



**DATED**

**2017**

**THE SECRETARY STATE FOR JUSTICE (1)**

of 102 Petty France London SW1H 9AJ

**- and -**

**INTERSERVE INVESTMENTS LIMITED (2)**

which has its registered office at

Interserve House, Ruscombe Park, Twyford,  
Reading, Berkshire, RG10 9JU

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**CONTRACT FOR PROVISION OF  
EMPLOYMENT POSITIONS FOR PRISONERS  
AT HMP BERWYN**

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**BACKGROUND**

- (A) The Authority wishes to make provision for quality Employment Positions for Prisoners in custody so that they can develop the Employability Skills and experience to improve their opportunities for Employment on release and to contribute to their rehabilitation.
- (B) The Authority wishes to provide these Employment Positions by allowing the Provider to supply and manage its economic operations within HMP Berwyn.
- (C) The Provider has agreed to provide the Services, subject to the Terms and Conditions of this Contract.

**TERMS AND CONDITIONS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In these Terms and Conditions, unless otherwise stated, the Definitions set out in Schedule A of this Contract shall apply.

**1.2 Interpretation**

The interpretation and construction of this Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument where appropriate shall be construed as referring to any subsequent amendment or re-enactment of the same;
- 1.2.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted;
- 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.7 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and:
- 1.2.8 subject to the restrictions contained in Schedule B (Service Specification) and Schedule E (Payment Mechanism and Profit Share) this Contract

exclusively relates to the supply of the Services and shall have no force in relation to the economic operations which the Provider or the Provider's Personnel may carry on at the Premises in order to support the supply of the Services.

## **2. CONTRACT PERIOD**

- 2.1 This Contract shall take effect on the Commencement Date. This Contract shall expire in five (5) years unless it is:
- 2.1.1 terminated earlier; or
  - 2.1.2 extended under clause 2.2 or 2.4 below.
- 2.2 The term of this Contract may, by agreement of the Parties, be extended for a period of two (2) years, such extension to be implemented in accordance with the procedure set out in clause 2.3.
- 2.3 Not more than two (2) years and not less than six (6) Months prior to the Expiry Date, the Authority may serve a written notice upon the Provider of its intention to extend the term of this Contract in accordance with clause 2.2. If the Parties reach such agreement, the effect of this shall be to extend the Contract by two (2) years and to amend the Expiry Date accordingly.
- 2.4 Without prejudice to clauses 2.2 and 2.3, the term of this Contract may, at the Authority's sole discretion, be extended for a period of up to one (1) year, such extension to be implemented in accordance with the procedure set out in clause 2.5.
- 2.5 Not more than three (3) months prior to the Expiry Date, the Authority may send a written notice to the Provider extending the term of this Contract in accordance with clause 2.4 for such period(s) as may be specified in the notice, the effect of which shall be to extend the term specified in the notice and to amend the Expiry Date.
- 2.6 The Authority shall be entitled to exercise its right to extend the term of this Contract pursuant to clause 2.4 more than once, provided that the aggregate of such periods of extension do not exceed one (1) year.

## **3. CONDITION PRECEDENT**

- 3.1 In the event that the Authority's obligations under this Contract relate to and/or are consequential upon the appointment of Approved Operators, it shall be a condition precedent to the Authority's performance of those obligations, including its payment obligations in Clause 24 (Contract Price), that the Provider enters into Sub-contracts with those Approved Operators in accordance with Clause 41 (Assignment and Sub-contracting).

## **4. MOBILISATION SERVICES**

- 4.1 From and including the Commencement Date until the Planned Service Commencement Date, the Provider shall implement and comply with the Mobilisation

Plan set out at Appendix 1 of Schedule Q (Mobilisation Plan and Transition Plan) and any updated versions of the Mobilisation Plan as agreed with the Authority to ensure that the Services are able to be provided on the Service Commencement Date.

**5. THE SERVICES**

- 5.1 The Provider shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in this Contract and in the Service Specification (Schedule B of this Contract) in consideration of the payment of the Contract Price. The Authority and any Authority Related Party may inspect and examine the manner in which the Provider supplies the Services at the Premises at any time.

**6. BUSINESS CONTINUITY AND DISASTER RECOVERY**

- 6.1 The Provider shall comply with the provisions at section 9 of the Service Specification (Schedule B of this Contract) and its BCDR Plan at Appendix 1 of Schedule R (Business Continuity and Disaster Recovery) of this Contract.

**7. AUTHORITY'S ASSETS**

- 7.1 The Authority shall provide to the Provider for its use (subject to clause 7.3) the Authority's Assets listed in Part 1 (including the Capital Equipment purchased by the Provider on the Authority's behalf) and Part 2 of Appendix A (Authority Assets) of the Asset Register (Schedule L of this Contract) without charge.
- 7.2 The Authority's Assets shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Authority otherwise within five (5) Working Days of receipt.
- 7.3 The Provider shall only use the Authority's Assets in the performance of the Contract and for no other purpose whatsoever without the Authority's prior Approval.
- 7.4 Title in the Authority's Assets vests in the Authority. Subject to clauses 7.7 and 7.8, risk in the Authority's Assets vests in the Provider for the duration of the Contract Period.
- 7.5 The Authority, the Authority's Personnel and any Authority Related Party may enter the Premises during normal business hours on reasonable notice to remove any such Authority's Assets. The Provider shall not in any circumstances have a lien or any other interest in the Authority's Assets and the Provider shall at all times possess the Authority's Assets as fiduciary agent and bailee of the Authority. The Provider shall take all reasonable steps to ensure that the title of the Authority to the Authority's Assets and the exclusion of any such lien or other interest are brought to the notice of all relevant Provider's Personnel and shall, at the Authority's request, store the Authority's Assets separately and ensure that these are clearly identifiable as belonging to the Authority.
- 7.6 The Provider shall not sell, lease, assign, part with possession or otherwise dispose of any of the Authority's Assets or any interest in them without prior Approval. If the

Provider replaces any of the Authority's Assets, the replacement shall be the property of the Authority and the replacement shall be noted in Appendix A of the Asset Register (Schedule L of this Contract).

7.7 The Provider shall be responsible for the insurance, maintenance and security of all of the Authority's Assets referred to in Part 1 of Appendix A of the Asset Register (Schedule L of this Contract) and shall:

7.7.1 maintain such items in safe, clean and serviceable condition, fair wear and tear excepted, and in accordance with any manufacturer's recommendations, where such recommendations are supplied to the Provider; and

7.7.2 be liable for any loss of or damage to such Authority's Assets (excluding any damage arising from fair wear and tear) unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the negligence or wilful default of the Authority and in that event the Authority's liability shall be proportionate to the damage caused by the Authority.

7.8 The Provider shall not be responsible for the insurance, maintenance or security of any of the Authority's Assets referred to in Part 2 of Appendix A of the Asset Register (Schedule L of this Contract) and shall only be liable for the repair and replacement of such Authority's Assets where any damage or breakdown is caused by its negligence.

7.9 The Provider shall inform the Authority within two (2) Working Days of becoming aware of any material defects appearing in, or material losses or damage occurring to the Authority's Assets.

7.10 On the expiry or termination of the Contract for whatever reason the Provider shall be liable for the costs of making good any damage to the Authority's Assets but excluding any damage arising from fair wear and tear.

## **8. PROVIDER'S ASSETS**

8.1 The Provider shall provide all of the Provider's Assets that are required to provide the Services as set out in Part B of the Asset Register (Schedule L of this Contract).

8.2 The Provider shall be responsible for the insurance, security, maintenance, repair and replacement of all of the Provider's Assets in Part B of the Asset Register (Schedule L of this Contract) and shall maintain such items in safe, clean and serviceable condition. The Provider shall be responsible for undertaking appropriate safety checks in relation to the Provider's Assets and for ensuring that it complies with applicable Law.

