



Date: 4 April 2018

## A Services Concession Contract

Between

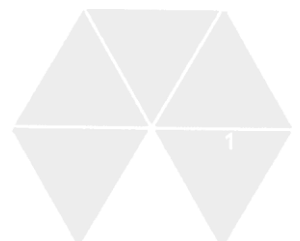
**The Secretary of State for Justice**

And

**WAMI AB (Waste Management Industry Training and  
Advisory Board)**

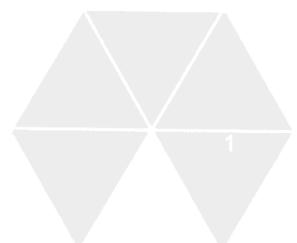
relating to

**the provision of Qualifications to Education Providers, Existing Education Providers, Her Majesty's Prison and  
Probation Service in Wales and/or the Authority**



**C****E**

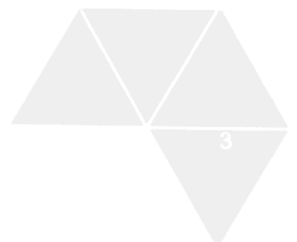
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This contract is dated: 24 April 2018

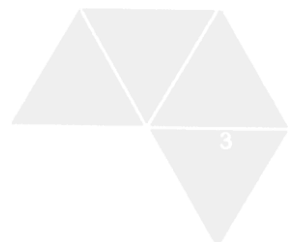
**ARTIES:**

- (1) THE SECRETARY OF STATE FOR JUSTICE of [REDACTED] (the "Authority");  
D [REDACTED UNDER S.40 FOIA (PERSONAL INFORMATION)]
- (2) WAMITAB (Waste Management Industry Training and Advisory Board) [REDACTED]  
[REDACTED] (the "Concessionaire") [REDACTED UNDER S.40 FOIA (PERSONAL INFORMATION)]
- (each a "Party" and together the "Parties").

**WHEREAS**

- A. The Authority placed the PIN Notice in the Official Journal of the European Union setting out its intention to establish a services concession contract granting an exclusive right to supply Qualifications to Education Providers.
- B. The Authority intends that the services concession will be divided into seven Lots covering the Curriculum Areas.
- C. The Authority intends that Education Providers will purchase Qualifications from the Awarding Organisations who are appointed as concessionaires for the seven Lots, so that the Qualifications can be used by Education Providers to accredit learning by prisoners completing courses in the respective Curriculum Areas.
- D. The Authority issued the Invitation to Tender to Awarding Organisations who responded to the PIN Notice.
- E. The Concessionaire represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements set out in the Invitation to Tender and, in particular, the Concessionaire made representations to the Authority in the Tender in relation to its competence, professionalism and ability to provide the Services in respect of Lot 7 – Cleaning and Facilities Management in an efficient and cost effective manner.
- F. On the basis of the Tender, the Authority intends to enter into a contract with the Concessionaire to provide the Services in respect of Lot 7 – Cleaning and Facilities Management.

**NOW IT IS HEREBY AGREED:**





## GENERAL

### 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.

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

**"Authorised Representative"** means the Authority representative named in a CCN as authorised to approve agreed 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 Concessionaire by or on behalf of the Authority; or (ii) which the Concessionaire is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Authority is the Data 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 Concessionaire 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 Concessionaire 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 Concessionaire in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Concessionaire System or which is necessary for the Authority to receive the Services.

**"Awarded Lot"** means Lot 7 – Cleaning and Facilities Management.

**"Awarding Organisation"** means an organisation approved by Office of Qualifications and Examinations Regulation (Ofqual) and is regulated to award qualifications and moderate examinations and assessments, and "Awarding Organisations" shall be construed accordingly.

**"BPSS"** means the Government's Baseline Personnel Security Standard for Government employees.



**"CC "** means a change control notice in the form set out in Schedule 3.

**"Change"** means a change in the Specification or 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 specified in clause A5.1.

**"Commercially Sensitive Information"** means the information listed in Schedule 4 comprising the information of a commercially sensitive nature relating to:

- (a) the Fees; and/or
- (b) the Concessionaire's business and investment plans

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

**"Comparable Supply"** means the supply of services to another customer of the Concessionaire which are the same or similar to any of the Services.

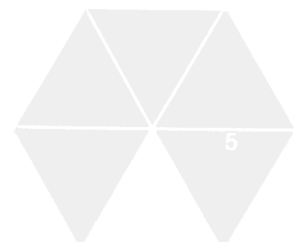
**"Concessionaire Software"** means software which is proprietary to the Concessionaire, including software which is or will be used by the Concessionaire for the purposes of providing the Services and which is set out in Schedule 5.

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

**"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 and sensitive personal data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E4,
- (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.

**"Contract"** means these terms and conditions, the attached Schedules and any other documents the Parties expressly agree are included.



**“Contracting authority”** means any contracting authority (other than the Authority) as defined in regulation 4 of the Regulations.

**“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.

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

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

**“Curriculum Area”** means one of the seven commonly taught curriculum areas across the HMPPS adult prison estate as detailed in the Specification, and **“Curriculum Areas”** shall be construed accordingly.

**“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.

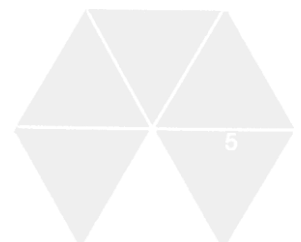
**“Data Protection Laws”** means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and, with effect from 25 May 2018, the GDPR).

**“Data Loss Event”** means a breach of any system containing Personal Data that causes unauthorised access to Personal Data, actual or potential loss of Personal Data.

**“Data Subject Access Request”** means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data.

**“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.





**"Education Provider"** means an education provider appointed by the Authority to provide education services to prisoners across the HMPPS adult prison estate in England following the award of the successor prisoner education contracts entered into following mini-competitions to call-off services from either the core education services framework contract or the dynamic purchasing system, from 1st August 2018, and "Education Providers" shall be construed accordingly.

**"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.

**"Equipment"** means the Concessionaire's equipment, consumables, plant, materials and such other items supplied and used by the Supplier in the delivery of the Services.

**"Existing Education Provider"** means one of the four education providers providing education services to prisoners across the HMPPS adult prison estate in England under the current education contracts as at the date of this Contract, and "Existing Education Providers" shall be construed accordingly.

**"Fees"** means the fees set out in Schedule 2 that the Concessionaire will charge to Education Providers, Existing Education Providers, Her Majesty's Prison and Probation Service in Wales and/or the Authority in respect of the Services detailed in the Specification.

**"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.

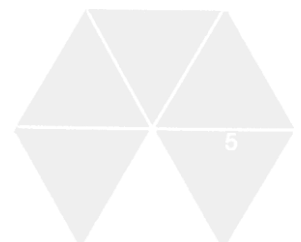
**"Force Majeure Event"** means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect 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 Concessionaire or the Staff or any other failure in the Concessionaire's supply chain.

**"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

**"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 Concessionaire) 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 Her Majesty's government of the United Kingdom.

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

**"HMRC"** means HM Revenue & Customs.

**"ICT Environment"** means the Authority System and the Concessionaire System.

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

**"Intellectual Property Rights"** 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.

**"Invitation to Tender" or "ITT"** means the invitation to tender issued by the Authority in relation to the PIN Notice.

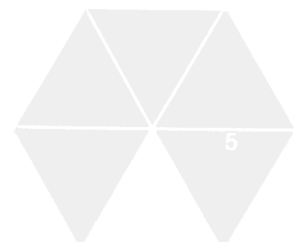
**"ITEPA"** means the Income Tax (Earnings and Pensions) Act 2003.

**"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, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Concessionaire is bound to comply.

**"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.

**"Lot" or "Lots"** means the lot or lots set out in the Specification for the provision of Qualifications to Education Providers, Existing Education Providers, Her Majesty's Prison and Probation Service in Wales and/or the Authority in respect of the applicable Curriculum Area or Curriculum Areas, as the context requires.



**" 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.

**" aterial Breach"** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses D1, E1, E2, E3, E4, E10 or I4.

**" onth"** means calendar month.

**"NICs"** means National Insurance Contributions.

**"Occasion of Tax Non-Compliance"** means:

- (a) any tax return of the Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire 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.

**"PIN Notice"** means the prior information notice (reference 2017-041864) dated 23 October 2017, published in the Official Journal of the European Union in accordance with Clause 19 and Clause 31 of the Regulations.

**"Prohibited ct"** 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;
- (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 any property, other than real property, issued or made available to the Concessionaire by the Authority in connection with the Contract.

**"Qualifications"** means accredited qualifications regulated by the Office of Qualifications and Examinations Regulation (Ofqual) provided by Awarding Organisations.

**"Quality Standards"** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization (ISO) 9001:2015, 22301:2012, 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 Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

**"Regulations"** means the Concession Contracts Regulations 2016 (SI 2016/273) (as amended).

**"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.

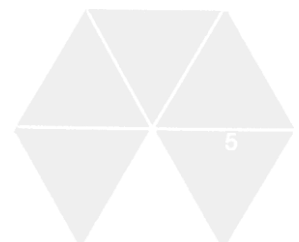
**"Regulator Correspondence"** means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under the Contract.

**"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 Concessionaire is established.

**"Replacement Concessionaire"** means any third party contractor appointed by the Authority to provide 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.

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



**"Restricted Country" means.**

- a) any country outside the European Economic Area; and
- b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC.

**"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 Concessionaire for use in relation to the performance of its obligations under the Contract; or
- b) the result of any work done by the Concessionaire or any Staff in relation to the provision of the Services.

**"Returning Employees" means those persons agreed by the Parties to be employed by the Concessionaire (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Term.**

**"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.**

**"Services" means the services set out in Schedule 1 (including any modified or alternative services) that the Concessionaire is required to provide in respect of the Awarded Lot.**

**"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 provided under the Contract as set out in Schedule 1 including, where appropriate, the Quality Standards.**

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

**"Staff" means all persons employed by the Concessionaire to perform its obligations under the Contract together with the Concessionaire's servants, agents, suppliers and Sub-Contractors used in the performance of its 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.**

**"Tender" means the Concessionaire's tender submitted in response to the Authority's ITT for offers to supply the Services in respect of the Awarded Lot.**

**"Term" means the period from the Commencement Date to the End Date 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 IP Claim"** has the meaning given to it in clause E8.5 (Intellectual Property Rights).

**"Third Party Software"** means software which is proprietary to any third party which is or will be used by the Concessionaire to provide the Services including the software and which is specified as such in Schedule 5.

**"Treaties"** means the TFEU and the Treaty on European Union.

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

**"TUPE Information"** means the information set out in clause B9.1.

**"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;
- (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.

## **Authority Obligations**

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, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Concessionaire.

