



Ministry of  
**JUSTICE**

OFFICIAL SENSITIVE

Contract for the Provision of Learning and Skills at HMP Berwyn

## **SCHEDULE 9 – DATA PROCESSING**



Contract for the Provision of Learning and Skills at HMP Berwyn

**1. GENERAL**

- 1.1 The Parties acknowledge that for the purpose of this Contract, the Authority and each Related Third Party may be a Controller for the purpose of the Data Protection Legislation and the Originating Controller (as defined in paragraph 2.3 (Data Sharing Obligations)), as applicable in relation to the Personal Data being processed. For the purpose of this Contract the Authority is appointed to act for and on behalf of itself and the Related Third Parties to provide instructions and to manage the relationship with the Contractor in relation to the provision of the Services and in doing so the processing of Personal Data. Without prejudice to any other term of this Contract, the Related Third Party(s) shall, to the extent applicable, take the benefit of this Schedule 9 (Data Processing) and the Contractor acknowledges and agrees that it shall comply with its obligations set out in this Schedule for the benefit of the Authority and each Related Third Party. In respect of any obligation(s) which are required to be performed by the Authority, the Authority shall ensure that the Authority or as applicable the Related Third Party performs such obligation(s). For the avoidance of doubt any Loss suffered or incurred by a Related Third Party due to a breach of this Schedule shall be considered a direct Loss of the Authority and the Authority shall be able to recover the same under and in accordance with the terms of this Contract.
- 1.2 Each of the Parties including the personnel of each Party (personnel shall include the Contractor's Staff) will comply with all applicable requirements of the Data Protection Legislation and shall not knowingly or negligently by any act or omission, place the other Party in breach, or potential breach of Data Protection Legislation. This paragraph 1.2 (General) is in addition to and does not relieve, remove, or replace a Party's obligations under the Data Protection Legislation.
- 1.3 The Parties shall each process Personal Data. The Parties acknowledge that the factual arrangements between them dictate the role of each Party in respect of the Data Protection Legislation. The Parties agree that they shall be:
- (a) joint Controllers (processing the same Personal Data as the other Party (or the Related Third Party) and determining together with the other Party (or the Related Third Party) the means and manner of such processing);
  - (b) Controllers (processing the same, or a common set of Personal Data as the other Party (or the Related Third Party), but determining itself the means and manner of such processing);
  - (c) Controllers (acting independently of the other Party (or the Related Third Parties), by way of processing the Personal Data obtained in the course of



**Contract for the Provision of Learning and Skills at HMP Berwyn**

this Contract for its own purpose, and determining itself the means and manner of such processing); and/or

- (d) in some circumstances the Contractor shall act as Processor for and on behalf of the Authority.

The roles of each Party in relation to the Personal Data being processed under and in accordance with this Contract is as set out in the data map contained at Appendix 1.

- 1.4 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.5 The Parties agree to take account of any data sharing agreement, protocol or Authority policy (including without limitation the Information Sharing Policy Framework - GOV.UK (www.gov.uk)) issued by the Authority or any Related Third Party or Government Department which provides for the processing and sharing of Personal Data between the Authority, a Related Third Party and each other and the Contractor agrees, where required, the Authority may, at any time on not less than 30 Working Days' notice, amend this Contract to ensure that it complies with any terms of such data sharing agreement, protocol or Authority Policy.
- 1.6 Within 1 month following the Commencement Date, the Contractor shall provide to the Authority details of how it plans to comply with its obligations under this Schedule 9 (Data Processing) and its obligations under Data Protection Legislation, including:
  - (a) copies of data sharing agreements and all necessary agreements and arrangements and an update as to the status of such agreements and arrangements;
  - (b) an updated, comprehensive, and fully completed copy of the data map contained at Appendix 1 to this Schedule 9 (Data Processing); and
  - (c) a copy of the fair processing notices the Contractor is mandated to provide pursuant to Data Protection Legislation and this Schedule 9 (Data Processing),(the "**Data Protection Roadmap**").
- 1.7 Within 30 Working Days, or such other period as notified by the Authority, of receipt of the Data Protection Roadmap, the Authority shall either confirm its acceptance of the Data Protection Roadmap, or mandate amendments to the Data



## Contract for the Provision of Learning and Skills at HMP Berwyn

Protection Roadmap, to the extent required to ensure compliance with the Data Protection Legislation and this Schedule 9 (Data Processing). In mandating such changes to the Data Protection Roadmap, the Authority shall act reasonably and in good faith.