8.3 All Provider's Assets brought onto the Premises by the Provider shall be at the Provider's own risk, subject to the Provider being able to demonstrate that any loss or damage was caused or contributed to by the negligence or wilful default of the Authority and in that event the Authority's liability shall be proportionate to the damage caused by the Authority.

- 8.4 Unless otherwise agreed, any Provider's Asset brought on to the Premises will remain the property of the Provider. The Provider shall at its own expense provide for the haulage or carriage to and the removal of the Provider's Assets from the Premises when they are no longer required.
- 8.5 The Provider shall, at the Authority's written request, at its own expense and as soon as reasonably possible:
- 8.5.1 remove from the Premises any Provider's Assets which are in the reasonable opinion of the Authority hazardous, noxious (other than the Provider's Assets, including cleaning materials, which are necessarily hazardous and/or noxious) or have not been provided in accordance with the provisions of this Contract; and
- 8.5.2 replace any such Provider's Assets with suitable substitute Provider's Assets.
- 8.6 On termination of the Contract, unless otherwise agreed with the Authority, the Provider shall remove the Provider's Assets together with any other materials provided by the Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition.
- 8.7 The Provider is solely responsible for making good any damage to the Premises, other than fair wear and tear, which has been caused by the Provider or any of the Provider's Personnel.

## **9. OFFERS OF EMPLOYMENT**

- 9.1 For the duration of the Contract and for a period of one (1) year thereafter neither the Authority nor the Provider shall employ or offer employment to any of the other Party's Personnel who have been associated with the procurement and/or the contract management and/or the Mobilisation and/or the Services without that Party's prior written consent unless the employment pertained to an advertised position where appointment was made following fair and open competition.

## **10. ENVIRONMENTAL REQUIREMENTS**

- 10.1 The Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **11. HEALTH AND SAFETY**

- 11.1 The Provider shall promptly notify the Authority of any health and safety hazards, of which it is aware or should reasonably be aware, which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Provider of

any health and safety hazards which may exist or arise at the Premises and which may affect the Provider in the performance of the Contract.

- 11.2 While on the Premises, the Provider shall comply with any health and safety measures implemented by the Authority in respect of Provider's Personnel and other persons working on those Premises.
- 11.3 The Provider shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the Premises where that incident causes any non-trivial personal injury or damage to property where there is a significant risk of future personal injury.
- 11.4 The Provider shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc., Act 1974 and any other Law relating to health and safety, which may apply to the Provider's Personnel and other persons working on the Premises in the performance of the Contract.
- 11.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc., Act 1974) is made available to the Authority on request.

## **12. OCCUPATION RIGHTS**

- 12.1 It shall be a condition precedent to the Provider's delivery of the first Available Employment Positions on the Service Commencement Date that the Provider shall enter a Licence Agreement with the Authority with regard to the Premises where the Services shall be provided. Subject to any other rights which the Authority shall grant the Provider, the Provider shall occupy the Premises subject to the provisions of the Licence. In the event of any conflict between the provisions of the Licence and the provisions of this Contract the provisions of this Contract will prevail. The draft Licence Agreement is annexed to this Contract as Annex A.

## **13. WELSH LANGUAGE SCHEME**

- 13.1 The Provider shall, and shall procure that any Sub-contractors shall:
  - 13.1.1 comply with the NOMS Welsh Language Scheme 2013 (as amended from time to time) to the extent that this relates to the provision of the Services; and
  - 13.1.2 give effect to the principle of equality for the English and Welsh languages by meeting the requirements set out in section 4.6 of the Services Specification (Schedule B).

## **14. SERVICE PROVISION**

- 14.1 The Provider will provide the Services from the Service Commencement Date until expiry or termination of this Contract for any reason.

- 14.2 The Provider shall comply with the Authority's policies in all material respects (as notified to the Provider) at all times when providing the Services.

**15. PROVIDER'S OBLIGATIONS**

- 15.1 The Provider acknowledges that the Authority is entering into the Contract in reliance on the warranties provided by the Provider in this clause.

- 15.2 The Provider warrants that the Services will be performed with all reasonable skill and care and in accordance with Good Industry Practice and that they will be provided substantially in accordance with these Terms and Conditions and the Service Specification (Schedule B of this Contract).

- 15.3 If the Services do not conform with the warranty in clause 15.2 the Provider will, at its expense, use all reasonable endeavours to correct any such non-conformance promptly.

- 15.4 The Provider shall provide a Business Plan and Annual Service Delivery Plan two (2) months prior to the Planned Service Commencement Date and annually thereafter containing, as a minimum, the information set out in paragraph 5.2.3 and 5.3.3 of the Service Specification (Schedule B of this Contract) for agreement with the Authority.

- 15.5 The Provider shall ensure that all Provider's Personnel supplying the Services shall do so with all due skill, care and diligence as is necessary for the proper supply of the Services.

- 15.6 The Provider shall employ at all times a sufficient number of Provider's Personnel to fulfil its obligations under the Contract. All Provider's Personnel shall possess the qualifications and competence appropriate to the tasks for which they are employed.

- 15.7 The Authority, whose decision shall be final and conclusive, reserves the right under the Contract to, acting reasonably, refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority (including the Premises):

15.7.1 any member of the Provider's Personnel; and/or

15.7.2 any person engaged by the Provider, including an officer, servant or agent;

whose admission or continued presence would, in the opinion of the Authority, be undesirable.

- 15.8 The Provider's Personnel, engaged within the boundaries of an Authority establishment (including the Premises), shall 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 any Provider's Personnel when at or in the reasonable vicinity of that establishment.

- 15.9 If the Provider fails to comply with clause 15.7 above the Authority (whose decision shall be final and conclusive), may decide that such failure is prejudicial to the interests of the Crown and may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 15.10 Subject to the Authority's obligation to pay the Contract Price, the Provider shall bear the cost of complying with any of its obligations under clause 15.
- 15.11 The Provider shall promptly inform and keep the Authority informed in writing of any industrial relations problems or other material matters relating to the Provider's Personnel which may affect the performance of the Contract.
- 15.12 The Provider shall not employ any person where the Provider knows, or by reason of the circumstances might reasonably be expected to know, that the person concerned is involved in any unlawful procurement of Social Security benefits or tax exemptions in connection with his employment by the Provider. The Provider shall not make, facilitate or participate in the procurement of any unlawful payments to any person employed by the Provider, whether in the nature of Social Security fraud, evasion of tax or otherwise.
- 15.13 The Provider shall comply with the requirements set out at paragraph 4.3.5 of the Service Specification (Schedule B) for the vetting of Provider's Personnel in respect of all persons employed or engaged in the provision of the Services. The Authority may in its sole discretion refuse access to its Premises by any member of the Provider's Personnel who has not successfully completed such vetting.
- 15.14 At the Authority's written request, the Provider shall within seven (7) days provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 15.5 The Provider shall be subject to the provisions of the Schedules to this Contract as applicable.
- 15.6 Subject to Schedule B (Service Specification) the Provider shall carry out economic operations at the Premises in order to provide the Services to be supplied. The Provider shall be solely responsible for the direction and management of its economic operations and subject to Schedule E (Payment Mechanism and Profit Share) shall be the beneficiary of the rewards which may pertain to it.