### **A3 Concessionaire's Status**

- A3.1 The Concessionaire 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.
- 3.2 The Concessionaire 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 Concessionaire is acting as the agent or employee of the Authority

### **A4 Mistakes in Information**

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

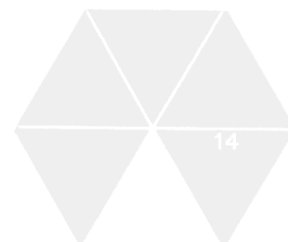
### **A5 Term**

- A5.1 The Services will commence on 1<sup>st</sup> August 2018 (the "Commencement Date") and the Contract will end on 31<sup>st</sup> July 2023 (the "End Date") unless it is terminated early in accordance with the Contract.
- A5.2 The exclusivity period will be the period from and including the 1<sup>st</sup> April 2019 until the End Date (the "Exclusivity Period").

## **B. THE SERVICES CO-CONSTRUCTION**

### **B1 Basis of the Contract**

- B1.1 In consideration of the Concessionaire being granted an exclusive right by the Authority to supply Qualifications to Education Providers in respect of the Awarded Lot, the Concessionaire shall supply the Services and perform its obligations under the Contract.
- B1.2 In accordance with clause B1.1 above:
- (a) from the Commencement Date until the Exclusivity Period



- (1) Existing Education Providers **will be permitted but not mandated** to purchase Qualifications in respect of all prisoners who newly commence a course in a Curriculum Area or Curriculum Areas covered by the Awarded Lot, in accordance with the Fees; and
    - (2) Education Providers **will be mandated** to purchase Qualifications in respect of all prisoners who newly commence a course in a Curriculum Area or Curriculum Areas covered by the Awarded Lot, in accordance with the Fees;
  - (b) during the Exclusivity Period the Authority will **mandate** that all Education Providers shall only use/purchase the **Concessionaire's Qualifications** in respect of all prisoners who newly commence a course in a Curriculum Area or Curriculum Areas covered by the Awarded Lot, in accordance with the Fees;
  - (c) from the Commencement Date until the End Date, Her Majesty's Prison and Probation Service in Wales and/or organisations delivering education in prisons in Wales may purchase Qualifications in respect of all prisoners who newly commence a course in a Curriculum Area or Curriculum Areas covered by the Awarded Lot, in accordance with the Fees, but will not be mandated to do so; and
  - (d) from the Commencement Date until the End Date, where the Authority is delivering in-house education in prisons in England, the Authority will purchase Qualifications in respect of all prisoners who newly commence a course in a Curriculum Area or Curriculum Areas covered by the Awarded Lot, in accordance with the Fees.
- B1.3 For the avoidance of doubt, the Authority shall not be a party to any contract entered into between an Education Provider and the Concessionaire and/or an Existing Education Provider and the Concessionaire, pertaining to this Contract, nor act as an agent or employee of the Concessionaire in relation to such contract.
- B1.4 The terms and conditions contained in the Contract apply to the exclusion of any other terms and conditions the Concessionaire seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## **B2 Services**

- B2.1 The Supplier 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 Concessionaire shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Concessionaire shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B2.2 The Concessionaire acknowledges that the Authority relies on the skill and judgment of the Concessionaire in the supply of the Services and the performance of the Concessionaire's obligations under the Contract.

- B2.3 The Concessionaire shall 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. The Concessionaire shall ensure that those Staff are properly managed and supervised.
- B2.4 If the Specification includes installation of equipment the Concessionaire 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 Concessionaire,
- (a) accept the installation; or
  - (b) reject the installation and inform the Concessionaire **why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.**
- B2.5 If the Authority rejects the installation pursuant to clause B2.4 (b), the Concessionaire shall **immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not, within 2 Working Days or such other period agreed by the Parties, comply with the Specification, the Authority may terminate the Contract with immediate effect.**
- B2.6 The installation is complete when the Concessionaire receives a notice issued by the Authority in accordance with clause B2.4 (a). Notwithstanding acceptance of any installation in accordance with clause B2.4 (a), the Concessionaire 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.
- B2.7 During the Term, the Concessionaire shall:
- (a) at all times have all licences, approvals and consents necessary to enable the Concessionaire and Staff to carry out the installation;
  - (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
  - (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.
- B2.8 The Authority may inspect the manner in which the Concessionaire supplies any of the Services at Authority Premises during normal business hours on reasonable notice. The Concessionaire shall provide at its own cost all such facilities as the Authority may reasonably require for such inspection. In this clause B2, Services include planning or preliminary work in connection with the supply of the Services.
- B2.9 If reasonably requested to do so by the Authority, the Concessionaire shall co-ordinate its activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.
- B2.10 *Timely supply of the Services is of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified***



***date. If the Concessionaire fails to supply the Services within the time promised or specified in the Specification, the Authority may terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority .***

- B2.11 If the Authority informs the Concessionaire in writing that the Authority reasonably believes that any part of the Services do 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 Concessionaire 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.
- B2.12 If, in delivering the Services, the Concessionaire is required to visit Authority Premises which are prisons, the Concessionaire shall comply with Schedule 6.

### **B3 Equipment**

- B3.1 The Concessionaire shall provide all the Equipment and resource necessary for the supply of the Services.
- B3.2 The Concessionaire shall not deliver any Equipment to, or begin any work on, Authority Premises without Approval.
- B3.3 All Equipment brought onto Authority Premises is at the Concessionaire's own risk and the Authority has no liability for any loss of or damage to any Equipment unless the Concessionaire demonstrates that such loss or damage was caused or contributed to by the Authority's Default. The Concessionaire shall provide for the haulage or carriage thereof to the Authority Premises and the removal of Equipment when no longer required at its sole cost.
- B3.4 Equipment brought onto Authority Premises remains the property of the Concessionaire.
- B3.5 If the cost of any Equipment is reimbursed to the Concessionaire such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Concessionaire will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.
- B3.6 The Concessionaire shall, at the Authority's request, at its own cost and as soon as reasonably practicable:
- (a) remove immediately from Authority Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B3.7 Within 20 Working Days of the end of the Term, the Concessionaire shall remove any Equipment together with any other materials used by the Concessionaire to supply the Services from Authority Premises and shall leave the relevant Authority Premises in a clean, safe and tidy condition. The Concessionaire shall make good any damage to those Authority Premises and any fixtures and fitting in the Authority Premises which is caused by the Concessionaire or Staff.

## **B4 Staff**

**B4.1** The Authority may, by notice to the Concessionaire, refuse to admit onto, or withdraw permission to remain on, 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.

**B4.2** The Authority shall maintain the security of Authority Premises in accordance with its standard security requirements, including Prison Rules 1999 Part III, the Prison (Amendment) Rules 2005, the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008, available to the Concessionaire on request. The Concessionaire shall comply with all security requirements of the Authority while on Authority Premises, and ensure that all Staff comply with such requirements.

**B4.3** The Authority may search any persons or vehicles engaged or used by the Concessionaire at Authority Premises.

**B4.4** The Concessionaire shall not, and shall procure that all Staff shall not, take photographs on Authority Premises without Approval.

**B4.5** At the Authority's written request, the Concessionaire 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 Authority Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

**B4.6** The Concessionaire 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.

**B4.7** The Concessionaire 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.

**B4.8** The Concessionaire shall comply with PSI 10/2012 as amended from time to time and available from the Authority on request.

## **5 Due Diligence**

Save as the Authority may otherwise direct, the Supplier is deemed to have completed due diligence in relation to all matters connected with the performance of its obligations under the Contract before submitting its Tender.

## **B6 Licence to Occupy**

- B6.1** Any land or Authority Premises made available from time to time to the Concessionaire by the Authority in connection with the Contract are on a non-exclusive licence basis free of charge and are used by the Concessionaire solely for the purpose of performing its obligations under the Contract. The Concessionaire has the use of such land or Authority Premises as licensee and shall vacate the same on termination of the Contract.
- B6.2** The Concessionaire shall limit access to the land or Authority Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Concessionaire shall co-operate (and ensure that its Staff co-operate) with other persons working concurrently on such land or Authority Premises as the Authority may reasonably request.
- B6.3** If the Concessionaire requires modifications to Authority Premises such modifications are subject to Approval and shall be carried out by the Authority at the Concessionaire's cost. The Authority shall undertake Approved modification work without undue delay.
- B6.4** The Concessionaire 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 Authority Premises as determined by the Authority.
- B6.5** The Contract does not create a tenancy of any nature in favour of the Concessionaire 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 Authority Premises owned or occupied by it in any manner it sees fit.

## **B7 Property**

- B7.1** All Property is and remains the property of the Authority and the Concessionaire irrevocably licenses the Authority and its agents to enter any Authority Premises used by the Concessionaire during normal business hours on reasonable notice to recover any such Property.
- B7.2** The Concessionaire does not have a lien or any other interest on the Property and the Concessionaire at all times possesses the Property as fiduciary agent and bailee of the Authority. The Concessionaire 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.



- B7.3 The Property is deemed to be in good condition when received by or on behalf of the Concessionaire unless the Concessionaire notifies the Authority otherwise within 5 Working Days of receipt.
- B7.4 The Concessionaire 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.
- B7.5 The Concessionaire shall ensure the security of all the Property whilst in its possession, either on the Authority Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- B7.6 The Concessionaire is liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Concessionaire shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B8 Offers of Employment**

- B8.1 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.
- B8.2 If either Party breaches the clause B8.1, 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.
- B8.3 The Parties agree that the sum specified in clause B8.2 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 B8.1

## **B9 Employment**

- B9.1 No later than 12 Months prior to the end of the Term, the Concessionaire shall fully and accurately disclose to the Authority all information the Authority may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement terminates at the end of the Term, save for any operation of Law;
  - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B9.1 (a);
  - (c) the terms and conditions of employment/engagement of the Staff referred to in clause B9.1 (a), their job titles and qualifications;
  - (d) their immigration status;



- (e) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
  - (f) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B9.2** At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Concessionaire shall give the Authority updated TUPE Information.
- B9.3** Each time the Concessionaire supplies TUPE Information to the Authority it warrants its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Concessionaire.
- B9.4** The Authority may use TUPE Information it receives from the Concessionaire for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Term. The Concessionaire shall provide the Replacement Concessionaire with such assistance as it shall reasonably request.
- B9.5** If TUPE applies to the transfer of the Services on termination or partial termination of the Contract, the Concessionaire indemnifies and keeps indemnified the Authority, the Crown and any Replacement Concessionaire against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Concessionaire may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
  - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Concessionaire or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
  - (c) any failure by the Concessionaire or any Sub-Contractor to comply with its obligations under regulations 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Concessionaire to comply with its duties under regulation 13 of TUPE;
  - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Concessionaire or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
  - (e) any claim by any person who is transferred by the Concessionaire to the Authority and/or a Replacement Concessionaire whose name is not included in the list of Returning Employees.

