

Dated 1<sup>st</sup> April 2015

**Ministry of Justice**

**-and-**

**Pertemps People Development Group**

**AGREEMENT**

**relating to**

**NOMS Co-Financing Organisation (CFO) provision for the  
European Social Fund (ESF) 2014-2020 Operational Programme (Round 3) in  
the Yorkshire region**

**Contract reference:**

**3671- Lot 3: Yorkshire - Reducing Reoffending-SE-RFP**

## Contract Letter

### Contract Reference:

3671-Lot 3: Yorkshire - Reducing Reoffending-SE-RFP

### Description of Services:

NOMS Co-Financing Organisation (CFO) provision for the European Social Fund (ESF) 2014-2020 Operational Programme (Round 3) in the Yorkshire region

|   |  |
|---|--|
| Authority   | Ministry of Justice  |
| Address:<br>NOMS CFO<br>First Floor,<br>Unit 1100,<br>Daresbury Park,<br>Warrington,<br>WA4 4GB | Authority Representative: [REDACTED]<br><br>Telephone No: [REDACTED]<br><br>Fax No: [REDACTED]<br><br>E-mail: [REDACTED] |

|  |   |
|--|---|
| Contractor:  | Pertemps People Development Group   |
| Address:<br>Westbourne Manor,<br>Westbourne Road, Edgbaston,<br>Birmingham B15 3TR | Contractor Representative: [REDACTED]<br><br>Telephone No: [REDACTED]<br><br>Fax No: [REDACTED]<br><br>E-mail: [REDACTED] |

|                    |                                |
|--------------------|--------------------------------|
| Commencement Date: | 1 <sup>st</sup> April 2015     |
| Expiration Date:   | 31 <sup>st</sup> December 2020 |

This Contract consists of:

This Contract Letter

Terms and Conditions of Contract and annexed Schedules

The following amendments will apply to the Terms and Conditions of Contract.

CL1 The following clauses of the Terms and Conditions of Contract do **NOT** apply to the Contract.

Schedule B Special Conditions: Goods

Schedule I Commercially Sensitive Information

Annex A Minimum scope of Authority Data which is protected personal data

|                 |  |
|-----------------|--|
| Service Levels: | The service level requirements are detailed within Schedules G, H, J and K of the Terms and Conditions |
|-----------------|--|

**IN WITNESS** of which the Contract has been duly executed by the parties.

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

**SIGNED** for and on behalf of Pertemps People Development Group

Signature:

Signature:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Position: \_\_\_\_\_

Date:

Date:

## **Terms and Conditions of Contract**

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## **STANDARD TERMS**

### **1. Definitions and Interpretations**

#### **1.1. Definitions**

In these Conditions:

**"Achieve"** means in relation to a Payment Stage, all of the criteria for that stage set out in paragraph H3.5 of Schedule H Pricing and Payment have been satisfied and **"Achieved"** shall have a corresponding meaning.

**"Action Plan"** has means a plan issued to the Contractor by the Authority relating to the Contractor's underperformance of the Contract as described in Schedule R.

**"Approval"** means the written consent of the Authority.

**"Authority"** means the Secretary of State for Justice acting through the authorised representative identified in the Contract Letter.

**"Authority Confidential Information"** means all Personal Data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential.

**"Authority Data"** means

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - (i) supplied to the Contractor by or on behalf of the Authority; or
  - (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Authority is the Data Controller.

**"Authority Personnel"** means all employees, agents, consultants and sub-contractors of the Authority.

**"Authority Representative"** has the meaning given to it in Section (vii) Administrative Instructions.

**"Authority to Approve"** and **"ATA"** mean the individuals having the authority to approve requests for new CATS user accounts on behalf of the Contractor following the completion of the process detailed in Schedule N.

**"Basic Disclosure"** means Disclosure Scotland's Basic Disclosure Certificate which contains details of convictions considered "unspent" under the Rehabilitation of Offenders Act 1974.

**"Budget Profile"** means the Contractor's forecast ESF Eligible Expenditure set out in Schedule GB Contractors Tender including Budget Profile and clarifications, Participant Throughput Profile and Financial Profile.