**16. AUTHORITY'S OBLIGATIONS**

- 16.1 The Authority shall provide the Provider with:
- 16.1.1 all necessary co-operation in relation to this Contract;
  - 16.1.2 all necessary access to such information as may be reasonably required by the Provider in order to provide the Services, including Authority Data,

security access information and software interfaces to the Authority's other business applications; and

- 16.1.3 such assistance from the Authority's Personnel as may be reasonably requested by the Provider from time to time.
- 16.2 The Authority shall, upon the Parties entering into the Licence Agreement, provide access to areas of land and buildings (and details of any restrictions) as stated in the Service Specification (Schedule B of this Contract) as it is reasonably able to do so as to enable the Provider to carry out its obligations under the Contract.
- 16.3 The Authority shall provide a two (2) week induction to the Provider's Personnel, where the Authority identifies induction as a relevant requirement.
- 16.4 The Prison Governor shall have absolute discretion to deploy Prison Officers to the Workshops to supervise the Workers.
- 16.5 The Prison Governor shall have absolute discretion to deploy Prison Officers at the end of each Workshop Session to carry out personal searching of the Workers before they leave the Workshops.
- 16.6 The Authority shall, upon the Parties entering into the Licence Agreement, provide site facilities to the Provider for the carrying out of the Contract, which, if required, shall be as detailed and on such terms as set out in the Service Specification (Schedule B of this Contract).
- 16.7 The Authority shall be subject to the provisions of the Schedules to this Contract as applicable.

## **17. WARRANTIES AND REPRESENTATIONS**

- 17.1 The Authority warrants that:
  - 17.1.1 it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to the Provider, any materials reasonably necessary for the fulfilment of all its obligations under this Contract, including any third-party licences and consents in respect of any Authority Software; and
  - 17.1.2 the Provider's use in the provision of the Services or otherwise in connection with this Contract of any third-party materials, including any Hardware or Software supplied by the Authority to the Provider for use in the provision of the Services or otherwise in connection with this Contract, shall not cause the Provider to infringe the rights, including any Intellectual Property Rights, of any third party.
- 17.2 The Provider warrants and represents that:
  - 17.2.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its parent company) to

enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Provider;

- 17.2.2 in entering the Contract it has not committed any fraud;
- 17.2.3 as at the Commencement Date, all information contained in its final tender submission remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to the execution of the Contract;
- 17.2.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently 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 a material adverse effect on its ability to perform its obligations under the Contract;
- 17.2.5 it is not subject to any contractual obligations, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 17.2.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider 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 Provider's assets or revenue;
- 17.2.7 it owns or has obtained valid licences, consents, permissions and rights to enable the Provider to comply with this Contract and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Contract including for the Authority's use and receipt of the Services, and the Provider shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- 17.2.8 in the two (2) years prior to the date of the Contract:
  - 17.2.8.1 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;
  - 17.2.8.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - 17.2.8.3 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;

17.2.9 it will comply with all applicable laws in performing its obligations under this Contract; and

17.2.10 the Provider's Personnel used in the performance of this Contract are adequately skilled and experienced for the activities they are required to perform.

## **18. SCOPE OF CONTRACT**

18.1 At all times during the Contract Period the Provider shall be an independent Provider and nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Provider and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

18.2 Other than as set out in the Contract, the Provider agrees and acknowledges that it has not been given any rights of exclusivity or any volume guarantees whatsoever in relation to the Services to be performed under the Contract or in relation to income or turnover.

## **19. NOTICES**

19.1 For the purposes of this clause 19, the address of each Party shall be as stated in the Contract Letter. Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

19.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by receipted facsimile transmission or receipted electronic mail. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such notice or communication.

19.3 Either Party may change its address for service by serving a notice in accordance with this clause.

## **20. MISTAKES IN INFORMATION**

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

20.2 The Provider shall be deemed to have satisfied itself as regards the nature and extent of the Services required by the Authority, the means of communication and access to the Authority's Premises, the supply and conditions affecting labour, the suitability of

the Premises and the Assets necessary for the performance of the Contract, subject to all such matters being discoverable by the Provider.

20.3 The Provider acknowledges that it has:

20.3.1 made and shall make its own enquiries to reasonably satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;

20.3.2 raised all reasonable relevant due diligence questions with the Authority before the Commencement Date;

20.3.3 reasonably satisfied itself that it has sufficient information to ensure that it can provide the Services; and

20.3.4 entered into this Contract in reliance partly on its own due diligence.

20.4 Without prejudice to clause 20.3, the Provider shall:

20.4.1 use its reasonable endeavours to check and verify that the data, information, plans, drawings, documents, handbooks and/or codes of practice supplied by the Authority are accurate; and

20.4.2 notify the Authority promptly if it discovers material errors or discrepancies in the data, information, plans, drawings, documents, handbooks and/or codes of practice supplied by the Authority.

## **21. CONFLICTS OF INTEREST**

21.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any of the Provider's Personnel is placed in a position where, in the reasonable opinion of the Authority:

21.1.1 there is or may be an actual conflict or potential conflict between the financial or personal interests of the Provider and the duties owed to the Authority under the provisions of the Contract; or

21.1.2 the behaviour of the Provider or any of the Provider's Personnel is not in the Authority's best interest or might adversely affect the Authority's reputation.

21.2 The Provider will as soon as reasonably practicable disclose to the Authority full particulars of any behaviour which might give rise to the acts complained of in sub-clauses 21.1.1 or 21.1.2.

21.3 The Authority reserves the right to terminate the Contract immediately and/or to take such other steps it deems necessary where having notified the Provider by notice in writing that, in the reasonable opinion of the Authority, there is or may be an actual conflict or potential conflict (which is material in nature) between the financial or personal interests of the Provider or any of the Provider's Personnel and the duties owed to the Authority under the provisions of the Contract and such conflict remains unaddressed thirty (30) days from the date of such notification. The actions of the

Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which has accrued or will accrue to the Authority.

**22. PREVENTION OF FRAUD AND PREVENTION OF CORRUPTION**

22.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Provider's Personnel in connection with the receipt of monies from the Authority.

22.2 The Provider shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is reasonably likely to occur.

22.3 If the Provider or any of the Provider's Personnel commits fraud in relation to this Contract or any other contract with the Crown (including the Authority) the Authority may:

22.3.1 terminate the Contract and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and

22.3.2 recover in full from the Provider any other loss sustained by the Authority in consequence of the fraud.

22.4 The Provider shall not offer or give or agree to give to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any other such contracts.

22.5 The Provider warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body, otherwise than specifically set out in this Contract, in connection with the Contract.

22.6 If the Provider, any of the Provider's Personnel or anyone acting on the Provider's behalf, engages in conduct prohibited by clauses 22.4 or 22.5, the Authority may:

22.6.1 terminate the Contract and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and

22.6.2 recover in full from the Provider any other loss sustained by the Authority in consequence of any breach of those clauses.

**23. PAYMENT AND CONTRACT PRICE**

**24. CONTRACT PRICE**

24.1 In consideration of the performance by the Provider of the Provider's Obligations set out in clause 15 of this Contract, the Authority shall pay the Contract Price in accordance with the provisions in Schedule E (Payment Mechanism and Profit Share) of this Contract.

24.2 The Contract Price and the Employment Management Fee shall not be subject to any inflationary increases.

24.3 Subject to clause 24.1 and, unless otherwise stated in this Contract, the Provider shall be responsible for all of its costs in relation to and arising from the provision of the Services.

**25. CHARGES, PAYMENT AND VAT**

25.1 The Parties shall comply with the provisions in Schedule E (Payment Mechanism and Profit Share) in relation to Charges, Payment and VAT, including invoicing arrangements.

25.2 The Authority shall:

25.2.1 consider and verify any invoices submitted by the Provider in a timely fashion; and

25.2.2 pay all sums due to the Provider within the period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed.

Where the Authority fails to comply with this clause 25.2 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of this clause 25.2 after a reasonable period of time has passed.

25.3 Where the Provider enters into a contract with a Sub-contractor which is made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract, the Provider shall:

25.3.1 consider and verify any invoices submitted by the Sub-contractor in a timely fashion; and

25.3.2 pay any sums due under such an invoice no later than a period of thirty (30) days from the date on which the Provider has determined that the invoice is valid and undisputed.

25.4 If the Provider fails to comply with its obligations in clause 25.3 and there is undue delay in considering and verifying an invoice, the invoice shall be regarded by the parties to the arrangement as valid and undisputed for the purposes of clause 25.3 after a reasonable period of time has passed.