- 1.8 The Contractor shall maintain the Data Protection Roadmap for the duration of the Contract and shall notify the Authority of any proposed changes to the Data Protection Roadmap within 5 Working Days of proposing such change, following which the process in paragraph 1.7 shall apply. Regardless of any changes to the Data Protection Roadmap, the Contractor shall be subject to, comply with and give full attention and support to an annual compliance and assurance process, carried out by the Authority. To the extent the Authority is not satisfied with the outcome of such annual compliance and assurance process, the Contractor shall allow for audit by the Authority and/or its designated auditor, in respect of compliance with Data Protection Legislation and this Schedule 9 (Data Processing).

## 2. DATA SHARING OBLIGATIONS

- 2.1 The Parties each acknowledge and agree that they may need to process Personal Data relating to each Party's representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Services; (b) request and receive the Services; (c) compile, dispatch and manage the payment of invoices relating to the Services; (d) manage the Contract and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Service; (f) confirm identification and security for systems access and (g) comply with their respective obligations.
- 2.2 Each Party shall process such Personal Data relating to each Party's representatives for the purposes set out in paragraph 2.1 (Data Sharing Obligations) in accordance with their own privacy policies. The Parties acknowledge that they may be required to share Personal Data with their Affiliates, group companies and other relevant parties, in order to carry out the activities listed in paragraph 2.1 (Data Sharing Obligations), and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation. No data by either Party shall be transferred to or shared with a party located in a Restricted Country.
- 2.3 Save in relation to contact Personal Data processed by the Parties in accordance with paragraph 2.1 (Data Sharing Obligations), where and to the extent the Contractor is acting as a Controller (except as a joint Controller, in which case paragraph 2.4 shall apply), and processing Personal Data in its provision of the Services and compliance with its obligations under this Contract the conditions set out in this paragraph 2.3 (Data Sharing Obligations) shall apply. For the purpose of



**Contract for the Provision of Learning and Skills at HMP Berwyn**

this paragraph 2 (Data Sharing Obligations), the Party from whom the Personal Data originates shall also be referred to as the Originating Controller.

- (a) The Contractor shall:
- (i) only process the Personal Data for the Permitted Purpose (as defined in Part 1 of Appendix 1 to this Schedule 9 (Data Processing));
  - (ii) make due notification to the Information Commissioner's Office (or other such regulatory authority as required by Data Protection Legislation), including in relation to its use and processing of the Personal Data and comply at all times with the Data Protection Legislation;
  - (iii) ensure that all fair processing notices have been given (and/or, as applicable, consents obtained) to the relevant Data Subjects, within 1 month of obtaining the Personal Data and are in accordance with the requirements of the Data Protection Legislation, Authority policies, and/or any templates, guidance, or instructions of the Authority and/or (where applicable) Originating Controller;
  - (iv) maintain complete and accurate records and information to demonstrate its compliance with this paragraph 2.3 (Data Sharing Obligations). This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
    - (A) the Authority and/or (where applicable) the Originating Controller determines that the processing is not occasional;
    - (B) the Authority and/or (where applicable) Originating Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
    - (C) the Authority and/or (where applicable) Originating Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects;