- B9.6 If the Concessionaire is aware that TUPE Information has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date and accurate TUPE Information.
- B9.7 This clause B9 applies during the Term and indefinitely thereafter.
- B9.8 The Concessionaire undertakes to the Authority that, during the 12 Months prior to the end of the Term the Concessionaire shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Concessionaire and the Staff in the normal course of business and where any such amendment or variation is not in any way related to the transfer of the Services),
  - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Concessionaire, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
  - (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## **C PAY E T**

### **C1 Fees**

- C1.1 The Concessionaire shall charge the Fees to Education Providers, Existing Education Providers, Her Majesty's Prison and Probation Service in Wales and the Authority, in accordance with clause B1 and Schedule 2, notwithstanding any other terms and conditions of the contracts that the Concessionaire enters into with these entities. No variation to the Fees will be permitted.

### **C2 Volume discount rebate payable by the Concessionaire to the Authority**

- C2.1 The Concessionaire will pay the Qualifications volume discount rebate to the Authority in accordance with Schedule 2 and this clause C2.1. The Qualifications volume discount rebate will be calculated as a percentage of the aggregated annual spend on Qualifications purchased by Education Providers, Existing Education Providers, Her Majesty's Prison and Probation Service in Wales and/or the Authority, in accordance with clause B1, clause C1 and Schedule 2 of this Contract. The Qualifications volume discount rebate will be calculated

annually each United Kingdom financial year commencing 6<sup>th</sup> April, and will be paid annually to the Authority within 30 days following the end of each United Kingdom financial year, for the duration of the Term.

### **C3 Recovery of Sums Due**

- C3.1 If under the Contract any sum of money is recoverable from or payable by the Concessionaire to the Authority (including any sum which the Concessionaire 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 Concessionaire from the Authority under the Contract or under any other agreement with the Authority or the Crown.
- C3.2 Any overpayment by either Party, is a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Concessionaire shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Concessionaire has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Concessionaire.
- C3.4 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.

## **. STATUTORY OBLIGATIONS**

### **1 Fraud and Bribery**

- D1.1 The Concessionaire represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Concessionaire shall not during the Term:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- D1.3 The Concessionaire shall, during the Term:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
  - (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.
- D1.4 The Concessionaire shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:
  - (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.
- D1.5 If the Concessionaire notifies the Authority pursuant to clause D1.4, the Concessionaire shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation.
- D1.6 If the Concessionaire is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:
  - (a) require the Concessionaire to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
  - (b) immediately terminate the Contract.
- D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract terminates).

## **D2 Equality**

D2.1 The Concessionaire shall:

- (a) perform its obligations under the Contract in accordance with:

- i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
  - i') the Authority's equality and diversity policy as given to the Concessionaire from time to time;
  - ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

### **D3 Health and Safety**

**D3.1** The Concessionaire shall perform its obligations under the Contract in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Authority's health and safety policy while at Authority Premises.

**D3.2** Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Concessionaire shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

### **D4 Modern Slavery Act**

**D4.1** The Concessionaire shall, and procure that each of its Sub-Contractors shall, comply with:

- (a) all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 ("Slavery Act"); and
- (b) the Authority's anti-slavery policy as provided to the Concessionaire from time to time ("Anti-slavery Policy").

**D4.2** The Concessionaire shall:

- (a) implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
- (b) respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;



- (c) prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
  - (d) maintain a complete set of records to trace the supply chain of all Services provided to the Authority in connection with the Contract; and
  - (e) implement a system of training for its employees to ensure compliance with the Slavery Act.
- D4.3** The Concessionaire represents, warrants and undertakes on an ongoing basis during the Term that:
- (a) it conducts its business in a manner consistent with all applicable laws, regulations and codes including, the Slavery Act and all analogous legislation in place in any part of the world;
  - (b) its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate;
  - (c) neither the Concessionaire nor any of its Staff or any other persons associated with it:
    - i) has been convicted of any offence involving slavery and trafficking; or
    - ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence in connection with slavery and trafficking.
- D4.4** The Concessionaire shall notify the Authority as soon as it becomes aware of:
- (a) any breach, or potential breach, of the Anti-Slavery Policy; or
  - (b) any actual or suspected slavery or trafficking in a supply chain which is connected with the Contract.
- D4.5** If the Concessionaire notifies the Authority pursuant to clause D4.4, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with the Contract.
- D4.6** If the Concessionaire is in Default under clauses D4.2 or D4.3 the Authority may by notice:
- (a) require the Concessionaire to remove from performance of the Contract any Staff or other persons associated with it whose acts or omissions have caused the Default; or
  - (b) immediately terminate the Contract.

## PROTECTION OF INFORMATION

### Authority Data

- E1.1 For the purposes of clauses E1 and E2, the terms **"Data Controller"**, **"Data Processor"**, **"Data Subject"**, **"Personal Data"**, **"Process"** and **"Processing"** have the meanings prescribed in Data Protection Laws.
- E1.2 The Concessionaire shall:
- (a) not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Concessionaire of its obligations under the Contract or as otherwise Approved;
  - (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 Concessionaire, supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification;
  - (e) perform secure back-ups of all Authority Data and ensure that up-to-date back-ups are stored securely off-site. The Concessionaire shall ensure that such back-ups are made available to the Authority immediately upon request;
  - (f) ensure that any system on which the Concessionaire 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; and
  - (i) notify the Authority immediately and inform the Authority of the remedial action the Concessionaire 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.
- E1.3 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Concessionaire's Default so as to be unusable, the Authority may:
- (a) require the Concessionaire (at the Concessionaire's expense) to restore or procure the restoration of Authority Data and the Concessionaire shall do so promptly, and/or



- (b) itself restore or procure the restoration of Authority Data, and be repaid by the Concessionaire any reasonable expenses incurred in doing so.

## **E2 Data Protection and Privacy**

### **E2.1 The Concessionaire shall:**

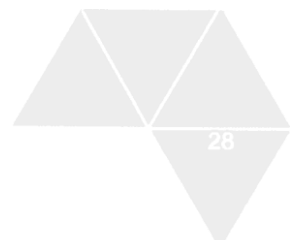
- (a) (and shall procure that all its Staff) comply with any notification requirements under Data Protection Laws and both Parties will duly observe all their obligations under Data Protection Laws which arise in connection with the Contract;
- (b) in conjunction with the Authority, in its own right and in respect of the Services, make all necessary preparations to ensure it is compliant with the GDPR on its implementation; and
- (c) provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations in this clause E2.

### **E2.2 Notwithstanding the obligation in clause E2.1, if the Concessionaire is Processing Personal Data as a Data Processor for the Authority the Concessionaire shall:**

- (a) prior to the processing of any Personal Data and if requested by the Authority provide a privacy impact assessment to the Authority which shall include:
  - i. a systematic description of the envisaged processing operations and the purpose of the processing;
  - ii. an assessment of the necessity and proportionality on the processing operations in relation to the Services;
  - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- (b) implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected including the measures as are set out in clause E1 (Authority Data), clause E7 (Security);
- (c) Process the Personal Data only in accordance with written instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Authority;



- (d) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Concessionaire's obligations under the Contract or as required by Law or any Regulatory Body;
- (e) maintain a record of all categories of processing activities carried out on behalf of the Authority, containing:
  - i) the categories of processing carried out on behalf of the Authority;
  - ii) where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.
- (f) take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that Staff:
  - i) are aware of and comply with the Concessionaire's obligations in clauses E1, E2 and E4;
  - ii) are subject to appropriate confidentiality undertakings;
  - iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise allowed by the Contract; and
  - iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (g) not disclose or transfer the Personal Data to, or allow the processing of Personal Data by any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- (h) notify the Authority within 48 hours if it:
  - i) receives from a Data Subject (or third party on their behalf): A Data Subject Access Request (or purported Data Subject Access Request); a request to rectify, block or erase any Personal Data; or any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
  - ii) considers that any of the Authority's instructions from the Authority infringe the Data Protection Laws;
  - iii) receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract;
  - iv) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or



- v) is required by Law to commit an act or omission that would, but for clause E2.10, constitute a breach of this clause E2.

**E2.3** The Concessionaire shall cooperate with and assist the Authority (within the timescales reasonably required by the Authority) in relation to either Party's obligations under Data Protection Laws or any complaint, communication or request made pursuant to clause E2.2(h), including by promptly providing:

- (a) full details and copies of the complaint, communication or request;
- (b) if applicable, such assistance as reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the Data Protection Laws;
- (c) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (d) assistance following a Data Loss Event as required by the Authority including with respect to the conduct of a data protection impact assessment and the Authority's consultation with the Information Commissioner's Office.

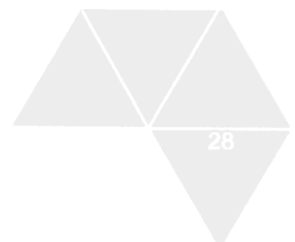
**E2.4** The Concessionaire shall, if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause E2 and provide to the Authority copies of all documentation relevant to such compliance including, processing records, procedures, guidance, training and manuals.

**E2.5** The Concessionaire shall allow the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E9 (Audit), the Concessionaire's Processing activities (and/or those of Staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Concessionaire is in full compliance with its obligations under the Contract.

**E2.6** The Concessionaire shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without Approval. If, after the Commencement Date, the Concessionaire or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the Concessionaire shall, in seeking Approval, submit such information as the Authority requires in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into the Contract at the Concessionaire's cost and expense using the Change Control Procedure.

**E2.7** If there is a Data Loss Event the Concessionaire shall:

- (a) notify the Authority immediately and in any event no later than 12 hours after becoming aware of a Data Loss Event, and such notice shall describe the event including the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
- (b) cooperate fully with Authority investigations into the Data Loss Event;



- (c) provide immediate access to the Concessionaire's premises and systems for the purposes of any investigation under clause E2.5;
- (d) take all necessary actions to remedy the causes of the Data Loss Event and to ensure the protection of Personal Data from any further loss;
- (e) not make any public statement of any kind without Approval; and
- (f) if appropriate, assist the Authority to notify the Information Commissioner within 72 hours of becoming aware of the Data Loss Event.

**E2.8** At the end of the Term, at the Authority's request, the Concessionaire shall delete or return all Personal Data to the Authority and delete any copies of Personal Data except where required to retain copies by Law.