- 25.5 The Provider shall also require that each Sub-contractor (direct or indirect) includes provisions substantially similar to clauses 25.3 and 25.4 in each contract it enters into with its Sub-contractors.

**26. RECOVERY OF SUMS DUE**

- 26.1 Whenever under this Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Authority in respect of any Default), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider from the Authority under this Contract or under any other contract with the Authority or Crown.
- 26.2 Any overpayment by either Party, whether of the Contract Price or of VAT, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 26.3 The Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Parties have agreed otherwise or the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider.

**27. STATUTORY OBLIGATIONS AND REGULATIONS**

**28. EQUALITIES**

- 28.1 In providing the Services the Provider shall comply with the Equalities Provisions.
- 28.2 The Provider shall take all reasonable steps to procure the observance of the Equalities Provisions by those members of the Provider's Personnel engaged in the provision of the Services.
- 28.3 The Provider shall provide such information as the Authority may reasonably require for reviewing the Provider's compliance with clauses 28.1 and 28.2.
- 28.4 The Provider shall notify the Authority immediately in writing upon becoming aware of any investigation or legal proceedings brought against the Provider under the Equalities Provisions.
- 28.5 In the event of any finding of unlawful discrimination being made against the Provider under the Equalities Provisions during the period of this Contract, the Provider shall inform the Authority of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Authority to prevent repetition of the unlawful discrimination.
- 28.6 In the event of repeated findings of unlawful discrimination against the Provider during the period of this Contract (whether arising from the same or different acts or omissions, and regardless of any steps it has taken in accordance with clause 28.5 above) the Authority shall be entitled to terminate the Contract with immediate effect.

- 28.7 If requested to do so by the Authority, the Provider shall fully co-operate with the Authority at its own expense in connection with any investigation, legal proceedings, ombudsman inquiries or arbitration in which the Authority may become involved arising from any breach of the Authority's duties under the Equalities Provisions due to the alleged acts or omissions of the Provider.

**29. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 29.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written consent of both Parties. This clause does not affect any right or remedy of any person which exists or is available outside of the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

**30. INFORMATION**

**31. AUTHORITY AND PROVIDER DATA**

- 31.1 The Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data. The Authority shall not delete or remove any proprietary notices contained within or relating to the Provider Data.
- 31.2 The Provider shall not store, copy, disclose, or use the Authority Data except as required for the performance by the Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority. The Authority shall not store, copy, disclose, or use the Provider Data except as required for the performance by the Authority of its obligations under the Contract or as otherwise expressly authorised in writing by the Provider.
- 31.3 To the extent that Authority Data is held and/or processed by the Provider, the Provider shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Service Specification (Schedule B of this Contract).
- 31.4 The Provider shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data. The Authority shall take responsibility for preserving the integrity of Provider Data and preventing the corruption or loss of Provider Data.
- 31.5 If at any time the Provider suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify the Authority immediately and inform the Authority of the remedial action the Provider proposes to take. If at any time the Authority suspects or has reason to believe that Provider Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Authority shall notify the Provider immediately and inform the Provider of the remedial action the Authority proposes to take.

**32. PROTECTION OF PERSONAL DATA**

32.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Authority is the Data Controller and that the Provider is the Data Processor save as provided for in Clause 32.4 of this Contract.

32.2 The Provider shall:

32.2.1 process the Personal Data only in accordance with 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 to the Provider during the Contract Period) and the Provider shall at the very least comply with the provisions of Schedule U (Information Security);

32.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any regulatory body;

32.2.3 implement 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 and in any event the measures shall not be of a lesser standard than that set out in Schedule U (Information Security);

32.2.4 take reasonable steps to ensure the reliability of any members of the Provider's Personnel who have access to the Personal Data;

32.2.5 obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or affiliates for the provision of the Services;

32.2.6 ensure that all of the Provider's Personnel that are required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 32;

32.2.7 ensure that none of the Provider's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;

32.2.8 notify the Authority (within five (5) Working Days) if it receives:

32.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or

32.2.8.2 a complaint or request relating to the Authority's obligations under the Data Protection Legislation;

- 32.2.9 provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by:
  - 32.2.9.1 providing the Authority with appropriate details of the complaint or request; and
  - 32.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
- 32.2.10 provide the Authority with any Personal Data it holds in relation to a Data Subject, within the timescales required by the Authority; and
- 32.2.11 provide the Authority with any reasonable information requested by the Authority;
- 32.2.12 permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Provider's data processing activities (and/or those of the Provider's Personnel) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Provider is in full compliance with its obligations under this Contract;
- 32.2.13 provide a written description of the technical and organisational methods employed by the Provider for processing Personal Data (within the timescales required by the Authority); and
- 32.2.14 not process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
  - 32.2.14.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
  - 32.2.14.2 any reasonable instructions notified to it by the Authority.
- 32.3 The Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 32.4 In the event that there is Personal Data within the Provider Data then in respect of that Personal Data the Provider is the Data Controller and the Authority is the Data Processor and the obligations in clause 32 above shall apply to the Provider as if it were the Data Controller and to the Authority as if it were the Data Processor.
- 32.5 The Provider will, in conjunction with the Authority, in its own right and in respect of the Services, make all necessary preparations to ensure it will be compliant with the provisions of the General Data Protection Regulation upon its implementation.

**33. FREEDOM OF INFORMATION**

- 33.1 The Provider acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 33.2 The Provider shall and shall procure that its Sub-contractors shall:
- 33.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 33.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
  - 33.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 33.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 33.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 33.5 The Provider acknowledges that (notwithstanding the provisions of this clause 33) the Authority may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Provider or the Services:
- 33.5.1 pursuant to a binding legal obligation without consulting the Provider; or
  - 33.5.2 following consultation with the Provider and having taken its views into account;
- provided always that where clause 33.5.1 applies the Authority shall take reasonable steps, where appropriate, to give the Provider advanced notice, or where it is not possible to provide advance notice, to draw the disclosure to the Provider's attention promptly after any such disclosure if this is permitted.
- 33.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

**34. CONFIDENTIALITY**

34.1 The Parties acknowledge that, except for any information which falls within the Commercially Sensitive Contractual Provisions in Part 1 of Schedule O of this Contract (Commercially Sensitive Information) and/or which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Provider hereby gives consent for the Authority to publish the Contract in its entirety so that it can be accessed by the general public (but with any information which falls within the Commercially Sensitive Contractual Provisions in Part 1 of Schedule O of this Contract (Commercially Sensitive Information) and/or which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract. The Provider shall assist and cooperate with the Authority to enable the Authority to publish this Contract. Prior to publication the Authority may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:

34.1.1 national security;

34.1.2 personal data;

34.1.3 information protected by intellectual property law;

34.1.4 information which it is not in the public interest to disclose (under a FOIA analysis)

34.1.5 third party confidential information;

34.1.6 IT security; or

34.1.7 prevention of fraud.

