O or 61P of ITEPA.

- (c) The Authority and the Contractor agree that, as between them for the purposes of the off-payroll working rules known as “IR35”, the Contractor agrees that it is the “client” and shall be responsible for issuing all status determinations in respect of all persons engaged directly by the Contractor or indirectly through its supply chain and/or through a limited company or other entity.

H **DEFAULT, DISRUPTION AND TERMINATION**

H1 **INSOLVENCY AND CHANGE OF CONTROL**

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor if the Contractor is a company and in respect of the Contractor:

- (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;
- (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);
- (c) a petition is presented for its winding up (which is not dismissed within 14 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;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (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;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in clause H1.1(a)-(g) occurs under the law of any other jurisdiction.



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- H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor if the Contractor is an individual and:
- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
 - (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
 - (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
 - (d) he is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
 - (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
 - (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
 - (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
 - (h) any event similar to those listed in clauses H1.2(a)-(g) occurs under the law of any other jurisdiction.
- H1.3 The Contractor shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010 ("**Change of Control**"). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor upon:
- (a) being notified that a Change of Control has occurred; or
 - (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control

but is not permitted to terminate where Approval was granted prior to the Change of Control.



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- H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor if the Contractor is a partnership and:
- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - (b) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
 - (c) a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - (d) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
 - (e) any of the following occurs in relation to any of its partners:
 - (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors;
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
 - (f) any event similar to those listed in clauses H1.4(a) to H1.4(e) occurs under the law of any other jurisdiction.
- H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor if the Contractor is a limited liability partnership and:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
 - (b) an application 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 within Part II of the Insolvency Act 1986;
 - (c) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
 - (d) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
 - (e) a receiver, or similar officer is appointed over the whole or any part of its assets; or



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- (f) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (g) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in clauses H1.5(a) to H1.5(g) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5(a) are references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 DEFAULT

H2.1 The Authority may terminate the Contract with immediate effect by notice if the Contractor commits a Default and:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 20 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority acting reasonably, capable of remedy; or
- (c) the Default is a Material Breach.

H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor is liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 40 Working Days of the date of such notice, the Contractor may terminate the Contract with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C1.5 or to a Force Majeure Event.

H3 TERMINATION ON NOTICE

The Authority may terminate the Contract (in whole or in part) at any time by giving 12 months' notice to the Contractor.

H4 OTHER GROUNDS

H4.1 The Authority may terminate the Contract if:

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Contractor 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

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57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;

- (c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
- (d) the Contractor has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

H5 CONSEQUENCES OF EXPIRY OR TERMINATION

- H5.1 If the Authority terminates the Contract under clause H2 and makes other arrangements for the supply of the Services the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term.
- H5.2 If the Contract is terminated under clause H2 the Authority shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause H5.
- H5.3 If the Authority terminates the Contract under clauses H3 or H4 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.
- H5.4 Save as otherwise expressly provided in the Contract:
 - (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C1 (Payment and VAT), C2 (Recovery of Sums Due), B4 (Equipment), D2 (Data Protection and Privacy), D3 (Confidential Information), D4 (Freedom of Information), E1 (Intellectual Property Rights), F5 (Audit), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery), H8 (Exit Management), H9 (Knowledge Retention), I6 (Remedies Cumulative), I12 (Governing Law and Jurisdiction) and paragraph 9 of Schedule 8 (Statutory Obligations and corporate Social Responsibility).

H6 DISRUPTION

- H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.



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- H6.2 The Contractor shall immediately inform the Authority 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 Contract.
- H6.3 If there is industrial action by Staff, the Contractor shall seek Approval for its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, the Contract may be terminated with immediate effect by the Authority.
- H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H7 RECOVERY

- H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
 - (c) immediately vacate any Authority Premises occupied by the Contractor;
 - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
 - (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.
- H7.2 If the Contractor does not comply with clauses H7.1(a) and H7.1(b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its suppliers or Sub-Contractors where any such items may be held.

H8 EXIT MANAGEMENT

- H8.1 The Parties shall comply with the provisions of Schedule 19 (Exit Management) in relation to an orderly transition of the Services to the Authority or a Replacement Contractor (as appropriate).

H9 KNOWLEDGE RETENTION

The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the



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Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with such requests for information in relation to the completion or earlier termination of the Contract no later than 15 Working Days from the date that that request was made.

I GENERAL

I1 DISPUTE RESOLUTION

- I1.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the commercial director of the Authority.
- I1.2 Nothing in this dispute resolution procedure prevents the Parties seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I1.3 If the dispute cannot be resolved by the Parties pursuant to clause I1.1 either Party may refer it to mediation pursuant to the procedure set out in clause I1.5.
- I1.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- I1.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement of the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
 - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
 - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;



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- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I1.6.

I1.6 Subject to clause I1.2, the Parties shall not institute court proceedings until the procedures set out in clauses I1.1 and I1.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7;
- (b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority has 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7; and
- (c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I1.7, to which the Authority may consent as it sees fit.