**E2.9** The Concessionaire shall:

- (a) comply with Data Protection Laws and not perform its obligations in such a way as to cause the Authority to breach any of its obligations under the Data Protection Laws;
- (b) use reasonable endeavours to assist the Authority to comply with any of its obligations under the Data Protection Laws;
- (c) not perform its obligations in a way which causes the Authority to breach any of its obligations under the Data Protection Laws to the extent the Concessionaire is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations; and
- (d) indemnify the Authority against all Losses incurred by the Authority arising from the Concessionaire's Default under this clause E2 and/or any failure by the Concessionaire or any Sub-Contractor to comply with their respective obligations under the Data Protection Laws.

**E2.10** Nothing in this clause E2 is construed as requiring the Concessionaire or any Sub-Contractor to be in breach of any Data Protection Laws.

**E2.11** This clause E2 applies during the Term and indefinitely after its expiry.

### **E3 Official Secrets Acts and Finance Act**

**E3.1** The Concessionaire shall comply with:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989

#### **E4 Confidential Information**

- E4.1** Except to the extent set out in this clause E4 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.
- E4.2** The Concessionaire 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.
- E4.3** If required by the Authority, the Concessionaire 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 Concessionaire shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.
- E4.4** If requested by the Authority, the Concessionaire 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 Concessionaire shall ensure that Staff, professional advisors and consultants are aware of the Concessionaire's confidentiality obligations under the Contract.
- E4.5** The Concessionaire 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
- E4.6** The Concessionaire 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.
- E4.7** Clause E4.1 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.



**E4.8** Nothing in clause E4.1 prevents the Authority disclosing any Confidential Information obtained from the Concessionaire:

- (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 Concessionaire hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government 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 E4.8 (d) and (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.

**E4.9** Nothing in clauses E4.1 to E4.6 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.

**E4.10** The Authority shall use reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Concessionaire's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.

**E4.11** If the Concessionaire does not comply with clauses E4.1 to E4.8 the Authority may terminate the Contract immediately on notice.

**E4.12** To ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Concessionaire shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

**E4.13** The Concessionaire 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 Concessionaire has failed to comply with clause E4.12.

## **5 Freedom of Information**

- E5.1 The Concessionaire acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- E5.2 The Concessionaire 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 to directly to a Request for Information unless authorised to do so in writing by the Authority.
- E5.3 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.

## **E Publicity, Media and Official Enquiries**

- E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, without the written consent of the other Party.
- E6.2 The Concessionaire shall use reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

## **E7 Security**

- E7.1 The Authority may give the Concessionaire upon request copies of its written security procedures.

- E7.2 The Concessionaire shall, as an enduring obligation during the Term, use the latest versions of anti virus programs available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E7.3 Notwithstanding clause E7.2, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.
- E7.4 Any cost arising out of the actions of the Parties taken in compliance with clause E7.3 shall be borne by the Parties as follows:
- (a) by the Concessionaire where the Malicious Software originates from the Concessionaire Software, the Third-Party Software or the Authority Data (whilst the Authority Data was under the control of the Concessionaire); and
  - (b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

## **E8 Intellectual Property Rights**

### **E8.1 All Intellectual Property Rights in:**

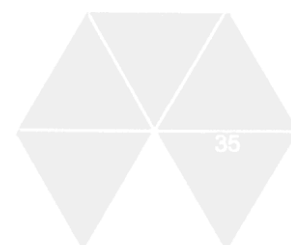
- (a) the Results; or
- (b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is furnished to or made available to the Concessionaire by or on behalf of the Authority (together with the Results, the "IP Materials")

shall vest in the Authority (save for Copyright and Database Rights which shall vest in Her Majesty the Queen) and the Concessionaire 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 Concessionaire of its obligations under the Contract.

### **E8.2 The Concessionaire 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 Concessionaire; and
- (b) to Her Majesty the Queen, 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.



**E8.3 The Concessionaire shall:**

- (a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract;
- (b) ensure that the third party owner of any Intellectual Property Rights that 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 shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Crown, the Replacement Concessionaire or to any other third party supplying goods and/or services to the Authority ("**Indemnified Persons**");
- (c) not infringe any Intellectual Property Rights of any third party in supplying the Services; and
- (d) during and after the Term, indemnify and keep indemnified the Authority and Indemnified Persons from and against 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 E8.3, except to the extent that any such claim results directly from:
  - i) items or materials based upon designs supplied by the Authority; or
  - ii) the use of data supplied by the Authority which is not required to be verified by the Concessionaire under any provision of the Contract.

**E8.4** The Authority shall notify the Concessionaire 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 Concessionaire to the Authority.

**E8.5** The Concessionaire 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 Concessionaire or Indemnified Person) arising from the performance of the Concessionaire's obligations under the Contract ("**Third Party IP Claim**"), provided that the Concessionaire 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)

**E8.6** The Authority shall, at the request of the Concessionaire, afford to the Concessionaire all reasonable assistance for the purpose of contesting any Third-Party IP Claim and the Concessionaire shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Concessionaire shall not be required to indemnify the Authority under this clause E8.6 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.3 (d) i) and ii).

**E8.7** The Authority shall not, without the Concessionaire's consent, make any admissions which may be prejudicial to the defence or settlement of any Third-Party IP Claim.

**E8.8** If any Third-Party IP Claim is made or in the reasonable opinion of the Concessionaire is likely to be made, the Concessionaire 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 E8.3 (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,

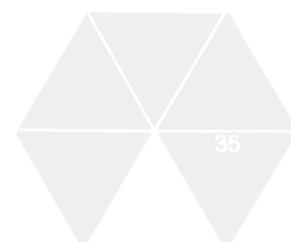
and if the Concessionaire is unable to comply with clauses E8.8 (a) or (b) within 20 Working Days of receipt by the Authority of the Concessionaire's notification the Authority may terminate the Contract immediately by notice to the Concessionaire.

**E8.9** The Concessionaire grants to the Authority and, if requested by the Authority, to a Replacement Concessionaire, a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Concessionaire owned or developed prior to the Commencement Date and which the Authority (or the Replacement Concessionaire) reasonably requires in order for the Authority to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

## **E9 Audit**

**E9.1** The Concessionaire 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, any expenditure reimbursed by the Authority, all Fees received from Education Providers and/or Existing Education Providers, and any 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;
- (c) make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Concessionaire in relation to the Services;
- (d) allow authorised representatives of the Authority and/or the National Audit Office to examine the Concessionaire's records and documents relating to the Contract and provide such copies and oral or written explanations as may reasonably be required; and
- (e) 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 Concessionaire shall provide such explanations as are reasonably required for these purposes.

## **E10 Tax Compliance**

**E10.1** If, during the Term, an Occasion of Tax Non-Compliance occurs, the Concessionaire 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.

**E10.2** If the Concessionaire or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Concessionaire 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 and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Concessionaire or any Staff.

## **F CONTROL OF THE CONTRACT**

### **F1 Contract performance**

- F1.1** The Concessionaire 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** On or around 12 Months from the Commencement Date and each anniversary of the Commencement Date thereafter, the Authority may carry out a review of the performance of the Concessionaire (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 Concessionaire's delivery of the Services;
  - b) the Concessionaire'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 any key milestones.
- F1.3** The Concessionaire 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 there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Concessionaire's obligations under the Contract.
- F1.5** The Authority shall give the Concessionaire a copy of the Review Report (if applicable). The Authority shall consider any Concessionaire comments and may produce a revised Review Report.
- F1.6** The Concessionaire 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 Concessionaire's failure to meet its obligations under the Contract identified by the Review Report, or those which result from the Concessionaire's failure to meet the Authority's expectations notified to the Concessionaire or of which the Concessionaire ought reasonably to have been aware) shall be implemented at no extra cost to the Authority.





## **F Remedies**

- F2.1** If the Authority reasonably believes the Concessionaire 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 Concessionaire has demonstrated to the Authority's reasonable satisfaction that the Concessionaire 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 and thereafter itself supply or procure a third party to supply such part of the Services; and/or
  - (c) terminate the Contract in accordance with clause H2.
- F2.2** If the Authority reasonably believes the Concessionaire 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 Concessionaire notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- F2.3** If the Concessionaire has been notified of a failure in accordance with clause F2.2 the Authority may direct the Concessionaire 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 charge to the Authority within the specified timescale.
- F2.4** If the Concessionaire has been notified of a failure in accordance with clause F2.2, 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 F2.4 and the progress of those measures until resolved to the satisfaction of the Authority.
- F2.5** If, having been notified of any failure, the Concessionaire fails to remedy it in accordance with clause F2.4 within 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 Concessionaire.





### **3 Transfer and Sub-Contracting**

- 3.1 Except where both clauses F3.6 and F3.7 apply, the Concessionaire 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 Concessionaire of any of its obligations or duties under the Contract.
- 3.2 The Concessionaire is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Concessionaire 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.
- F3.3 The Concessionaire 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 E9 (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 Concessionaire on the basis of such documents or work carried out by the Sub-Contractor.
- F3.4 If the Authority has consented to the award of a Sub-Contract, the Concessionaire shall ensure that:
- (a) the Sub-Contract contains:
    - i) a right for the Concessionaire to terminate the Sub-Contract if the relevant Sub-Contractor does not comply with its legal obligations in data protection, environmental, social or labour law; and
    - ii) obligations no less onerous on the Sub-Contractor than those on the Concessionaire under the Contract in respect of data protection in clauses E1 and E2
  - (b) the Sub-Contract includes a provision having the same effect as set out in clause F3.4 (a) in any Sub-Contract which it awards; and
  - (c) copies of each Sub-Contract are sent to the Authority immediately after their execution.
- F3.5 If the Authority believes there are:
- (a) compulsory grounds for excluding a Sub-Contractor pursuant to regulation 38 of the Regulations, the Concessionaire shall replace or not appoint the Sub-Contractor; or
  - (b) non-compulsory grounds for excluding a Sub-Contractor pursuant to regulation 38 of the Regulations, the Authority may require the Concessionaire to replace or not appoint the Sub-Contractor and the Concessionaire shall comply with such requirement.



- 3.6 Notwithstanding clause F3.1, the Concessionaire may assign to a third party (the **"Assignee"**) the right to receive payment of the Fees or any part thereof due to the Concessionaire. Any assignment under this clause F3.6 is subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (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 clause F3.7.
- F3.7 If the Concessionaire assigns the right to receive the Fees under clause F3.6, the Concessionaire or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F3.8 Clause C2 continues to apply in all other respects after the assignment and shall not be amended without Approval.
- 3.9 Subject to clause F3.10, 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 on the Concessionaire's obligations under the Contract.
- F3.10 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F3.11, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F3.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F3.9 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"**):
- (a) the rights of termination of the Authority in clauses H1 and H2 are available to the Concessionaire 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 Concessionaire.