**Contract for the Provision of Learning and Skills at HMP Berwyn**

- (v) prepare and/or support the Authority and/or (where applicable) the Originating Controller in preparing, any Data Protection Impact Assessment prior to commencing any processing;
- (vi) ensure that it has in place Protective Measures including in the case of the Contractor the measures set out in Schedule 6 (Information Security and Assurance), which are appropriate to protect against a Data Loss Event, which the Authority and/or (where applicable) the Originating Controller may reasonably reject (but failure to reject shall not amount to approval by the Authority and/or (where applicable) the Originating Controller of the adequacy of the Protective Measures), having taken account of the:
  - (A) nature of the data to be protected;
  - (B) harm that might result from a Data Loss Event;
  - (C) state of technological development; and
  - (D) cost of implementing any measures;
- (vii) not transfer Personal Data to a Restricted Country unless the prior written consent of the Authority and/or (where applicable) the Originating Controller has been obtained and the following conditions are fulfilled:
  - (A) the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Authority and/or (where applicable) the Originating Controller;
  - (B) the Data Subject has enforceable rights and effective legal remedies;
  - (C) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (D) the Contractor complies with any reasonable instructions notified to it in advance by the Authority and/or (where applicable) the Originating Controller with respect to the processing of the Personal Data;



**Contract for the Provision of Learning and Skills at HMP Berwyn**

- (viii) subject to paragraph 2.3(a)(ix) (Data Sharing Obligations), notify the Authority and/or (where applicable) the Originating Controller immediately if it:
  - (A) receives a Data Subject Request (or purported Data Subject Request);
  - (B) receives a request to rectify, block or erase any Personal Data;
  - (C) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (D) receives any communication from the Information Commissioner's Office or any other regulatory authority (including a supervisory authority as defined in the Data Protection Legislation) in connection with Personal Data processed under this Contract;
  - (E) 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
  - (F) becomes aware of a Data Loss Event;
- (ix) following notification to the Authority and/or (where applicable) the Originating Controller pursuant to paragraph 2.3(a)(viii) and its determination and confirmation to the Contractor whether the Authority or (where applicable) the Originating Controller, or the Contractor shall be the primary point of contact and responder to the request, complaint or communication received pursuant to paragraph 2.3(a)(viii) (and the Parties shall ensure this is reflected within the relevant fair processing notices provided to Data Subjects) then where the Authority and/or (where applicable) the Originating Controller:
  - (A) designates the Contractor as the primary point of contact, the Contractor shall provide updates and further information to the Authority and/or (where applicable) the Originating Controller including (where directed by the Authority and/or (where applicable) the Originating Controller) allowing the Authority and/or (where applicable) the Originating Controller to have final



**Contract for the Provision of Learning and Skills at HMP Berwyn**

oversight and approval of any response, prior to such response being released to the relevant Party;

- (B) designates the Authority and/or (where applicable) the Originating Controller as the primary point of contact, the Contractor shall provide all support as necessary within the timescales directed by the Authority and/or (where applicable) the Originating Controller, including providing all Personal Data held by the Contractor in respect of the request, complaint or communication received to the Authority and/or (where applicable) the Originating Controller as soon as practicable and in any event within 5 days, or as otherwise agreed by the Parties acting reasonably and in good faith;
- (x) the Contractor's obligation to notify under paragraph 2.3(a)(viii) (Data Sharing Obligations) shall include the provision of further information to the Authority and/or (where applicable) the Originating Controller in phases, as details become available. The Contractor shall be the primary point of contact for any communication in respect of the Data Loss Event and: (a) the Contractor shall act quickly to remedy a Data Loss Event and minimise the impact(s) of a Data Loss Event; and (b) the Contractor, the Authority and where relevant the Originating Controller shall work together (acting reasonably and in good faith) to formulate responses, notifications, and other communications in respect of the Data Loss Event;
- (xi) take reasonable steps to ensure the reliability of and adequate training of any personnel who have access to the Personal Data;
- (xii) hold the information contained in the Personal Data confidentially; and
- (xiii) not do anything which shall damage the reputation of its (if applicable) or the Originating Controller's (or the Authority, where the Authority is not the Originating Controller) relationship with the Data Subjects.
- (b) Where acting as a Controller for the purposes of the Personal Data, the Originating Controller shall:
  - (i) ensure that all fair processing notices have been given (and/or, as applicable, consents obtained), and are sufficient in scope to allow