I1.7 If any arbitration proceedings are commenced pursuant to clause I1.6:

- (a) the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "**Arbitration Notice**") stating:
 - (i) that the dispute is referred to arbitration; and
 - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with I1.7(a) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator is binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I1.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and



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- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

I2 FORCE MAJEURE

- I2.1 Subject to this clause I2, a Party may claim relief under this clause I2 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is prevented by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier is regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.
- I2.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- I2.3 If the Contractor is the Affected Party, it is not entitled to claim relief under this clause I2 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- I2.4 Subject to clause I2.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- I2.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- I2.6 If, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - (i) the other Party is not entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - (ii) neither Party is liable for any Default arising as a result of such failure;
 - (b) the Contractor fails to perform its obligations in accordance with the Contract it is entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the Contract during the occurrence of the Force Majeure Event.



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- 12.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- 12.8 Relief from liability for the Affected Party under this clause 12 ends as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and is not dependent on the serving of a notice under clause 12.7.

13 NOTICES AND COMMUNICATIONS

- 13.1 Subject to clause 13.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Jaggaer.
- 13.2 If it is not returned as undelivered a notice served in:
- (a) a letter is deemed to have been received 2 Working Days after the day it was sent; and
 - (b) an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day
- or when the other Party acknowledges receipt, whichever is the earlier.
- 13.3 Notices pursuant to clauses 11, 12 or 17 or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.
- 13.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

- (a) For the Authority:

Contact Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]

- (b) For the Contractor:

Contact Name: [REDACTED]

Address: [REDACTED]

Email: [REDACTED]



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14 CONFLICTS OF INTEREST

- 14.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the Contract. The Contractor will notify the Authority immediately giving full particulars of any such conflict of interest which may arise.
- 14.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the Contract. The actions of the Authority pursuant to this clause 14 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

15 RIGHTS OF THIRD PARTIES

- 15.1 Clause D2 and Schedule 9 (Data Processing) and clause E1.4 and paragraphs 3.1 of Part B (Transferring Former Contractor Employees at Commencement of Services) of Schedule 16 (TUPE, Employees and Pensions), paragraphs 3.1, 3.2 and 8.2 of Part D (Pensions) of Schedule 16 (TUPE, Employees and Pensions); paragraphs 6 and 7 of Annex D2 (NHSPS) of Part D (Pensions) of Schedule 16 (TUPE, Employees and Pensions); paragraphs 1.2, 1.4, 2.3 and 2.8 of Part E (Employment Exit Provisions) of Schedule 16 (TUPE, Employees and Pensions) confer benefits on persons named in them (together "**Third Party Provisions**" and each person a "**Third Party Beneficiary**") other than the Parties and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("CRTPA").
- 15.2 Subject to clause H5.1, a person who is not a Party has no right under the CRTPA to enforce the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.
- 15.3 No Third Party Beneficiary may enforce or take steps to enforce any Third Party Provision without Approval.
- 15.4 Any amendments to the Contract may be made by the Parties without the consent of any Third Party Beneficiary.

16 REMEDIES CUMULATIVE

Except as expressly provided in the Contract all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy are not an election of such remedy to the exclusion of other remedies.

17 WAIVER

- 17.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy do not constitute a waiver of that right or remedy and do not cause a diminution of the obligations established by the Contract.



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17.2 No waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 13 (Notices and Communications).

17.3 A waiver of any right or remedy arising from a breach of the Contract does not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

18 SEVERABILITY

If any part of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such part shall be severed and the remainder of the Contract shall continue in full effect as if the Contract had been executed with the invalid, illegal or unenforceable part eliminated.

19 ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

110 CHANGE IN LAW

110.1 The Contractor is neither relieved of its obligations to supply the Services in accordance with the terms and conditions of the Contract nor entitled to an increase in the Price as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

110.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 110.1(b)), the Contractor shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any:
 - (i) Change is required to the Services, the Price or the Contract; and
 - (ii) relief from compliance with the Contractor's obligations is required; and
- (b) provide the Authority with evidence:
 - (i) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors; and
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services.



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I10.3 Any variation in the Price or relief from the Contractor's obligations resulting from a Specific Change in Law (other than as referred to in clause I10.1(b)) shall be implemented in accordance with clause F4.

I11 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.

I12 GOVERNING LAW AND JURISDICTION

Subject to clause I1 (Dispute Resolution) the Contract, including any matters arising out of or in connection with it, are governed by and interpreted in accordance with English Law and are subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction does not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction does not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.



SIGNED for and on behalf of the **Secretary of State**
for Justice by

Full Name

[Redacted]

Job Title

[Redacted]

Signature

[Redacted]

SIGNED by Novus Cambria

Full Name

[Redacted]

Job Title

[Redacted]

Signature

[Redacted]