- 3.12 The Authority may disclose to any Transferee any Confidential Information of the Concessionaire which relates to the performance of the Concessionaire'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 Concessionaire'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.
- 3.13 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 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Change subject to the terms of this clause F4.
- F4.2 The Authority may request a Change by notifying the Concessionaire in writing of the Change and giving the Concessionaire sufficient information to assess the extent of the Change and consider whether any change to the Fees is required in order to implement the Change within a reasonable time limit specified by the Authority. If the Concessionaire accepts the Change it shall confirm it in writing.
- F4.3 If the Concessionaire is unable to accept the Change or where the Parties are unable to agree a change to the Fees, the Authority may:
- (a) allow the Concessionaire to fulfil its obligations under the Contract without the Change; or
  - (b) terminate the Contract immediately except where the Concessionaire has already delivered all or part of the Services or where the Concessionaire 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 Concessionaire is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Concessionaire in addition to the warranties and representations set out in clause G2.
- 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.

## **LIABILITIES**

### **G1 Liability, Indemnity and Insurance**

#### **G1.1 Neither Party limits its liability for:**

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clauses D1, E1, E2 or E4;  
or
- (e) any liability to the extent it cannot be limited or excluded by Law.

#### **G1.2 Subject to clauses G1.3 and G1.4, the Concessionaire 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 Concessionaire of its obligations under the Contract or the presence of the Concessionaire or any Staff on Authority 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 Concessionaire, or any other loss which is caused directly by any act or omission of the Concessionaire.**

#### **G1.3 Subject to clause G1.1 the Concessionaire's annual aggregate liability in respect of the Contract does not exceed the annual total turnover of the Concessionaire (net of value added tax) in consideration for the Services.**

#### **G1.4 The Concessionaire is not responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.**

#### **G1.5 The Authority may recover from the Concessionaire the following losses incurred by the Authority to the extent they arise as a result of a Default by the Concessionaire:**

- (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 a Replacement Concessionaire for the remainder of the Term and or replacement deliverables which shall include any incremental costs



associated with the Replacement Concessionaire 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.

**G1.6** Subject to clauses G1.1 and G1.5, neither Party is liable to the other 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.

**G1.7** Unless otherwise specified by the Authority, the Concessionaire shall, with effect from the Commencement Date for such period as necessary to enable the Concessionaire 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 Concessionaire, arising out of the Concessionaire's performance of its obligations under the Contract including:

- (a) if required by the Authority, appropriate, professional indemnity insurance in the sum of not less than £5,000,000 (five million pounds) for any advice given by the Concessionaire to the Authority;
- (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 duration of the Term and for a minimum of 6 years following the end of the Term.

**G1.8** The Concessionaire 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.

**G1.9** If the Concessionaire 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 Concessionaire.

**G1.10** The provisions of any insurance or the amount of cover shall not relieve the Concessionaire of any liabilities under the Contract.

**G1.11** The Concessionaire 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 Concessionaire, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Concessionaire is an insured, a co-insured or additional insured person.

## **2        warranties and Representations**

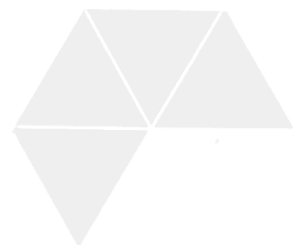
- G2.1    The Concessionaire warrants and represents on the Commencement Date and for the Term that:**
- (a)    it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Concessionaire;**
  - (b)    in entering the Contract it has not committed any fraud;**
  - (c)    all information contained in the Tender or other offer made by the Concessionaire 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 Concessionaire 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 Concessionaire'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 Concessionaire 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 Concessionaire has not been in existence for 3 years) prior to the date of the Contract:**
    - 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;
  - (j) 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; and
  - (k) the Qualifications supplied by the Concessionaire as part of the Services shall at all times be accredited qualifications that satisfy the relevant regulatory requirements of the Office of Qualifications and Examinations Regulation.
- G2.2 The Concessionaire 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 Concessionaire hereby waives and releases the Authority in respect thereof absolutely.

## **THE AUTHORITY DISRUPTIONS - TERMINATION**

### **1 Insolvency and Change of Control**

- H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire if the Concessionaire is a company and in respect of the Concessionaire:
- (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 H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire if the Concessionaire 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 Concessionaire's creditors,
- (b) a petition is presented and not dismissed within 14 days or order made for the Concessionaire's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Concessionaire'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 Concessionaire'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) to (g) occurs under the law of any other jurisdiction.

H1.3 The Concessionaire shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Concessionaire 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 Concessionaire within 6 Months of:

- (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.

**H1.4** The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire if the Concessionaire 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 (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 Concessionaire if the Concessionaire 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
- (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 (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 Concessionaire commits a Default and.

- (a) the Concessionaire 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, capable of remedy; or
- (c) the Default is a Material Breach.

H2.2 If, through any Default of the Concessionaire, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Concessionaire 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.

## **H3 Termination on Notice**

The Authority may from 1<sup>st</sup> January 2021, terminate the Contract, in whole or in part, at any time and without compensation to the Concessionaire, by giving 6 months' notice in writing to the Concessionaire.

## **H 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 43(9) of the Regulations;

- (b) the Concessionaire was, at the time the Contract was awarded, in one of the situations specified in regulation 38(8) of the Regulations, including as a result of the application of regulation 38(9), 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 Concessionaire 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 Concessionaire has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

## **5 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 Concessionaire 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 Save as otherwise expressly provided in the Contract:
- (a) termination (including partial termination) or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination (including partial termination) or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination (including partial termination) or expiry; and
  - (b) termination (including partial termination) of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Concessionaire under clauses C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection and Privacy), E3 (Official Secrets Acts and Finance Act), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination), H8 (Retendering and Handover), H9 (Exit Management), H10 (Knowledge Retention), I6 (Remedies Cumulative), and I1 (Governing Law and Jurisdiction).

## **H6 Disruption**

- H6.1 The Concessionaire 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.
- 6.2 The Concessionaire 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 Concessionaire shall seek Approva for its proposals to continue to perform its obligations under the Contract.

- H6.4 If the Concessionaire'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.
- 6.5 If the Concessionaire is unable to deliver the Services owing to disruption of the Authority's normal business, the Concessionaire may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Concessionaire as a direct result of such disruption.

## **H7 Recovery**

- H7.1 On termination of the Contract for any reason, the Concessionaire 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 Concessionaire in good working order;
  - (c) immediately vacate any Authority Premises occupied by the Concessionaire;
  - (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Concessionaire 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 Concessionaire to conduct due diligence.
- H7.2 If the Concessionaire does not comply with clauses H7.1 (a) and (b), the Authority may recover possession thereof and the Concessionaire grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Concessionaire or its suppliers or Sub-Contractors where any such items may be held.

## **H8 Retendering and Handover**

- H8.1 Within 21 days of being requested by the Authority, the Concessionaire shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.
- H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.



- H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.
- 8.4 The Concessionaire indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Concessionaire is required to provide under clause H8.1.
- H8.5 The Concessionaire shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation includes allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- H8.6 Within 10 Working Days of being requested by the Authority, the Concessionaire shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

## **H9 Exit Management**

- H9.1 On termination (including partial termination) of the Contract the Concessionaire shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Concessionaire if required by the Authority, in accordance with the procedure set out in clauses H9.2 to H9.4.
- H9.2 If the Authority requires a continuation of all or any of the Services on expiry or termination of the Contract, either by performing them itself or by engaging a third party to perform them, the Concessionaire shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.
- H9.3 If requested to do so by the Authority, the Concessionaire shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.
- H9.4 Within one Month of receiving the software licence information described in clause H9.3, the Authority shall notify the Concessionaire of the licences it wishes to be transferred and the Concessionaire shall provide for the approval of the Authority a plan for licence transfer.

## **H10 Knowledge Retention**

The Concessionaire shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge, information and/or data transfer from the Concessionaire to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Concessionaire 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 Concessionaire shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

## **GE E**

### **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 Concessionaire and the commercial director of the Authority.
- 1.2** 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.
- 1.3** 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 Concessionaire 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;
  - (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

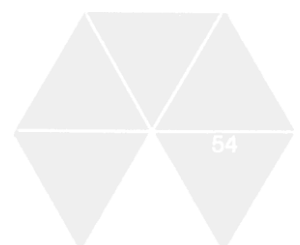
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 11.6.

11.6 Subject to clause 11.2, the Parties shall not institute court proceedings until the procedures set out in clauses 11.1 and 11.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Concessionaire requiring the dispute to be referred to and resolved by arbitration in accordance with clause 11.7;
- (b) if the Concessionaire 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 Concessionaire requiring the dispute to be referred to and resolved by arbitration in accordance with clause 11.7; and
- (c) the Concessionaire may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 11.7, to which the Authority may consent as it sees fit.

11.7 If any arbitration proceedings are commenced pursuant to clause 11.6:

- (a) the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Concessionaire (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 11.7 (b) 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 11.7 (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
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.





## **2 Force majeure**

- 12.1** Subject to this clause 12, a Party may claim relief under clause 61 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 directly affected by a Force Majeure Event. Any failure or delay by the Concessionaire in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be 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 Concessionaire.
- 12.2** 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.
- 12.3** If the Concessionaire is the Affected Party, it is not entitled to claim relief under this clause 12 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Concessionaire 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.
- 12.4** Subject to clause 12.5, 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.
- 12.5** 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 Concessionaire 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.
- 12.6** If, as a result of a Force Majeure Event
- 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 shall not be 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; and
  - ii) neither Party shall be liable for any Default arising as a result of such failure.



- 2.7 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.
- 2.8 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 Bravo.
- 3.2 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 12 (Force Majeure), 11 (Dispute Resolution) 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]

REDACTED UNDER S.40 FOIA  
(PERSONAL INFORMATION)

Any notices must also be copied to [REDACTED] at the e-mail address: [REDACTED]

(b) For the Concessionaire:

REDACTED UNDER S.40 FOIA  
(PERSONAL INFORMATION)

Contact Name: [REDACTED]

REDACTED UNDER S.40 FOIA  
(PERSONAL INFORMATION)

Address: [REDACTED]

Email: [REDACTED]

REDACTED UNDER S.40 FOIA  
(PERSONAL INFORMATION)

### **Conflicts of Interest**

- 14.1 The Concessionaire shall take appropriate steps to ensure that neither the Concessionaire 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 Concessionaire and the duties owed to the Authority under the Contract. The Concessionaire 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 Concessionaire 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 Concessionaire 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 Clauses B9.5, C1.1 and E8.3 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 15.1, 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.

- 7.2 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 Concessionaire 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 Fees 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 Concessionaire 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 Fees or the Contract; and
    - (ii) relief from compliance with the Concessionaire's obligations is required; and
  - (b) provide the Authority with evidence:
    - (i) that the Concessionaire 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.