**"CATS"** means the Authority's Case Assessment Tracking System, which the Contractor shall use subject to and in accordance with the terms of the Contract.

**"Change in Law"** has the meaning given to it in Schedule O.

**"Commencement Date"** means the date specified in the Contract Letter.

**"Commercially Sensitive Information"** means the information (i) listed in the Commercially Sensitive Information Schedule: or (ii) notified to the Authority in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information:

which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule or notification; and/or

that constitutes a trade secret

**"Condition"** means a condition of the Contract.

**"Confidential Contract Information Exceptions"** means the Information listed in the relevant Schedule.

**"Confidential Information"** means the Authority's Confidential Information and/or the Contractor's Confidential Information.

**"Contingency European Social Fund Contract Area"** means a geographical ESF Contract Area identified in Schedule N (Special Conditions: European Social Fund)

**"Contract"** means this written agreement between the Authority and the Contractor consisting of the Contract Letter, these terms and conditions, any attached Schedules and the Contractor's Tender.

**"Contract Funding"** means the total ESF funding allocated to the Contract, being £[•]

**"Contract Letter"** means the letter identifying those documents which form the Contract.

**"Contract Period"** means the period from the Commencement Date to:

- (a) the date of expiry set out in clause 2 (Initial Contract Period); or
- (b) following an extension pursuant to clause 31 (Extension of Initial Contract Period), the date of expiry of the extended period;

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

**"Contract Price"** means the DAF Payments, the Service Charge Payments, the Stage Payments and, if applicable, the Development Fund Payments.

**"Contracting Authority"** means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

**"Contractor"** means the person, firm or company with whom the Authority enters into the Contract and for the purposes of the Contract includes the Contractor's Personnel and where applicable the Key Personnel.

**"Contractor's Confidential Information"** means any information which has been designated as confidential by either party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

**"Contractor Personnel"** and **"Contractor Staff"** mean the personnel of the Contractor, of any Subcontractor or those of any Employing Subcontractor who are directly employed, assigned or engaged in providing the Services (or relevant part thereof) under this Contract.

**"Contractor's Personnel Vetting Procedure"** means the Authority's procedures for the vetting of Contractor's Personnel, as advised to the Contractor by the Authority.

**"Contractor Premises"** means premises in the possession or control of the Contractor, a Contractor Related Party or any Subcontractor from which the Services are delivered, in whole or in part or otherwise relate to the provision of the Services or the performance of the Contractor's other obligations arising under or in connection with this Agreement.

**"Contractor Representative"** means the individual named in the Contract Letter unless this role is delegated, with the prior consent of the Authority, to another named individual acting with appropriate authority on behalf of the Contractor.

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

**"Crown"** means the government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

**"DAF"** means the Discretionary Access Fund.

**"DAF Amount"** means the maximum amount allocated to the DAF pursuant to paragraph H2.1 of Schedule H Pricing and Payment

**"DAF Guidance"** means the guidance provided by the Authority from time to time relating to the Contractor's use of the DAF, a copy of the then current version having been provided to the Contractor at the Commencement Date

**"DAF Payment Evidence"** means the relevant evidence specified in the Evidence Guidance.

**"DAF Payments"** means the payments to be made from the DAF by the Authority as described in paragraph H2 of Schedule H Pricing and Payment.

**"Data Controller"** shall have the same meaning as set out in the Data Protection Act 1998.

**"Data Processor"** shall have the same meaning as set out in the Data Protection Act 1998.

**"Data Protection Legislation"** means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**"Data Subject"** shall have the same meaning as set out in the Data Protection Act 1998.

**"Default"** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or their Personnel in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

**"Development Fund"** means the fund established by the Authority as described in, and managed in accordance with Schedule G Specification.

**"Discretionary Access Fund"** means the fund established by the Authority as described in, and managed in accordance with, paragraph H2 of Schedule H Pricing and Payment.