34.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:

34.2.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

34.2.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

34.3 Clause 34.2 shall not apply to the extent that:

34.3.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 33;

- 34.3.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 34.3.3 such information was obtained from a third party without obligation of confidentiality;
  - 34.3.4 such information was already in the public domain at the time of disclosure otherwise than as a result of a breach of this Contract; or
  - 34.3.5 such information is independently developed without access to the other Party's Confidential Information.
- 34.4 The Provider may only disclose the Authority's Confidential Information to those members of the Provider's Personnel who are directly involved in the provision of the Services and need to know, and shall ensure that the Provider's Personnel are aware of and shall comply with this clause 34.
- 34.5 The Provider shall not, and shall procure that the Provider's Personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 34.6 At the written request of the Authority, the Provider shall procure that those members of the Provider's Personnel identified in the Authority's notice sign a confidentiality undertaking on similar terms to the obligations in this Contract prior to performing any Services in accordance with this Contract.
- 34.7 Nothing in this Contract shall prevent the Authority from disclosing the Provider's Confidential Information (including the Management Information):
- 34.7.1 to any Crown body or any other Contracting Authority on the understanding that they shall be entitled to further disclose the Confidential Information to other Crown Bodies 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 Crown body or any Contracting Authority;
  - 34.7.2 to any consultant, provider or other person engaged by the Authority or any entity specified in clause 34.7.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract, including for the avoidance of doubt any person conducting an Office of Government Commerce gateway review;
  - 34.7.3 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements;
  - 34.7.4 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions or for the purpose of the exercise of its rights under this Contract;

- 34.7.5 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract;
  - 34.7.6 for the purpose of the examination and certification of the Authority's accounts; or
  - 34.7.7 for 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.
- 34.8 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee or third party to whom the Provider's Confidential Information is disclosed pursuant to clause 34.7 is made aware of the Authority's obligations of confidentiality.
- 34.9 Nothing in this clause 34 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of their Intellectual Property Rights.
- 35. OFFICIAL SECRETS ACTS 1911 TO 1989 AND SECTION 182 OF THE FINANCE ACT 1989**
- 35.1 The Provider undertakes to abide by, and ensure that its Personnel abide by, the provisions of:-
  - 35.1.1 the Official Secrets Acts 1911 to 1989; and
  - 35.1.2 Section 182 of the Finance Act 1989.
- 35.2 In the event that the Provider or any of the Provider's Personnel fail to comply with clause 35.1, the Authority reserves the right to terminate the Contract by giving notice in writing to the Provider.
- 36. PUBLIC RELATIONS, PUBLICITY AND MEDIA**
- 36.1 The Provider shall not, and shall procure that any Sub-contractors shall not:
  - 36.1.1 make public comments or communicate with any representatives of the press, television or radio or on social media, the internet or other communications media in relation to or arising from the provision of the Services in negative, critical or derogatory or other terms which may damage the reputation of the Authority;
  - 36.1.2 involve named Prisoners in any media interviews without the prior written consent of the Authority; or
  - 36.1.3 photograph or film within the Premises without the prior written consent of the Authority.

- 36.2 References in clause 36.1 to Provider and Sub-contractors include the Provider's Personnel and Sub-contractor's Personnel.

**37. INTELLECTUAL PROPERTY RIGHTS**

- 37.1 Intellectual Property Rights in any Intellectual Property Materials:

37.1.1 furnished or made available to the Provider by or on behalf of the Authority shall remain the property of the Authority; and

37.1.2 prepared by or for the Provider in relation to the performance by the Provider of its obligations under this Contract or prior to the Commencement Date shall remain the property of or belong to the Provider.

- 37.2 Neither Party shall acquire title to or interest in the other Party's Intellectual Property Materials except as may be specifically set out in this Contract.

- 37.3 Subject to clauses 37.1 and 37.2:

37.3.1 the Authority hereby grants the Provider (and its Sub-contractors as required) a royalty-free, non-exclusive and non-transferable licence to use the Authority's Intellectual Property Materials until termination or expiry of this Contract for the sole purpose of enabling the Provider (and its Sub-contractors as required) to perform its obligations under this Contract;

37.3.2 the Provider hereby grants the Authority (and any Authority Related Party as required) a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-licence) to use the Intellectual Property Materials created or developed by the Provider and its Sub-contractors pursuant to this Contract and any Intellectual Property Rights arising as a result of the provision of the Services under this Contract; and

37.3.3 the Provider hereby grants the Authority (and any Authority Related Party as required) a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-licence) to use:

37.3.3.1 any Intellectual Property Rights vested in or licensed to the Provider as at the Commencement Date; and

37.3.3.2 any Intellectual Property Rights created during the Contract Period but which are neither created or developed pursuant to this Contract nor arise as a result of the provision of the Services under this Contract,

including any modifications to or derivative versions of any such Intellectual Property Rights, which the Authority reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided under this Contract.

- 37.4 The Provider shall not infringe any Intellectual Property Rights of any third party in supplying the Services (including any Intellectual Property Materials licensed or supplied to the Authority) and the Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach by the Provider of this clause 37, except where such claim arises from:
- 37.4.1 items or materials based upon designs supplied by the Authority; or
  - 37.4.2 the use of Authority Data supplied by the Authority which is not required to be verified by the Provider under any provision of this Contract.
- 37.5 The Authority shall notify the Provider in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Rights in Intellectual Property Materials supplied or licensed by the Provider.
- 37.6 The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in Intellectual Property Materials supplied or licensed by the Provider, provided always that the Provider shall:
- 37.6.1 consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 37.6.2 take due and proper account of the interests of the Authority; and
  - 37.6.3 not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 37.7 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Provider by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Provider's obligations under this Contract and the Provider shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Provider shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 37.4.1 or 37.4.2.
- 37.8 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Provider in connection with the performance of its obligations under this Contract.
- 37.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall notify the Authority as soon as

reasonably practicable and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

37.9.1 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, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; and/or

37.9.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

and in the event that the Provider is unable to comply with clauses 37.9.1 or 37.9.2 within twenty (20) Working Days of receipt of the Provider's notification the Authority may terminate this Contract by notice in writing.

### **38. MONITORING**

38.1 The Provider shall comply with the monitoring arrangements set out in Schedule F (Performance and Monitoring Mechanism) including, but not limited to, providing such data and information as the Provider may be required to produce under this Contract.

38.2 The Provider shall supply (and shall procure that its Sub-contractors shall supply) the Management Information to the Authority and, where requested to do so, to Cabinet Office or successor body of the Crown in the form set out in Schedule F (Performance and Monitoring Mechanism) during the Contract Period.

38.3 The Provider agrees that the Authority may provide Cabinet Office with information relating to the Services procured and any payments made under the Contract.

38.4 Upon receipt of the Management Information supplied by the Provider in response to a request under clause 38.2 or receipt of information provided by the Authority to Cabinet Office under clause 38.3, the Authority and the Provider shall consent to Cabinet Office:

38.4.1 storing and analysing the Management Information and producing statistics; and

38.4.2 sharing the Management Information or any statistics produced using the Management Information, with any other Contracting Authority.

38.5 In the event that Cabinet Office shares the Management Information or information provided under clause 38.3 in accordance with 38.4.2, any Contracting Authority receiving the Management Information shall be informed of the confidential nature of that information and shall be requested not to disclose it to anybody who is not a Contracting Authority (unless required by Law). The Authority may make changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) Month's written notice of any changes.

**39. AUDIT**

The Parties shall comply with the obligations in Schedule D of the Contract (Audit).

**40. CONTROL OF THE CONTRACT**

**41. ASSIGNMENT AND SUB-CONTRACTING**

41.1 The Provider shall not assign or in any other way dispose of this Contract or any part of it without the Authority's prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under this Contract. The Provider shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.

41.2 If the Provider wishes to enter into any Sub-contracts with its Operators and/or its Operators wish to enter into any Sub-contracts with Third Party Operators it shall, prior to entering into those Sub-contracts and prior to its Operators entering into any Sub-contracts with Third Party Operators, submit to the Authority for its review and Approval:

41.2.1 a list of the proposed Operators and any proposed Third Party Operators; and

41.2.2 the proposed Sub-contracts to be entered into with those Operators and Third Party Operators, in relation to which the Provider and its Operators shall comply with the provisions of Schedule P (Provisions for Sub-contracts with Operators).

41.3 Where the Authority provides its Approval (which shall be given within three (3) Working Days of receipt of a final version of each Subcontract as agreed by the Parties) for the Provider to enter into Sub-contracts with its Operators and/or for its Operators to enter into Sub-contracts with Third Party Operators and the terms of those Sub-contracts:

41.3.1 the Approved Operators shall be recorded in Schedule K (Approved Operators) of this Contract; and

41.3.2 copies of each Sub-contract entered into between the Provider and an Operator and an Operator and a Third Party Operator shall be sent by the Provider to the Authority as soon as reasonably practicable.