- 10.3 Any variation in the Fees or relief from the Concessionaire'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.

**1 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 Concessionaire 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.





## **SCHEDULE 1 – SPECIFICATION**

### **1. SERVICE REQUIREMENTS**

#### **1.1. Curriculum Areas/Contract Lots**

There are seven specific Curriculum Areas covered by this Specification.

Each Curriculum Area equates to a separate Lot:

- English - Lot 1
- English for Speakers of Other Languages (ESOL) – Lot 2
- Mathematics – Lot 3
- Information Communication Technology (ICT) – Lot 4
- Catering and Hospitality – Lot 5
- Construction, Planning and the Built Environment – Lot 6
- Cleaning and Facilities Management – Lot 7

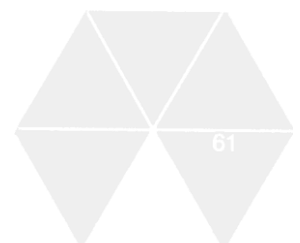
#### **1.2. Services requirements applicable to all Lots**

Qualifications in Lots 1, 3, 4, 5, 6 and 7 should cover the range from Entry Level up to and including Level 3 (including GCSEs and A Levels where appropriate).

Qualifications in Lot 2 should cover the range from Entry Level up to and including Level 2. Any Qualifications provided by the Concessionaire under a Lot must be approved by Ofqual must previously have been fundable under the Education and Skills Funding Agency (ESFA) regulations for adult learning provision.

Each Qualification supplied by the Concessionaire under a Lot must clearly indicate and provide:

- Learning outcomes for the Qualification
- Expected guided learning hours for the Qualification and expected total time to complete the Qualification
- Credit value for the Qualification/award of the Regulated Qualifications Framework (RQF)
- Links to any occupational/national occupational standards
- Any step off points during the award/modular awards contained within the Qualification
- Detailed content summary for the Qualification
- Assessment objectives for the Qualification
- Assessment methodologies for the Qualification
- Weightings of assessment objectives/methodologies for the Qualification
- Recommended texts/resources for the Qualification
- Centre requirements for the Qualification
- Sample assessment materials/past papers for the Qualification



- The appeal process in respect of the Qualification
- The complaint process in respect of the Qualification

In respect of any Qualifications provided under each Lot, the Concessionaire must ensure:

- Flexibility of exam entries for learners who are moved from prisons to other prisons and need to recommence studies
- Flexibility for learners who have specific or additional learning needs
- Clear guidelines of fee structures
- Clear guidelines on re-taking assessments
- Clear and adequate notice on updating/reviewing of Qualifications and provision of information which ensures delivery providers are kept up to date of any changes in specifications
- Clear and detailed grade descriptions
- Clear progression pathways between all levels of Qualifications offered
- Consideration of assessment methods for those in secure conditions with controlled access to the Internet
- Consideration of internal standardisation and external moderation for those in secure conditions with controlled access to the internet
- support services for learners and Education Providers for a period of 12 months following Contract expiry/termination (including partial termination) in respect of Qualifications where study has commenced prior to Contract expiry/termination (including partial termination)

In addition, the Concessionaire shall reach agreement with the Authority as to whether the Concessionaire must provide the following supplementary information in respect of each Qualification provided under any Lot:

- Sample schemes of work
- Sample lesson plans
- Sample teaching/learning materials
- Training courses to support delivery of the Qualification
- Web based support for delivery of the Qualification

### **1.3. Additional Services requirements for specific Lots**

#### **1.3.1. Lot 1: English**

The Lot 1 concessionaire must provide Qualifications for English from Entry Level through to Level 3, that shall include Functional Skills (and their reformed successor Qualifications) and (but not limited to) nationally recognised Qualifications such as GCSEs and A Levels.

The provision for of Qualifications for English must include all literacy skills based Qualifications encompassing the core skills of:  
reading

- writing
  - speaking
  - listening
  - spelling
  - punctuation
  - grammar
- and all combinations or variations.

### **1.3.2. Lot 2: English for Speakers of Other Languages (ESOL)**

The Lot 2 concessionaire must provide Qualifications for ESOL that shall include Entry Level through to Level 2 inclusive. Any ESOL qualifications must be based on the Adult Core Curriculum for ESOL covering the core skills of reading, writing, speaking and listening.

### **1.3.3. Lot 3: mathematics**

The Lot 3 concessionaire must provide Qualifications for Mathematics from Entry Level through to Level 3, that shall include Functional Skills (and their reformed successor Qualifications) and (but not limited to) nationally recognised Qualifications such as GCSEs and A Levels.

The provision of Qualifications for mathematics must include all numeracy skills based Qualifications encompassing the core skills of:

- Numbers
- Fractions
- Decimals/percentages
- Money
- Measurement, shape and space
- 2D and 3D shapes
- Time
- Working with/sorting/extracting information
- Mathematical skills/calculations
- Handling data
- Statistics
- Probability
- Algebra
- Geometry

and all combinations or variations.

### **1.3.4. Lot 4: Information Communication Technology (ICT)**

The Lot 4 concessionaire must provide Qualifications for Information and Communications Technology (ICT) from Entry Level through to Level 3, that shall include Functional Skills (and their reformed successor Qualifications) and (but not limited to) nationally recognised Qualifications such as GCSEs and A Levels. In addition, Information Technology

Qualifications must include user and software awards/certificates alongside those for computer science/computing.

### **1.3.5. Lot 5: Catering and Hospitality**

The Lot 5 concessionaire must provide Qualifications for Catering and Hospitality that shall include all Qualifications at Entry Levels and Levels 1, 2 and 3 and equivalents within the following suites of National Occupational Standards occupations:

- Chef
- Cook
- Kitchen Assistant
- Waiter/Waitress
- Bar Staff
- Bar Supervisor
- Drinks Dispense Technician
- Barista
- Hospitality and Catering Team Members
- Hospitality and Catering Supervisors

The Qualifications provided must include awards, certificates and diplomas relevant to the vocational area studied. Catering and Hospitality Qualifications falling outside these National Occupational Standards occupations do not form part of this Specification.

### **1.3.6. Lot 6: Construction, planning and the built environment**

The Lot 6 concessionaire must provide Qualifications for Construction and the built environment that shall include all Qualifications at Entry Levels and Levels 1, 2 and 3 and equivalents within the following National Occupational Standard occupations:

- Bricklayer and Mason
- Plasterer
- Carpenter and Joiner
- Shopfitter
- Construction and Building Trade Supervisors
- Painter and Decorator
- Floor and Wall Tiler
- Construction/Maintenance Operatives
- Roof Tilers and Slaters
- Scaffolders, Stagers and Riggers
- Plumber



The Qualifications provided must include awards, certificates and diplomas relevant to the vocational area studied. Qualifications falling outside these National Occupational Standards occupations do not form part of this Specification.

#### **1.3.7. Lot 7: Cleaning and Facilities Management**

The Lot 7 concessionaire must provide Qualifications for Cleaning and Facilities Management that shall include all Qualifications at Entry Levels and Levels 1, 2 and 3 and equivalents in the following suites of National Occupational Standards:

- Cleaning Support Operative
- Specialist Cleaning Operative
- Service Enterprise Operative
- Combined Facilities Support Activities/Operative  
Elementary Cleaning Operative
- Cleaning Supervisor  
Waste Management Operative

The Qualifications provided must include awards, certificates and diplomas relevant to the vocational area studied. Qualifications falling outside these National Occupational Standards occupations do not form part of this Specification.



## **2. PERFORMANCE AND MANAGEMENT OF THE SERVICES IN RESPECT OF ALL LOTS**

### **2.1.1. Monitoring the Concessionaire's performance of the Services**

The Concessionaire will comply with the performance requirements in clause F1 of the Contract.

As soon as reasonably practicable after the execution of the Contract, the Authority and the Concessionaire will agree an additional set of performance management requirements that will apply to the Concessionaire during the Term, and will be used by the Authority to monitor the Concessionaire's performance of the Contract. The performance management requirements will be formally documented in writing.

As a minimum the Concessionaire will provide Management Information (MI) reports as and detailed MI support data to allow the Authority to monitor the performance of the Services (for their intended purposes) and the Fees received by the Concessionaire.

The Concessionaire shall provide the MI reports to the Authority at such frequency, for such purpose and in such format as specified by the Authority. Unless agreed otherwise by the Authority, the MI reports shall be delivered in electronic format.

The Concessionaire shall deliver MI reports to the Authority on a daily, weekly and monthly basis (as specified in respect of such MI report) or as otherwise agreed between the Authority and Concessionaire.

During the Term, the Concessionaire shall (at the Authority's request) meet regularly and/or engage with the Authority, other Awarding Organisations, Education Providers and Existing Education Providers to discuss the strategic objectives of the relationship between the parties, to monitor the performance of the Contract, to review the MI reports and to ensure the successful delivery of education to prisoner learners by Education Providers and Existing Education Providers.

### **2.1.2. Service Levels and Key Performance Indicators (KPIs)**

As soon as reasonably practicable after the execution of the Contract, the Concessionaire shall agree a set of service levels and key performance indicators (KPIs) with the Authority that will apply to the Contract during the Term. The service levels/KPIs will include (as a minimum):

The Concessionaire's performance against an agreed timescale for the award of each of the Qualifications post assessment, with that timescale to be specified by each Concessionaire based on their existing time frames for provision of qualifications. This will be monitored and measured by Education Providers and Existing Education Providers on behalf of the Authority and enforced by the Authority under this Contract.

The Concessionaire's performance against timelines set out in a published appeal process for the award of Qualifications, with those timelines specified by the

Concessionaire based on their existing appeals process. This service level/KPI must be agreed prior to the Commencement Date.

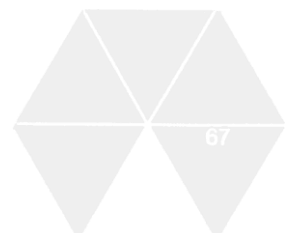
The Concessionaire's speed of response by a nominated curriculum support contact against a target response time to enable Education Providers and Existing Education Providers to be able to access advice/guidance from the Concessionaire. The details of the support contact, and target response times will be agreed in writing by the Concessionaire and the Authority prior to the Commencement Date.

- Any other service levels/KPIs that the Authority requires the Concessionaire to comply with determined by the Authority based on the Tender.

### **2.1.3. Concessionaire Roles and Responsibilities**

The Concessionaire must inform the Authority with sufficient notice of any key changes to any of the regulated Qualifications which fall within scope of this Contract. This also includes when the Concessionaire 'surrenders' recognition.

The Concessionaire must make available the Qualifications provided under the Awarded Lot(s).