**Contract for the Provision of Learning and Skills at HMP Berwyn**

the Originating Controller to disclose the Personal Data to the Contractor in accordance with the Data Protection Legislation and for the purposes set out in the Contract; and

- (ii) ensure that all Personal Data disclosed or transferred to, or accessed by, the Contractor is accurate and up to date, as well as adequate, relevant, and not excessive to enable the Contractor to process the Personal Data, for the Permitted Purpose.
- (c) For the purposes of paragraph 2.3(b)(i), at the discretion and instruction of the Authority and/or (where applicable) the Originating Controller, the Contractor shall support the Originating Controller and/or provide on the Originating Controller's behalf, all fair processing notices to the relevant Data Subjects (and/or as applicable, obtain the necessary consents of such Data Subjects), within a reasonable time frame to be determined and provided by the Authority and/or (where applicable) the Originating Controller.
- (d) Each Party warrants, represents and undertakes that it is not subject to any prohibition or restriction which would prevent or restrict it from disclosing or transferring the relevant Personal Data (as applicable) to the other Party in accordance with the terms of this Contract.

2.4 Where and to the extent the Contractor is acting as a joint Controller with another party (being the Authority and/or a Related Third Party) the conditions set out in this paragraph 2.4 (Data Sharing Obligations) shall apply.

- (a) Each Party shall:
  - (i) collaboratively ensure that all fair processing notices have been given (and/or, as applicable, consents obtained), and are sufficient in scope to allow the envisaged processing in accordance with the Data Protection Legislation and for the purposes set out in the Contract. For the purposes of this paragraph 2.4(a)(i) the Authority and/or Related Third Party shall have the final approval and oversight as to whether it or the Contractor is to provide any relevant fair processing notice and/or as applicable, obtain necessary consents, on behalf of both Parties;
  - (ii) make due notification to the Information Commissioner's Office (or other such regulatory authority as required by Data Protection Legislation), including in relation to its use and processing of the Personal Data and comply at all times with the Data Protection Legislation;



**Contract for the Provision of Learning and Skills at HMP Berwyn**

- (iii) maintain complete and accurate records and information to demonstrate its compliance with this paragraph 2.4 (Data Sharing Obligations). This requirement does not apply where the Party employs fewer than 250 staff, unless:
  - (A) the Authority and/or (where applicable) the Related Third Party determine that the processing is not occasional;
  - (B) the Authority and/or (where applicable) the Related Third Party determine the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - (C) the Authority and/or (where applicable) the Related Third Party determine that the processing is likely to result in a risk to the rights and freedoms of Data Subjects;
- (iv) work together (acting reasonably and in good faith) in the preparation of any Data Protection Impact Assessment prior to commencing any processing;
- (v) where the Personal Data has been transmitted by it, or is in its possession or control, ensure that it has in place Protective Measures including in the case of the Contractor the measures set out in Schedule 6 (Information Security and Assurance), which are appropriate to protect against a Data Loss Event, having taken account of the:
  - (A) nature of the data to be protected;
  - (B) harm that might result from a Data Loss Event;
  - (C) state of technological development; and
  - (D) cost of implementing any measures;
- (vi) not transfer Personal Data to a Restricted Country unless the prior written consent of the Authority and/or (as applicable) the Related Third Party has been obtained and the following conditions are fulfilled:
  - (A) the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with the Data



**Contract for the Provision of Learning and Skills at HMP Berwyn**

- Protection Legislation) as determined by the Authority and/or (where applicable) the Related Third Party;
- (B) the Data Subject has enforceable rights and effective legal remedies;
  - (C) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (D) the Contractor complies with any reasonable instructions notified to it in advance by the Authority and/or (as applicable) the Related Third party with respect to the processing of the Personal Data;
- (vii) subject to paragraph 2.4(b) (Data Sharing Obligations) notify the other Party and/or (where applicable) the Related Third Party promptly (and in any event within 24 hours) if it:
- (A) receives a Data Subject Request (or purported Data Subject Request);
  - (B) receives a request to rectify, block or erase any Personal Data;
  - (C) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (D) receives any communication from the Information Commissioner's Office or any other regulatory authority (including a supervisory authority as defined in the Data Protection Legislation) in connection with Personal Data processed under this Contract;
  - (E) 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
  - (F) becomes aware of a Data Loss Event.
- (b) Each Party's obligation to notify under paragraph 2.4(a)(vi) (Data Sharing Obligations) shall include the provision of further information in phases, as details become available. Subject as set out below in relation to a Data