**"Employing Subcontractor"** means any Subcontractor of the Contractor which becomes the employer of any Previous Contractor Transferring Employee or any other person who is assigned to carry out the Services to be carried out by the Contractor under this Contract

**"Environmental Information Regulations"** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**"ESF"** means the European Social Fund.

**"ESF Contract Area"** has the means given to it in Schedule G and Schedule GA.

**"ESF Eligible Expenditure"** means expenditure incurred by the Contractor pursuant to the Contract which complies with the ESF Regulations.

**"ESF Regulations"** means all applicable ESF rules, regulations, manuals and guidance as updated or amended from time to time and whether referenced at <http://www.dwp.gov.uk/esf/> or otherwise, which shall include all applicable ESF rules, regulations, manuals and guidance relating to the 2007 to 2013 ESF Operational Programme until replaced or superseded with the same relating to the 2014 to 2020 ESF Operational Programme.

**"European Social Fund"** means the European Commission fund of the same name for the period 2014 to 2020, for supporting jobs, helping people get better jobs and ensuring fairer job opportunities for all EU citizens.

**"Evidence Guidance"** means the payment evidence guidance issued by the Authority from time to time, a copy of the then current version having been provided to the Contractor at the Commencement Date.

**"Ex-offender"** means an individual whose community/suspended sentence order, licence or post-sentence supervision has been completed and there is no longer a right to recall.

**"Exit Period"** means the period of at least three months but not more than 12 months, as specified by the Authority, commencing if this Agreement is terminated by the Authority, on the date specified in accordance with this Agreement; or if this Agreement expires in accordance with Clause 2, as extended (as applicable) by the Authority in accordance with Clause 31.

**"Extended Period"** means the period commencing from the date on which the first extended period referred to in clause 31.1 expires until the date specified in the notice provided by the Authority in accordance with clause 31.1 to extend that first extended period.

**"Fees Regulations"** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

**"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**"Force Majeure"** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract.

**"Finance Budget Return"** means the document provided by the Contractor to the Authority described as such in paragraph H5 of Schedule H Pricing and Payment.

**"Financial Profile"** means the forecast Service Charge Payments and Stage Payments set out in Schedule GB Contractors Tender including Budget Profile and clarifications, Participant Throughput Profile and Financial Profile as updated from time to time in accordance with the Contract.

**"Fraud"** means any offence under the Law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

**"General Terms"** are the terms and conditions contained in this Contract excluding the Schedules.

**"Good Industry Practice"** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**"Industry Standard Partnering Agreement"** means the form of Subcontract set out in Schedule Q (Industry Standard Partner Agreement).

**"Information"** has the meaning given under section 84 of the Freedom of Information Act 2000.

**"Initial Contract Period"** means the period from the Commencement Date to the date of expiry set out in clause 2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

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

**"Law"** means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply.

**"Market Stewardship Principles"** means has the meaning given to it in Schedule P (Market Stewardship Principles).

**"Management Information"** means the information specified in the Monitoring Schedule.

**"Managing Authority"** means the Managing Authority for the European Social Fund in England.

**"Month"** means a calendar month.

**"Monitoring Schedule"** means the Schedule containing details of the monitoring arrangements.

**"New Contractor"** means the person who has entered or who will enter into an agreement with the Authority for the provision of services the same as or substantially the same as the Services in substitution for the Services.

**"NOMS"** means the National Offender Management Service.

**"NOMS CFO"** means the National Offender Management Service Co-financing Organisation.

**"NOMS CFO Finance Team"** means the NOMS CFO Finance team which at the Commencement Date is located at the second address provided in paragraph J4.1 of Schedule J Management and Monitoring Information.

**"Operating Costs"** means the operating costs incurred by the Contractor in performing the Services which are ESF Eligible Expenditure.



**“Outgoing Contractors”** has the meaning given in clause 46.1.1.

**“Participant”** means an offender who is eligible to receive the Services specified in this contract rolling the completion of the Enrolment, Assessment, Action Plan and Data Integrity Checks stages of the Participant Pathway.