## SCHEDULE 2 – FEES

The Fees that will be charged by the Concessionaire in respect of Qualifications provided under the Awarded Lot and in accordance with clause B1 and clause C1, are set out in this Schedule 2.

Where a Qualification listed in the Lot 7 table below includes a tendered price in respect of the Qualification, the tendered price will be the fixed price for the Qualification during the Term, that will be charged by the Concessionaire to Education Providers, Existing Education Providers, Her Majesty's Prison and Probation Service in Wales and the Authority.

Where a Qualification listed in the Lot 7 table below does not include a tendered price, the price of the Qualification that will be charged by the Concessionaire to Education Providers, Existing Education Providers, Her Majesty's Prison and Probation Service in Wales and the Authority, will be the list price for the Qualification valid at 5pm on 24 November 2017, subject to any discount offered in respect of the Qualification set out in the table below. The price for the respective Qualification will be fixed for the duration of the Term.

The Authority will not be liable for any non-payment of Fees by Education Providers and/or Existing Education Providers.

The Concessionaire grants its express permission for the Authority to disclose the Qualification pricing information contained in Schedule 2 to (i) the Existing Education Providers and (ii) organisations participating in the procurements for the Prison Education Framework and the prison education dynamic purchasing system, provided that the organisations execute non-disclosure agreements with the Authority in respect of the information disclosed.



## Lot 7 – Cleaning and Facilities Management Qualifications

2015-16 Enrolment Data	Awarding Body	Qualification Number	Qualification Title	Review of Qualification			Teaching and Assessment				Learning Support and Resources included within this offering	Costing			
				Qualification Title	Qualification Title	Qualification Title	Grading Type	Assessment Methods	Minimum Guided Learning Hours	Total Qualification Time (in Hours)		Details of Teacher Support	Details of Student Support	Estimated volumes	List Price (£)
Cleaning and Facilities Management Qualifications	WAMIT AB Level 1 Award in Cleaning Principles	601/754 8/5	WAMIT AB Level 1 Award in Cleaning Principles	1	RQF	1.4 Public Services	Pass/Fail	Exam - MCQ	44	35	Delivery slides, Tutors notes, template lesson plans, in-classroom activities				
Entry Level - Household Cleaning	WAMIT AB Level 1 Award in Practical Cleaning Skills (Washrooms)	601/422 8/5	WAMIT AB Level 1 Award in Practical Cleaning Skills (Washrooms)	1	RQF	7.3 Service Enterprises	Pass/Fail	Portfolio of Evidence	44	44	Qualifications Handbook Delivery slides, Tutors notes, template lesson plans, in-classroom activities				
Entry Level - Prepare and clean furniture fixtures and fittings	WAMIT AB Level 1 Award in Cleaning Principles	601/754 8/5	WAMIT AB Level 1 Award in Cleaning Principles	1	RQF	1.4 Public Services	Pass/Fail	Exam - MCQ	42	35	Qualifications Handbook learner workbook with activities				
Entry Level - Prepare and clean furniture fixtures and fittings	WAMIT AB Level 1 Award in Cleaning Principles	601/422 3/6	WAMIT AB Level 1 Award in Cleaning Principles	1	RQF	7.3 Service Enterprises	Pass/Fail	Portfolio of Evidence	42	42	Qualifications Handbook learner workbook with activities				

Entry Level - Prepare and clean interior walls and windows	20	WAMI TAB	601/422 5/X	WAMI TAB	601/422 5/X	1	RQF	7.3 Service Enterprises	2	Pass/Fail	Portfolio of Evidence	42	42	Qualifications Handbook	Qualification Handbook	
Entry Level - Prepare and clean stairs and landings	10	WAMI TAB	601/422 6/1	WAMI TAB	601/422 6/1	1	RQF	7.3 Service Enterprises	2	Pass/Fail	Portfolio of Evidence	42	42	Qualifications Handbook	Qualification Handbook	
Entry Level - Prepare, dry sweep and damp mop floor surfaces	60	WAMI TAB	601/422 0/0	WAMI TAB	601/422 0/0	1	RQF	7.3 Service Enterprises	2	Pass/Fail	Portfolio of Evidence	42	42	Qualifications Handbook	Qualification Handbook	
Entry Level - Recycling, Managing Waste	10	WAMI TAB	600/675 3/6	WAMI TAB	600/675 3/6	1	RQF	7.3 Service Enterprises	2	Pass/Fail	Exam - MCQ	31	52	Delivery slides, Tutors notes, template	learner workbook with activities	

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Fluids/Spillages/ Hazardous Items	410	WAMI TAB	601/422 0/0	In Practical Cleaning Skills (Bodily Fluids, Spillage s and Hazardo us Items)	1	RQF	7.3 Service Enterpris es	2	Pass/ Fail	Portfolio of Evidenc e	42	42	Qualific ations Handbo ok	Qualific ation Handbo ok				
Level 1 Award in Practical Cleaning Skills - Cleaning Floors (all variations)				WAMIT AB Level 1 Award In Practical Cleaning Skills (dry sweep and damp mop floors)														
Level 1 Award in Practical Cleaning Skills - Suction Clean Floors	150	WAMI TAB	601/422 7/3	WAMIT AB Level 1 Award In Practical Cleaning Skills (Suction Clean Floor Surface s)	1	RQF	7.3 Service Enterpris es	2	Pass/ Fail	Portfolio of Evidenc e	46	46	Qualific ation Handbo ok	Qualific ation Handbo ok	Delivery slides, Tutors notes, template lesson plans, in- classroo m activitie s	learner workbo ok with activities		
Level 1 Award in Waste and Recycling	1160	WAMI TAB	600/675 3/6	WAMIT AB Level 1 Award In Waste and Recyclin g	1	RQF	7.3 Service Enterpris es	2	Pass/ Fail	Exam - MCQ	31	52	Delivery slides, Tutors notes, template lesson plans, in- classroo m activitie s	learner workbo ok with activities				
Level 1 Certificate in Cleaning (all variations)	20	WAMI TAB	601/754 8/5	WAMIT AB Level 1 Award	1	RQF	1.4 Public Services	2	Pass/ Fail	Exam - MCQ	24	35	Delivery slides, Tutors notes,	learner workbo ok with				



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Level 1 - Clean and dispose of bodily fluids, spillages and hazardous items	140	WAMI TAB	601/421 9/4	WAMIT AB Level 1 Award in Practical Cleaning Skills (Bodily Fluids, Spillages and Hazardous Items)	1	RQF	7.3 Service Enterprises	2	Pass/Fail	Portfolio of Evidence	48	48	Qualifications Handbook	Qualification Handbook						
Level 1 - Clean surfaces using correct methods	530	WAMI TAB	601/754 8/5	WAMIT AB Level 1 Award in Cleaning Principles	1	RQF	1.4 Public Services		Pass/Fail	Exam - MCQ	24	35	Delivery slides, Tutors notes, template lesson plans, in-classroom activities	learner workbook with activities						
Level 1 - Introduction to Waste and Recycling	20	WAMI TAB	600/675 3/6	WAMIT AB Level 1 Award in Waste and Recycling	1	RQF	7.3 Service Enterprises	2	Pass/Fail	Exam - MCQ	31	52	Delivery slides, Tutors notes, template lesson plans, in-classroom activities	learner workbook with activities						
Level 1 - Introduction to working in the facilities industry	10	WAMI TAB	600/630 8/7	WAMIT AB Level 2 Certificate in Facilities Services	2	RCF			Pass/Fail	Portfolio of Evidence	21	69	Qualifications Handbook	Qualification Handbook						

Level 1 - Maintain personal hygiene standards when cleaning	470	WAMI TAB	601/754 8/5	WAMIT AB Level 1 Award in Cleaning Principles	1	RQF	1.4 Public Services	Pass/Fail	Exam - MCQ	24	35	Delivery slides, Tutors notes, template lesson plans, in-classroom activities	learner workbook with activities	
Level 1 - Prepare and clean a food area and appliances	40	WAMI TAB	601/421 6/9	WAMIT AB Level 1 Award in Practical Cleaning Skills (Food Areas and Appliances)	1	RQF	7.3 Service Enterprises	Pass/Fail	Portfolio of Evidence	42	42	Qualification Handbook	Qualification Handbook	
Level 1 - Prepare and clean hard floor surfaces using machinery	50	WAMI TAB	601/422 4/8	WAMIT AB Level 1 Award in Practical Cleaning Skills (Hard Floor Surfaces)	1	RQF	7.3 Service Enterprises	Pass/Fail	Portfolio of Evidence	48	48	Qualification Handbook	Qualification Handbook	
Level 1 - Prepare and clear areas for counter and takeaway service	10	WAMI TAB	601/421 6/9	WAMIT AB Level 1 Award in Practical Cleaning Skills (Food Areas and Appliances)	1	RQF	7.3 Service Enterprises	Pass/Fail	Portfolio of Evidence	42	42	Qualification Handbook	Qualification Handbook	
Level 1 - Prepare to work in the cleaning industry	50	WAMI TAB	601/754 8/5	WAMIT AB Level 1 Award	1	RQF	1.4 Public Services	Pass/Fail	Exam - MCQ	24	35	Delivery slides, Tutors notes,	learner workbook with activities	

Level 1 - Prepare, spray clean and buff floor surfaces	50	WAMI TAB	601/420 9/1	WAMIT AB Level 1 Award in Practical Cleaning Skills (Buff Floor Surfaces)	1	RQF	7.3 Service Enterpris es	2	Pass/ Fail	Portfolio of Evidenc e	54	54	Qualific ation Handbo ok	Qualific ation Handbo ok					
Level 1 - Use and store cleaning equipment and agents	380	WAMI TAB	501/189 0/0	WAMIT AB Level 2 Certificate in Cleaning and Support Services	2	RQF	1.4 Public Services	3	Pass/ Fail	Portfolio of Evidenc e	36	101	Qualific ation Handbo ok	Qualific ation Handbo ok					
Level 1 - Use electrically powered cleaning equipment effectively and safely	450	WAMI TAB	501/189 0/0	WAMIT AB Level 2 Certificate in Cleaning and Support Services	2	R	1.4 Public Services	3	Pass/ Fail	Portfolio of Evidenc e	36	101	Qualific ation Handbo ok	Qualific ation Handbo ok					
Level 2 Certificate for Sustainable Waste Management Operative (all variations)	180	WAMI TAB	501/185 5/9	WAMIT AB Level 2 Certificate for Sustain able Waste Manage ment Operativ e	2	RQF	1.4 Public Services	3	Pass/ Fail	Portfolio of Evidenc e	57	132	Qualific ation Handbo ok	Qualific ation Handbo ok					
Level 2 Certificate in Cleaning/Support Services Skills	1460	WAMI TAB	501/189 0/0	WAMIT AB Level 2 Certificate	2	RQF	1.4 Public Services	3	Pass/ Fail	Portfolio of Evidenc e	36	101	Qualific ation Handbo ok	Qualific ation Handbo ok					