**Contract for the Provision of Learning and Skills at HMP Berwyn**

Loss Event the Authority and/or Related Third Party shall determine and confirm to the Contractor whether it or the Contractor shall be the primary point of contact and responder to the request, complaint or communication received pursuant to paragraph 2.4(a)(vi) (Data Sharing Obligations) and the Parties shall ensure this is reflected within the relevant fair processing notices provided to Data Subjects. Where the Authority and/or Related Third Party:

- (i) designates the Contractor as the primary point of contact, the Contractor shall provide updates and further information to the Authority and/or Related Third Party, including (where directed by the Authority and/or Related Third Party) allowing the Authority and/or Related Third Party to have final oversight and approval of any response, prior to such response being released to the relevant Party;
- (ii) designates itself as the primary point of contact, the Contractor shall provide all support as necessary within the timescales directed by the Authority and/or Related Third Party, including providing all Personal Data held by the Contractor in respect of the request, complaint or communication received to the Authority and/or Related Third Party as soon as practicable and in any event within 5 days, or as otherwise agreed by the Parties acting reasonably and in good faith.

The Party who suffered the Data Loss Event shall be the primary point of contact for any communication in respect of the Data Loss Event and: (a) the Contractor shall act quickly to remedy a Data Loss Event (to the extent within its or its Sub-processor's control) and minimise the Impact(s) of a Data Loss Event; and (b) the Contractor, the Authority and where relevant the Related Third Party shall work together (acting reasonably and in good faith) to formulate responses, notifications and other communications in respect of the Data Loss Event.

- (c) Before further sharing the Personal Data with a third party (including using a Processor or any Sub-processor to process any Personal Data related to this Contract), the Contractor must:
  - (i) notify the Authority and/or (where applicable) the Related Third Party in writing of the intended third party (including any Processor and/or Sub-processor) and processing;
  - (ii) obtain the written consent of the Authority and/or (where applicable) the Related Third Party;



## Contract for the Provision of Learning and Skills at HMP Berwyn

- (iii) enter into a written contract with the third party (including any Processor and/or Sub-processor) which give effect to the terms set out in this Schedule (as applicable); and
  - (iv) provide the Authority and the Related Third Party with such information regarding the third party as the Authority and the Related Third Party may reasonably require.
- (d) The Contractor shall remain fully liable for all acts or omissions of any third party to which it transfers the relevant Personal Data.

### 3. PROCESSOR OBLIGATIONS

For the purposes of this paragraph 3 (Processor Obligations), a reference to the "Controller" shall be a reference to the Authority and a reference to the "Processor" shall be a reference to the Contractor.

- 3.1 Where and to the extent the Contractor is acting as a Processor, the conditions set out in this paragraph 3 (Processor Obligations) shall apply.
- 3.2 The only processing that the Processor is authorised to do is listed in Part 2 of Appendix 1 to this Schedule 9 (Data Processing) by the Controller and may not be determined by the Processor.
- 3.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 3.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.