**“Participant Pathway”** has the meaning given to it in Schedule G and Schedule H.

**"Party"** means a party to the Contract.

**"Payment Stages"** means the following payment stages from the Participant Pathway:

- Enrolment;
- Supportive Measures;
- Short Courses;
- Achievements;
- Participant Feedback; and
- Secured Employment.

**“Performance Improvement Plan”** means a plan to be agreed by the Parties relating to the Contractor's underperformance of the Contract as described in Schedule R.

**“Permitted Activity”** or **“Permitted Activities”** means specific activity that the Authority has stated can be delivered by the Contractor and which are listed within Schedule H Pricing and Payment or within CATS.

**"Personal Data"** shall have the same meaning as set out in the Data Protection Act 1998.

**"Personnel"** means all employees, agents, consultants and sub-contractors of either Party.

**"Premises"** means the location where the Goods or Services are to be delivered or provided as set out in the Specification.

**“Previous Contractor Transferring Employees”** means an employee who immediately before the Relevant Transfer Date is an employee of a Previous Contractor and assigned to carry out the services to be carried out by the Contractor under this Contract

**"Pricing and Payment Schedule"** means the Schedule containing details of the Contract Price.

**"Process"** has the meaning given to it under the Data Protection Legislation and, for the purposes of the Contract, it shall include both manual and automatic processing.

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

**"Provider"** has the same meaning as "Contractor", and the two terms are used interchangeably within this Contract.

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

**"Receipt"** means the physical or electronic arrival of the invoice at the address of the Authority detailed at clause 6 or at any other address given by the Authority to the Contractor for the submission of invoices.

**"Receiving Contractor"** has the meaning given in paragraph H6.3.2 of Schedule H Pricing and Payment.

**"Regulatory Bodies"** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and **"Regulatory Body"** shall be construed accordingly.

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

**"Relevant Transfer"** means the transfer to the Contractor or an Employing Sub-Contractor (as applicable) of Previous Contractor Transferring Employees pursuant to this Contract or TUPE or any successor legislation, as applicable.

**"Relevant Transfer Date"** means the date on which a Relevant Transfer is effected for the Previous Contractor Transferring Employees.

**"Replacement Contractor"** means any third party service provider appointed by the Authority to supply any Goods or Services which are substantially similar to any of the Goods or Services, and which the Authority receives in substitution for any of the Goods or Services following the expiry, termination or partial termination of the Contract.

**"Requests for Information"** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

**"Schedule"** means a schedule attached to, and forming part of, the Contract.

**"Sending Contractor"** has the meaning given in paragraph H6.4 of Schedule H Pricing and Payment.

**"Services"** means the services to be supplied as detailed in this Contract, including each Schedule and Section.

**"Service Charge Amount"** means the maximum value of the Service Charges determined at the start of the Contract in accordance with paragraph H3.1 of Schedule H Pricing and Payment

**"Service Charge Payments"** means the monthly payments made by the Authority to reimburse the Contractor for its Operating Costs in accordance with paragraph H3 of Schedule H Pricing and Payment

**"Specification"** means the description of the Goods or Services to be supplied under the Contract as set out in Schedule G (Specification) including, where appropriate, the Contractor's Key Personnel, the Premises and the Quality Standards.

**"Stage Payment Amount"** means the maximum total value of the Stage Payments determined at the start of the Contract in accordance with paragraph H3.1 of Schedule H Pricing and Payment.

**"Stage Payments"** means the payments specified in Appendix I of Schedule G Specification.

**"Subcontract"** means a contract entered into between the Contractor and a Subcontractor;

**"Subcontractor"** means a person engaged by the Contractor from time to time as may be permitted by this Agreement to provide, or contribute to the provision of, the Services (or any of them) and a reference to a subcontractor means a subcontractor of the Contractor.

**"Termination Date"** means the date on which the Exit Period expires and this Agreement is effectively terminated in accordance with the provisions outlined in this Agreement.

**"Tender"** means any document(s) submitted by the Contractor to the Authority in response to the Authority's invitation to suppliers for formal offers to supply it with the Goods or Services.