Level 2 Certificate in Practical Cleaning Skills	480	WAMI TAB	501/189 0/0	te in Cleaning and Support Services	WAMIT AB Level 2 Certificate in Cleaning and Support Services	2	RQF	7.3 Service Enterprises	3	Pass/Fail	Portfolio of Evidence	36	101	Qualification Handbook	Qualification Handbook						
Level 2 Diploma Sustainable Recycling Activities	110	WAMI TAB	501/218 2/0	te in Cleaning and Support Services	WAMIT AB Level 2 Diploma for Sustainable Recycling Activities	2	RQF	3.4 Environmental Conservation	3	Pass/Fail	Portfolio of Evidence	30	94	Qualification Handbook	Qualification Handbook						
Level 2 - Service Enterprises, Up to 12 hrs PW B	120	WAMI TAB	600/630 8/7	te in Cleaning and Support Services	WAMIT AB Level 2 Certificate in Facilities Services Principle	2	RQF	7.3 Service Enterprises	3	Pass/Fail	Portfolio of Evidence	21	69	Qualification Handbook	Qualification Handbook						
Level 2 - Service Enterprises, Up to 12 hrs, PW C	430	WAMI TAB	600/630 8/7	te in Cleaning and Support Services	WAMIT AB Level 2 Certificate in Facilities Services Principle	2	RQF	7.3 Service Enterprises	3	Pass/Fail	Portfolio of Evidence	21	69	Qualification Handbook	Qualification Handbook						
Level 2 - Clean and maintain internal surfaces and areas	50	WAMI TAB	501/189 0/0	te in Cleaning and Support Services	WAMIT AB Level 2 Certificate in Cleaning and Support Services	2	RQF	1.4 Public Services	3	Pass/Fail	Portfolio of Evidence	36	101	Qualification Handbook	Qualification Handbook						

Level 2 - Clean food areas	10	WAMI TAB	501/189 O/O	Support Services	WAMIT AB Level 2 Certificate in Cleaning and Support Services	2	RQF	1.4 Public Services	3	Pass/Fail	Portfolio of Evidence	36	101	Qualification Handbook ok	Qualification Handbook ok						
Level 2 - Clean glazed surfaces and facades	20	WAMI TAB	501/189 O/O	Support Services	WAMIT AB Level 2 Certificate in Cleaning and Support Services	2	RQF	1.4 Public Services	3	Pass/Fail	Portfolio of Evidence	36	101	Qualification Handbook ok	Qualification Handbook ok						
Level 2 - Clean high risk areas	10	WAMI TAB	501/189 O/O	Support Services	WAMIT AB Level 2 Certificate in Cleaning and Support Services	2	RQF	1.4 Public Services	3	Pass/Fail	Portfolio of Evidence	36	101	Qualification Handbook ok	Qualification Handbook ok						
Level 2 - Clean washrooms and replenish supplies	40	WAMI TAB	501/189 O/O	Support Services	WAMIT AB Level 2 Certificate in Cleaning and Support Services	2	RQF	1.4 Public Services	3	Pass/Fail	Portfolio of Evidence	36	101	Qualification Handbook ok	Qualification Handbook ok						
Level 2 - Clean, maintain and protect semi-hard and hard floors	20	WAMI TAB	501/189 O/O	Support Services	WAMIT AB Level 2 Certificate in Cleaning and Support Services	2	RQF	1.4 Public Services	3	Pass/Fail	Portfolio of Evidence	36	101	Qualification Handbook ok	Qualification Handbook ok						
Level 2 - Deal with routine waste	30	WAMI TAB	501/189 O/O	Cleaning	WAMIT AB Level 2 Certificate in Cleaning	2	RQF	1.4 Public Services	3	Pass/Fail	Portfolio of Evidence	36	101	Qualification Handbook ok	Qualification Handbook ok						

[illegible]

**Lot 7 – Cleaning and Facilities Management - Annual Concession Service Discount**

**The Concessionaire will apply a discount/rebate to the purchase of Qualifications pertaining to this Contract.**

This will take the form of a rebate to the Authority paid by the Concessionaire and shall be based on the aggregated annual spend of Qualifications purchased from the Concessionaire, in accordance with clause C.2.1.

The table below shows the discounts/rebate that the Concessionaire will provide to the Authority in accordance with clause C2.1 based on annual spend thresholds in respect of Lot 7 Qualifications.

Annual Spend (£s)	Discount to be Applied (%)	Any additional comments

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(COMMERCIAL INTERESTS)



## SCHEDULE 3 CHANGE CONTROL

### Contract Change Notice ("CCN") CCN:

Contract Reference Number & Title

Change Title

Number of Pages

WHEREAS the Concessionaire and the Authority entered into a Contract to provide the Services dated (the "Original Contract") and now wish to amend the Original Contract

IT IS AGREED as follows

1. The Original Contract is amended as set out in this CCN:

Change Requestor / Originator

Summary of Change

Reason for Change

Revised Contract Value

Original Contract Value £

Previous Contract Changes £

Contract Change Note £

New Contract Value £

Revised Fees Schedule

Revised Specification (See Annex [x] for Details)

Revised Term

Change in Contract Management

Other Changes

2. Save as amended in the CCN all other terms of the Original Contract remain effective.
3. The CCN takes effect from the date on which both Parties sign below.

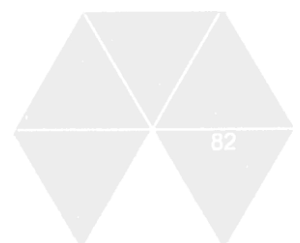
**IN WITNESS** of which this CCN has been duly executed by the Parties.

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

Signature:  
Name (block capitals):  
Position:  
Date:

**SIGNED** for and on behalf of WAMITAB  
(Waste Management Industry Training  
and Advisory Board) company limited by  
guarantee in England

Signature:  
Name (block capitals):  
Position:  
Date:



## SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION

[REDACTED]

[REDACTED]

3

[REDACTED]

4

[REDACTED]

[REDACTED]

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(COMMERCIAL INTERESTS)

## SCHEDULE 5 - CONCESSIONAIRE AND THIRD PARTY SOFTWARE

Concessionaire Software comprises the following:

Software	Concessionaire (if Affiliate of the Concessionaire)	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?
<b>WAMITAB Secure Area</b>  www.wamitab.org.uk	<b>WAMITAB</b>	<b>To access learning materials and documents to deliver the qualifications</b>	<b>N/A</b>	<b>Password which is provided to individual centre coordinator</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

Third Party Software comprises the following:

Third Party Software	Concessionaire	Purpose	No. of Licences	Restrictions	No. of copies	Other	To be deposited in escrow?
<b>Online Testing system</b>	<b>Classmarker</b>	<b>Online tests and quizzes for qualification exams</b>	<b>N/A</b>	<b>Accessible by password upon taking test</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>Centre Administration System</b>	<b>Creatio</b>	<b>To record candidate information relating to the provision of qualifications</b>	<b>N/A</b>	<b>Accessible to centre coordinators and appointed administrators</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>

## SCHEDULE 6 - PRISON

### ACCESS TO PRISONS

- 1 If Staff are required to have a pass for admission to an Authority Premises which is a prison, (a "Prison") the Authority shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued. Any member of the Staff who cannot produce a proper pass when required to do so by any member of the Authority's personnel, or who contravenes any conditions on the basis of which a pass was issued, may be refused admission to a Prison or be required to leave a Prison if already there.
- 2 Staff shall promptly return any pass if at any time the Authority so requires or if the person to whom the pass was issued ceases to be involved in the performance of the Services. The Concessionaire shall promptly return all passes on expiry or termination of the Contract.
- 3 Staff attending a Prison may be subject to search at any time. Strip searches shall be carried out only on the specific authority of the Authority under the same rules and conditions applying to the Authority's personnel. The Concessionaire is referred to Rule 71 of Part IV of the Prison Rules 1999 as amended by the Prison (Amendment) Rules 2005.
- 4 Searches shall be conducted only on the specific authority of the Authority under the same rules and conditions applying to the Authority's personnel and/or visitors. The Concessionaire is referred to Section 8 of the Prison Act 1952, Rule 64 of the Prison Rules 1999 and PSI 67/2011.

### SECURITY

- 5 Whilst at Prisons, Staff shall comply with all security measures implemented by the Authority in respect of staff and other persons attending Prisons. The Authority shall provide copies of its written security procedures to Staff on request. The Concessionaire and all Staff are prohibited from taking any photographs at Prisons unless they have Approval and the Authority's representative is present so as to have full control over the subject matter of each photograph to be taken. No such photograph shall be published or otherwise circulated without Approval.
- 6 The Authority may search vehicles used by the Concessionaire or Staff at Prisons.
- 7 The Concessionaire and Staff shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible for security matters on the Authority's behalf, and when required by the Authority shall:
  - 7.1 take all reasonable measures to make available for interview by the Authority any members of Staff identified by the Authority, or by a person who is responsible for security matters, for the purposes of the investigation. Staff may be accompanied by and be advised or represented by another person whose attendance at the interview is acceptable to the Authority; and



7.2 subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind and in whatever form which may be reasonably required by the Authority, or by a person who is responsible for security matters on the Authority's behalf, for the purposes of investigation as long as the provision of that material does not prevent the Concessionaire from performing the Services. The Authority may retain any such material for use in connection with the investigation and, as far as possible, may provide the Concessionaire with a copy of any material retained.

## **OFFENCES AND AUTHORISATION**

- 8 In providing the Services the Concessionaire shall comply with PSI 10/2012 (Conveyance and Possession of Prohibited Items and Other Related Offences) and other applicable provisions relating to security as published by the Authority from time to time.
- 9 Nothing in the Contract is deemed to provide any "authorisation" to the Concessionaire in respect of any provision of the Prison Act 1952, Offender Management Act 2007, Crime and Security Act 2010, Serious Crime Act 2015 or other relevant legislation.

**IN WIT ESS** of which the Contract is duly executed by the Parties on the date which appears at the head of page 1. The Parties confirm that an electronic signature is a valid means of establishing the authenticity and/or integrity of the Contract

**SIG ED** for and on behalf of the  
Secretary of State for Justice

Signature:

Name (block capitals):

Position:

Date:

24/4/2018

REDACTED UNDER S.40 FOIA  
(PERSONAL INFORMATION)

**SIGNED** for and on behalf of WAMITAB  
(Waste Management Industry Training  
and Advisory Board), company limited by  
guarantee in England

Signature:

Name (block capitals)

Position:

Date: 29.03.2018

REDACTED UNDER S.40 FOIA  
(PERSONAL INFORMATION)