41.4 The Provider shall obtain the Authority's prior Approval before:

41.4.1 adding to or replacing any of the Approved Operators; or

41.4.2 varying the terms of or rescinding any Sub-contracts between the Provider and its Operators and/or its Operators and Third Party Operators.

- 41.5 Where the Authority provides its Approval for the addition or replacement of any Approved Operators or for the Provider's Sub-contracts with its Operators and/or its Operators' Sub-contracts with Third Party Operators to be varied or rescinded:
- 41.5.1 Schedule K (Approved Operators) of this Contract shall be updated to reflect any changes in accordance with the procedure for changes to Controlled Documents within Schedule I (Change Mechanism) of this Contract; and
- 41.5.2 copies of any revised Sub-contracts shall be sent by the Provider to the Authority as soon as reasonably practicable.
- 41.6 Subject to clause 41.8, the Authority may assign, or otherwise dispose of its rights and obligations under this Contract thereof as it sees fit provided that any such assignment or other disposal shall not increase the burden of the Provider's obligations under the Contract.
- 41.7 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 41.8, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Authority.
- 41.8 If the rights and obligations of the Authority under the Contract are assigned, or otherwise disposed of to a body pursuant to clause 41.6, the Authority will remain liable for its obligations under this Contract unless 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") in which case:
- 41.8.1 the rights of termination of the Authority in clauses 56 (Termination on Change of Control, Use and Closure of the Prison and Insolvency and Related Events) and 54 (Termination on Default) shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency or Default of the Transferee; and
- 41.8.2 the Transferee shall only be able to assign or otherwise dispose of its rights and obligations under this Contract or any part thereof with the prior consent in writing of the Provider.
- 41.9 The Authority may disclose to any Transferee any Confidential Information of the Provider which relates to the performance of the Provider's obligations under this Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Provider's obligations under this 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.
- 41.10 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 provisions of the Contract.

**42. WAIVER**

42.1 The failure of either Party to insist upon strict performance of any provision of this Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

42.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 19.

42.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

**43. CONTRACT CHANGE**

43.1 The Parties may request a change to the Contract, including a change to the terms and a change to the provision of the Services, using the Change Control Mechanism in Schedule I of this Contract.

**44. SEVERABILITY**

44.1 If any provision of this Contract is to be invalid, unlawful or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, unlawful or unenforceable provision eliminated.

44.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

**45. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

45.1 The Parties shall comply with the following:

45.1.1 In the event that the Provider is in Default in relation to the performance of the Services in accordance with the Agreement, then the Authority may, in addition to the remedy in clause 54.1, withhold from payment or recover from the Provider any payment attributable to the Default or non-conforming Services, which shall be paid or reimbursed on rectification of the Default to the reasonable satisfaction of the Authority.

45.1.2 In the event that there has been a material Default by the Provider, then the Authority may, without prejudice to its rights under this Contract or otherwise at Law, terminate this Contract in accordance with clause 54.

- 45.1.3 In the event of termination under clauses 45.1.2, 54.1 or 55.2:
- 45.1.3.1 the Authority may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services;
  - 45.1.3.2 where such termination occurs in the first Contract Year, the Provider shall re-pay to the Authority an amount equivalent to 100% of the Mobilisation Costs which the Authority has paid to the Provider;
  - 45.1.3.3 where such termination occurs within the second Contract Year, the Provider shall re-pay to the Authority an amount equivalent to 50% of the Mobilisation Costs which the Authority has paid to the Provider; and
  - 45.1.3.4 where such termination occurs within the third Contract Year, the Provider shall re-pay to the Authority an amount equivalent to 25% of the Mobilisation Costs the Authority has paid to the Provider.
- 45.1.4 If the Provider fails to supply any of the Services in accordance with the provisions of the Agreement and such failure is capable of remedy, then the Authority shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within twenty (20) Working Days or such other period of time as the Authority may direct.
- 45.1.5 In the event that:
- 45.1.5.1 the Provider fails to comply with clause 45.1.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
  - 45.1.5.2 the Provider persistently fails to comply with clause 45.1.4 above;
- the Authority may terminate this Contract (or that part of this Contract) with immediate effect by notice in writing.
- 45.1.6 The remedies of the Authority under this clause 45 may be exercised successively in respect of any one or more failures by the Provider.
- 45.2 In the event that through any Default of the Provider, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and

shall provide a full credit in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

**46. REMEDIES CUMULATIVE**

46.1 Except as otherwise expressly provided in this Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not exclude the exercise of any other remedy, although this shall not permit any double recovery.

**47. ENTIRE AGREEMENT**

47.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. This 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 fraud or fraudulent misrepresentation.

47.2 In the event of, and only to the extent of, any conflict between the contract documents, the conflict shall be resolved, unless the Parties have agreed in writing to the contrary, in accordance with the order of precedence set out in the Contract Letter.

**48. COUNTERPARTS**

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

**49. [BLANK]**

**50. LIABILITY**

50.1 Neither Party excludes or limits its liability for:

50.1.1 death or personal injury caused by its negligence or the negligence of any of its Personnel or agents;

50.1.2 fraud or fraudulent misrepresentation by it or any of its Personnel or agents;

50.1.3 any breach of any obligations imposed by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979; or

50.1.4 any other liability which cannot be limited or excluded by applicable Law.

50.2 Subject to the limits set out in clause 50.4, the Provider shall be liable for the following types of loss, damage, cost or expense flowing from an act or Default of the Provider which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Authority) be recoverable by the Authority:

- 50.2.1 the additional operational and/or administrative costs and expenses arising from any material Default;
- 50.2.2 the cost of procuring, implementing and operating any alternative or replacement services to the Services; and
- 50.2.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Provider of any Laws.
- 50.3 In no event shall either Party be liable to the other for any:
- 50.3.1 loss of profits;
- 50.3.2 loss of business;
- 50.3.3 loss of revenue;
- 50.3.4 loss of or damage to goodwill;
- 50.3.5 loss of savings (whether anticipated or otherwise); and/or
- 50.3.6 any indirect, special or consequential loss or damage.
- 50.4 Subject to clause 50.1, the maximum amount for which the Provider shall be liable to the Authority in any Contract Year in respect of Uninsured Losses under and in connection with this Contract whether those liabilities are expressed as an indemnity or otherwise (whether in contract, tort (including negligence), and breach of statutory duty or howsoever arising) shall be limited to:
- 50.4.1 [REDACTED]
- [REDACTED]
- 50.5 Subject to clause 50.1 and the Authority's obligation to pay the Contract Price, the maximum amount for which the Authority shall be liable to the Provider in any Contract Year under and in connection with this Contract whether those liabilities are expressed as an indemnity or otherwise (whether in contract, tort (including negligence), and breach of statutory duty or howsoever arising) shall be limited to:
- 50.5.1 [REDACTED]
- [REDACTED]
- 50.6 The Provider is solely liable for the economic operations it directs and manages in the Premises. Subject to the terms of this Contract, the Authority shall accept no liability with regard to any financial loss in relation to the economic operations.

**51. INDEMNITY AND INSURANCE**

51.1 Subject to clause 51.2, the Provider shall indemnify the Authority and keep the Authority indemnified fully up to:

51.1.1

in respect of all proven loss, damages, costs and expenses which arise directly out of the breach by the Provider of this Contract and the negligence or wilful Default of the Provider.

51.2 Without prejudice to its obligation to indemnify or otherwise be liable to the Authority under this Contract, the Provider shall for the periods specified in Schedule G (Required Insurances) take out and maintain, or procure the taking out and maintenance of the Required Insurances. The Provider shall ensure that the Required Insurances are effective in each case not later than the date on which the relevant risk commences.

51.3 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.