**Contract for the Provision of Learning and Skills at HMP Berwyn**

- 3.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract shall:
- (a) process that Personal Data only in accordance with Part 2 Appendix 1 to this Schedule 9 (Data Processing) unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures including in the case of the Contractor the measures set out in Schedule 6 (Information Security and Assurance) which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;
  - (c) ensure that:
    - (i) the Processor Staff do not process Personal Data except in accordance with this Contract (and in particular Part 2 of Appendix 1 to this Schedule 9 (Data Processing));
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Staff who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Processor's duties under this paragraph 3 (Processor Obligations);
      - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
      - (C) 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 Controller or as otherwise permitted by this Contract; and



**Contract for the Provision of Learning and Skills at HMP Berwyn**

- (D) have undergone adequate training in the use, care, protection, and handling of Personal Data; and
- (E) not transfer Personal Data to a Restricted Country unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (1) the Processor has provided appropriate safeguards in relation to the transfer (in accordance with the Data Protection Legislation) as determined by the Controller;
  - (2) the Data Subject has enforceable rights and effective legal remedies;
  - (3) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations);
  - (4) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
  - (5) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- (d) Subject to paragraph 3.5(e) (Processor Obligations), the Processor shall notify the Controller immediately if it:
  - (i) receives a Data Subject Request (or purported Data Subject Request);
  - (ii) receives a request to rectify, block or erase any Personal Data;
  - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;



**Contract for the Provision of Learning and Skills at HMP Berwyn**

- (iv) receives any communication from the Information Commissioner's Office or any other regulatory authority (including a supervisory authority as defined in the Data Protection Legislation) in connection with Personal Data processed under this Contract;
  - (v) 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
  - (vi) becomes aware of a Data Loss Event.
- (e) The Processor's obligation to notify under paragraph 3.5(d) (Processor Obligations) shall include the provision of further information to the Controller in phases, as details become available. The Controller shall either, at its sole election: (a) assume full control of the responses to the events set out in paragraph 3.5(d) (Processor Obligations); or (b) direct the Processor in its response, save where the Processor is required to act quickly and solely within its internal business to minimise the impact(s) of a Data Loss Event.
- (f) Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 3.5(d) (Processor Obligations) (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
  - (i) the Controller with full details and copies of the complaint, communication, or request;
  - (ii) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (iii) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (iv) assistance as requested by the Controller following any Data Loss Event; and
  - (v) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.





**Contract for the Provision of Learning and Skills at HMP Berwyn**

- (g) The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph 3 (Processor Obligations). This requirement does not apply where the Processor employs fewer than 250 staff, unless:
  - (i) the Controller determines that the processing is not occasional;
  - (ii) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - (iii) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- (h) The Processor shall allow for audits of its data processing activity by the Controller or the Controller's designated auditor.
- (i) Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- (j) Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
  - (i) notify the Controller in writing of the intended Sub-processor and processing;
  - (ii) obtain the written consent of the Controller;
  - (iii) enter into a written contract with the Sub-processor which give effect to the terms set out in this paragraph 3 (Processor Obligations) such that they apply to the Sub-processor; and
  - (iv) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- (k) The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- (l) The Controller may, at any time on not less than 30 Working Days' notice, revise this paragraph 3 (Processor Obligations) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (designated as such pursuant to Data Protection Legislation) (which shall apply when incorporated by attachment to this Contract).



Contract for the Provision of Learning and Skills at HMP Berwyn

## 4. DATA PROCESSED FOR LAW ENFORCEMENT PURPOSES

4.1 In relation to Personal Data processed for Law Enforcement Purposes, the Contractor shall:

- (a) maintain logs for its processing operations in respect of:
  - (i) collection;
  - (ii) alteration;
  - (iii) consultation;
  - (iv) disclosure (including transfers);
  - (v) combination; and
  - (vi) erasure,(together the "**Logs**");
- (b) ensure that:
  - (i) the Logs of consultation make it possible to establish the justification for, and date and time of, the consultation; and as far as possible, the identity of the person who consulted the data;
  - (ii) the Logs of disclosure make it possible to establish the justification for, and date and time of, the disclosure; and the identity of the recipients of the data; and
  - (iii) the Logs are made available to the Information Commissioner's Office on request;
- (c) use the Logs only to:
  - (i) verify the lawfulness of processing;
  - (ii) assist with self-monitoring by the Authority and/or Related Third Party or (as the case may be) the Contractor, including the conduct of internal disciplinary proceedings;
  - (iii) ensure the integrity of Personal Data; and
  - (iv) assist with criminal proceedings;



## Contract for the Provision of Learning and Skills at HMP Berwyn

- (d) as far as possible, distinguish between Personal Data based on fact and Personal Data based on personal assessments; and
- (e) where relevant and as far as possible, maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:
  - (i) persons suspected of having committed or being about to commit a criminal offence;
  - (ii) persons convicted of a criminal offence;
  - (iii) persons who are or maybe victims of a criminal offence; and
  - (iv) witnesses or other persons with information about offences.