51.4 Where specified in Schedule G (Required Insurances) the Provider shall ensure that the relevant policies of insurance:

51.4.1 contain an indemnity to principals clause, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Provider is legally liable in its provision of the Services under this Contract; and

51.4.2 name the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions.

51.5 The Provider shall not (and the Provider shall procure that its Subcontractors of any tier shall not) take any action or fail to take any action or, insofar as is reasonably within its power, permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.

51.6 If the Provider is in breach of clause 51.2, the Authority may elect, but shall not be obliged, to purchase any of the Required insurances which the Provider is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Provider.

51.7 The Provider shall, upon the date of this Contract and within fifteen (15) days after each renewal of any of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in force and effect and

meet the requirements of this clause 51 and Schedule G (Required Insurances). The supply to the Authority of any evidence of insurance cover in compliance with the requirements of this clause 51.7 shall not imply acceptance by the Authority that the extent of insurance cover is sufficient or that the terms and conditions thereof are satisfactory or constitute any waiver of the Provider's liability under this Contract.

51.8 The Provider shall notify the Authority at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.

51.9 The Provider shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to the Services or this Contract, the Provider shall co-operate with the Authority and assist it in dealing with such claims including, without limitation, providing information and documentation in a timely manner.

51.10 Except where the Authority is the claimant party, the Provider shall notify the Authority immediately (such notification to be accompanied by reasonable particulars of the incident or circumstances giving rise to such incident) if there is an incident or circumstances which may give rise to a claim:

51.10.1

[REDACTED]

51.10.2 in connection with this Contract which may be in excess of the limits of the Required Insurances in Schedule G (Required Insurances).

51.11 Where any of the Required Insurances requires payment of a premium, the Provider shall be liable for such premium.

51.12 Where any of the Required Insurances referred to in Schedule G (Required Insurances) is subject to an excess or deductible below which the indemnity from insurers is excluded, the Provider shall be liable for such excess or deductible which would otherwise be insured but for the excess or deductible. The Provider shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of this Contract or otherwise.

51.13 All insurance proceeds received under the Property Damage "All Risks" Insurance referred to in Schedule G (Required Insurances) shall be applied to repair, reinstate and replace each part or parts of the insured property in respect of which the proceeds were received.

51.14 The Provider undertakes to the Authority not to permit or agree any wording in any policy of insurance which would permit:

51.14.1 any commercial insurer;

51.14.2 any commercial insurer's successors or permitted assigns; or

51.14.3 any other person claiming by or through a commercial insurer,

to bring any claim under the Riot Compensation Act 2016. This undertaking shall be for the benefit of any police authority in the United Kingdom and the statutory successors of any such police authority, each of which may enforce the terms of this clause against the Provider and/or its successors and permitted assigns (as appropriate), and shall be binding upon the Provider and each of its successors and permitted assigns.

**52. [BLANK CLAUSE]**

**53. DEFAULT, DISRUPTION AND TERMINATION**

**54. TERMINATION ON DEFAULT**

54.1 The Authority may terminate the Contract with immediate effect if the Provider commits a Default and:

54.1.1 the Provider has not remedied the Default to the satisfaction of the Authority within twenty (20) Working Days after issue of a written notice specifying the Default and requesting it to be remedied; or

54.1.2 the Default is not, in the reasonable opinion of the Authority capable of remedy; or

54.1.3 the Default is a material breach of the Contract.

54.2 If the Authority fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 45.

54.3 In the event that the Provider terminates the Contract under clause 54.2, the indemnity provided in clause 61.2 shall apply.

**55. PERSISTENT BREACH**

55.1 If a particular breach (other than any breach for which an Improvement Notice or Rectification Notice could have been issued), has continued for more than fourteen (14) days or occurred more than three (3) times in any six (6) Month period then the Authority may serve a Warning Notice on the Provider:

55.1.1 specifying that it is a Warning Notice;

55.1.2 giving reasonable details of the breach; and

55.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in the termination of this Contract.

55.2 If, following service of a Warning Notice, the breach specified has continued beyond thirty (30) Days or recurred in two (2) or more Months within the six (6) Month period after the date of service of the Warning Notice, then the Authority may serve a Final Warning Notice on the Provider:

55.1.2.1 specifying that it is a Final Warning Notice;

55.1.2.2 stating that the breach specified has been the subject of a Warning Notice served within the six (6) Month period prior to the date of service of the Final Warning Notice; and

55.1.2.3 stating that if the breach continues for more than fourteen (14) Days or recurs in two (2) or more Months within the six (6) Month period after the date of service of the Final Warning Notice, this Contract may be terminated

and in the event that the breach continues in accordance with 55.1.2.3 the Authority may terminate the Contract with immediate effect.

**56. TERMINATION ON CHANGE OF CONTROL, USE AND CLOSURE OF THE PRISON AND INSOLVENCY AND RELATED EVENTS**

56.1 The Authority shall have the option, in relation to the Premises and on the provision of at least three (3) Months written notice to the Provider, to terminate this Contract in the event that the Authority:

56.1.1 transfers ownership and/or control of the Prison to a third party (which third party is not part of or controlled by HM Government) ;

56.1.2 materially changes the use of the Prison (such as, but not limited to, the Prison becoming an Immigration Removal Centre or Young Offender Institution) or;

56.1.3 closes the Prison

and in the event of such termination, the indemnity provided in clause 61.2 shall apply.

56.2 The Authority confirms that at the time of execution of this Contract, the Authority has no plans in contemplation either to a) transfer ownership or control of the Prison or b) close the Prison.

56.3 The Authority may terminate the Contract with immediate effect by notice in writing where the Provider is a company and in respect of the Provider:

56.3.1 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; or

56.3.2 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 reorganisation or amalgamation); or
- 56.3.3 a petition is presented for its winding up (which is not dismissed within fourteen (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; or
- 56.3.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 56.3.5 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; or
- 56.3.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 56.3.7 being a "**small company**" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 56.3.8 any event similar to those listed in clause 56.1.1 to 56.1.7 occurs under the law of any other jurisdiction.
- 56.4 The Authority may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:
- 56.4.1 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 Provider's creditors; or
- 56.4.2 a debt relief order or a debt restriction order has been made in respect of him; or
- 56.4.3 a petition is presented and not dismissed within fourteen (14) days or order made for the Provider's bankruptcy; or
- 56.4.4 a receiver, or similar officer is appointed over the whole or any part of the Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 56.4.5 the Provider 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; or
- 56.4.6 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 Provider's assets and such attachment or process is not discharged within fourteen (14) days; or
- 56.4.7 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005.
- 56.5 The Authority may terminate the Contract with immediate effect by notice in writing where the Provider is a partnership and:
- 56.5.1 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
- 56.5.2 it is for any reason dissolved; or
- 56.5.3 a petition is presented for its winding up or for the making of any administrative order, or an application is made for the appointment of a provisional liquidator; or
- 56.5.4 a receiver, or similar officer, is appointed over the whole or any part of its assets; or
- 56.5.5 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
- 56.5.6 any of the following occurs in relation to any of its partners:
- 56.5.6.1 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; or
- 56.5.6.2 a petition is presented for his bankruptcy; or
- 56.5.6.4 a receiver, or similar officer, is appointed over the whole or any part of his assets.
- 56.6 The Authority may terminate the Contract with immediate effect by notice in writing where the Provider is a limited liability partnership and:
- 56.6.1 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; or
- 56.6.2 it is for any reason dissolved; or

- 56.6.3 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; or
- 56.6.4 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; or
- 56.6.5 a petition is presented for its winding up (which is not dismissed within fourteen (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; or
- 56.6.6 a receiver, or similar officer, is appointed over the whole or any part of its assets; or
  - 56.6.6.1 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 56.6.7.1 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.
- 56.7 References to the Insolvency Act 1986 in clause 56.4.1 shall be construed as references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 56.8 The Provider shall notify the Authority immediately of a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). Where in the reasonable opinion of the Authority the change is likely to result in an adverse effect on the provision of the Services the Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:
  - 56.8.1 being notified that a change of control has occurred; or
  - 56.8.2 where no notification has been made, the date that the Authority becomes aware of the change of control, but shall not be permitted to terminate where an Approval was granted prior to the change of control.
- 57. TERMINATION FOR CONVENIENCE**
- 57.1 The Authority shall have the right to terminate this Contract at any time by giving three (3) Months written notice to the Provider.
- 58. TERMINATION FOR PROCUREMENT REASONS**
- 58.1 The Authority shall have the right to terminate this Contract at any time by giving one (1) Months' written notice to the Provider where:

58.1.1 this Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of The Public Contracts Regulations 2015;

58.1.2 the Provider, at the time the Contract was awarded, was in one of the situations referred to in regulation 57(1) or 57(3) of The Public Contracts Regulations, and should therefore have been excluded from the procurement procedure;

58.1.3 the Provider, at the time the Contract was awarded, was in one of the situations referred to in regulation 57(4) or 57(8) of The Public Contracts Regulations, and the Authority would have excluded the Provider from the procurement procedure had it been aware of the situation prior to the award of the Contract; or

58.1.4 the Contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaty on the European Union, the Treaty on the Functioning of the European Union and Directive 2014/24 that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

58.2 In the event of termination of this Contract in accordance with clause 58.1, the Provider shall only be entitled to the indemnity provided in clause 61.2 if the event giving rise to such termination was caused or contributed to by the negligence or wilful default of the Authority and in that event the Authority's liability shall be proportionate to the extent to which it was caused or contributed to by the Authority.

## **59. TERMINATION FOR OCCASION OF TAX NON-COMPLIANCE**

59.1 The Authority may terminate this Contract with immediate effect by notice in writing if the Provider:

59.1.1 is in breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance pursuant to clause 60.1.1; or

59.1.2 fails to provide details of the steps and the mitigating factors pursuant to clause 60.1.2 or those are not in the Authority's reasonable opinion acceptable.

## **60. PROMOTING TAX COMPLIANCE**

60.1 If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Provider shall:

60.1.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

60.1.2 promptly provide to the Authority:

60.1.2.1 details of the steps which the Provider is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

60.1.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

**61. CONSEQUENCES OF EXPIRY OR TERMINATION**

61.1 Where the Authority terminates the Contract under clause 54, and then makes other arrangements for the supply of the Services, the Authority may, subject to the limitation of liability in clause 50.4, recover from the Provider the additional cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period to the extent that such cost or expenditure exceeds that which would have been payable to the Provider. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where this Contract is terminated under clause 54, no further payments shall be payable by the Authority to the Provider (for the Services supplied by the Provider prior to termination and in accordance with this Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

61.2 Subject to clauses 50 and 51, where the Authority terminates this Contract under clause 57.1, the Authority shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss to the Provider by reason of the termination of this Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Authority shall only indemnify the Provider for those unavoidable direct costs that are not covered by the insurance available. The Provider shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under clause 57.1.

61.3 The Authority shall not be liable under clause 61.2 to pay any sum which:

61.3.1 was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

61.3.2 when added to any sums paid or due to the Provider under this Contract, exceeds the total sum that would have been payable to the Provider if this Contract had not been terminated prior to the expiry of this Contract Period; or

61.3.3 is a claim by the Provider for loss of profit, due to early termination of this Contract.

61.4 In the event of any termination or expiry of this Contract, save as otherwise expressly provided in this Contract:

- 61.4.1 the Authority shall be entitled to obtain a refund of the Contract Price paid by the Authority in respect of any part of this Contract which has not been performed by the Provider;
  - 61.4.2 the Contract Price shall be reduced on a pro-rata basis where any part of the Contract is terminated, and the remaining parts of the Contract shall continue to be performed for the remainder of the Contract Period;
  - 61.4.3 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
  - 61.4.4 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Provider under clauses 17 (Warranties and Representation), 22 (Prevention of Fraud and Prevention of Corruption), 25 (Charges, Payment and VAT), 26 (Recovery of Sums Due), 29 (The Contracts (Rights of Third Parties) Act 1999), 31 and 32 (Authority and Provider Data and Protection of Personal Data), 33 (Freedom of Information), 34 (Confidentiality), 39 (Audit), 46 (Remedies Cumulative), 50 and 51 (Liability and Indemnity and Insurance), 61 (Consequences of Expiry or Termination), , 65 (Exit Arrangements), 67 (Dispute Resolution) and 68 (Jurisdiction and Governing Law).
- 61.5 Upon expiry or termination of this Contract, the Provider shall provide all reasonable assistance and information to the Authority (and to any Replacement Provider appointed by the Authority) if requested, to the extent necessary to effect an orderly assumption of the Services by the Authority or the Replacement Provider.

**62. DISRUPTION**

- 62.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority, its employees or any other Provider employed by the Authority.
- 62.2 The Provider shall promptly inform the Authority of any actual or potential industrial action, of which it is aware or should be reasonably aware, whether such action is by any of the Provider's Personnel or others, which affects or might affect its ability at any time to perform its obligations under this Contract.
- 62.3 In the event of industrial action by any of the Provider's Personnel the Provider shall seek Approval to its proposals to perform its obligations under this Contract.
- 62.4 If the Provider's proposals referred to in clause 62.3 are considered insufficient or unacceptable by the Authority acting reasonably, then this Contract may be terminated with immediate effect by the Authority by notice in writing.

**63. [BLANK CLAUSE]**

**64 [BLANK CLAUSE]**

**65. EXIT ARRANGEMENTS**

- 65.1 The Parties shall comply with the provisions in Schedule M to this Contract (Exit Management).

**66. FORCE MAJEURE**

- 66.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Contract for a period in excess of three (3) Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 66.2 Any failure or delay by the Provider in performing its obligations under this Contract which results from any failure or delay by an agent or Sub-contractor shall be regarded as due to Force Majeure only if that agent or Sub-contractor is itself impeded by Force Majeure from complying with an obligation to the Provider.
- 66.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 66.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

**67. DISPUTE RESOLUTION**

- 67.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Director of Commercial and Procurement (or equivalent) of each Party.
- 67.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 67.3 If the dispute cannot be resolved by the Parties pursuant to clause 67.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 67.5 unless the Parties agree that the dispute is not suitable for resolution by mediation.
- 67.4 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 Provider and the Provider's Personnel shall comply fully with the requirements of this Contract at all times.
- 67.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- 67.5.1 a neutral adviser or Mediator shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (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 ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (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;
- 67.5.2 the Parties shall within ten (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 to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure;
- 67.5.3 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;
- 67.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 67.5.5 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 agreement without the prior written consent of both Parties; and
- 67.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (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 67.6.
- 67.6 Subject to clause 67.2, the Parties shall not institute court proceedings until the procedures set out in clauses 67.1, 67.3 and 67.5 have been completed save that:
  - 67.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause 67.7;
  - 67.6.2 if the Provider intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Provider requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 67.7; and

67.6.3 the Provider may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with the provisions of clause 67.7, to which the Authority may consent as it sees fit.

67.7 In the event that any arbitration proceedings are commenced pursuant to clause 67.6:

67.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

67.7.2 the Authority shall serve an Arbitration Notice on the Provider stating:

67.7.2.1 that the dispute is referred to arbitration; and

67.7.2.2 providing details of the issues to be determined;

67.7.3 the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration shall be applied and are deemed to be incorporated in this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

67.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

67.7.5 if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 67.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

67.7.6 the arbitration proceedings shall take place in London and in the English language; and

67.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

## **68. JURISDICTION AND GOVERNING LAW**

68.1 The Authority and the Provider accept the exclusive jurisdiction of the English courts and agree that this Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

**END**