### 5. **INDEMNITY**

Notwithstanding any other term of the Contract, the Contractor shall indemnify and keep indemnified and hold harmless the Authority or the Related Third Party (as applicable) and from and against all Losses suffered or incurred by the Authority or the Related Third Party (as applicable), including claims and proceedings, arising from any breach of the Contractor's obligations under this Schedule 9 (Data Processing).

### 6. **COMPENSATION**

6.1 To the extent that the Contractor has an entitlement under Data Protection Legislation to claim from the Authority or a Related Third Party (as applicable) compensation paid by the Contractor to a Data Subject or third party as a result of a breach of Data Protection Legislation (in full or in part) by the Authority or a Related Third Party (as applicable), the Authority or Related Third Party (as applicable) shall be liable only for such amount as directly relates to the Authority's or Related Third Party's (as applicable) responsibility for any damage caused to the relevant Data Subject or third party. For the avoidance of doubt the Authority or Related Third Party (as applicable) shall only be liable to make payment to the Contractor under this paragraph 6.1 (Compensation) upon receipt of evidence from the Contractor, which shall be to the Authority's or Related Third Party's (as applicable) reasonable satisfaction and that clearly demonstrates:

- (a) that the Authority or Related Third Party (as applicable) has breached Data Protection Legislation;
- (b) that such breach contributed (in part or in full) to the harm caused entitling the relevant Data Subject or third party to receive compensation in accordance with Data Protection Legislation; and



**Contract for the Provision of Learning and Skills at HMP Berwyn**

- (c) the proportion of responsibility for the harm caused to the relevant Data Subject or third party which is attributable to the Authority or Related Third Party (as applicable).



## APPENDIX 1

### DATA PROTECTION PARTICULARS AND DATA MAP

#### PART 1

##### 1. SCHEDULE OF DATA SHARING PARTICULARS

This paragraph 1 of Schedule 9 (Data Processing) sets out the data sharing particulars to be completed by the Parties, acting reasonably and in good faith.

| Description       | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Data mapping      | <p>The data map set out at Annex A, tab 1 details all data shared with the Contractor by the Authority and the Related Third Parties for the delivery of the Services where the Contractor acts as controller or joint controller with the Authority and/or each of the Related Third Parties.</p> <p>Details of all data sharing and onward sharing by the Contractor, where it acts as controller or joint controller, is as set out in the data map at Annex A tab 2.</p> <p>The data map shall be completed and kept accurate and up to date during the Term, in accordance with Schedule 9 (Data Processing).</p> |
| Permitted Purpose | <p>The lawful basis and purpose are as set out in the data map.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |



## PART 2

### 2. SCHEDULE OF DATA PROCESSING PARTICULARS

This paragraph 2 this Schedule 9 (Data Processing)) sets out the data processing particulars to be completed by the Controller, who may take account of the view of the Processor(s), however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

- 2.1 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 2.2 Any such further instructions shall be incorporated into this schedule of data processing particulars.

| Description       | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Data mapping      | <p>The data map set out at c, tab 1 details all data shared with the Contractor by the Authority and the Related Third Parties for the delivery of the Services where the Contractor is identified as a processor.</p> <p>Details of all data sharing and onward sharing where the Contractor acts as processor with Sub-processors is as set out in the data map at Annex A tab 2.</p> <p>The data map shall be completed and kept accurate and up to date during the Term, in accordance with Schedule 9 (Data Processing).</p> |
| Permitted Purpose | <p>The lawful basis and purpose are as set out in the data map.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                               |