**"Variation"** has the meaning given to it in clause 28 (Variation).

**"VAT"** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

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

## 1.2. Interpretation

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

- (c) Words importing the singular meaning include where the context so admits the plural meaning and vice versa.
- (d) Words importing the masculine include the feminine and the neuter.
- (e) Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- (f) 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.
- (g) 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.
- (h) The words "**include**", "**includes**" and "**including**" are to be construed as if they were immediately followed by the words "**without limitation**".
- (i) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## 2. Initial Contract Period

- 2.1. The Contract shall take effect on the Commencement Date and shall expire automatically on the date specified in the Contract Letter, unless it is terminated earlier in accordance with the Contract, extended under clause 31.1 or the Authority exercises its break option under clause 31.2.

## 3. Contractor's Obligations

- 3.1. The Contractor shall employ at all times a sufficient number of Contractor's Personnel to fulfil its obligations under the Contract. All Contractor's Personnel shall possess the qualifications and competence appropriate to the tasks for which they are employed. If and when so directed in writing by the Authority the Contractor shall within seven (7) days provide details of the qualifications and competence of any person employed or proposed to be employed by the Contractor in connection with the Contract and shall provide a copy of any certificate or qualification or competence that has been issued in respect of any such person. The Contractor shall, if required by the Authority, provide its Personnel with a copy of the Cabinet Office Joint

Statement on access to skills, trade unions and advice in government contracting.

- 3.2. The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Goods or Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Goods or Services with the Authority prior to the supply of the Goods or Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice. The Contractor shall ensure that all Contractor's Personnel supplying the Goods or Services shall do so with all due skill, care and diligence as are necessary for the proper supply of the Services.
- 3.3. The Authority, whose decision shall be final and conclusive, reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any Premises occupied by or on behalf of the Authority:
  - 3.3.1. any member of the Contractor's Personnel; or
  - 3.3.2. any person employed or engaged by a sub-contractor, agent or servant of the Contractorwhose admission or continued presence would be, in the opinion of the Authority, undesirable.
- 3.4. If and when directed by the Authority, the Contractor shall provide a list of the names and addresses, National Insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably desire.
- 3.5. The Contractor's Personnel, engaged within the boundaries of a Government establishment, 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 contractors' personnel when at that establishment and when outside that establishment.
- 3.6. If the Contractor fails to comply with clause 3.4 above the Authority, (whose decision shall be final and conclusive), may decide that such failure is prejudicial to the interests of the Crown; and if the Contractor does not comply with the provisions of clause 3.4 within 2 Months of the date of a written

notice from the Authority so to do then the Authority 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.

- 3.7. The Contractor shall bear the cost of any complying with any requirement of this clause.
- 3.8. The Contractor shall promptly inform and keep informed the Authority in writing of any industrial relations problems or other matters relating to the Contractor's Personnel which may affect the performance of the Contract.
- 3.9. The Contractor shall not employ any person where the Contractor 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 Contractor. The Contractor shall not make, facilitate or participate in the procurement of any unlawful payments to any person employed by the Contractor, whether in the nature of Social Security fraud, evasion of tax or otherwise.
- 3.10. The Contractor shall comply with the Authority's procedures for the vetting of Contractor's Personnel in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Contractors' Personnel Vetting Procedures.
- 3.11. At the Authority's written request, the Contractor shall 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.
- 3.12. The Authority may require the Contractor to ensure that any person employed in the provision of the Goods or Services has undertaken a criminal records check by means of a Basic Disclosure or a Disclosure and Barring Service (DBS) check as per the Contractor's Personnel Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the criminal

records disclosure check or otherwise) is employed or engaged in the provision of the Goods or Services.

- 3.13. Where the Authority deems it necessary the Contractor shall provide a list of Personnel who will be undertaking regulated activity according to the Protection of Freedoms Act 2012. The Authority may in its sole discretion refuse access to its Premises by any member of the Contractor's Personnel who has not been subjected to the necessary checks by the Disclosure and Barring Service.
- 3.14. The Contractor shall be subject to the provisions of the Schedules to this contract as applicable.
- 3.15. Subject to Clause 3.16, the Contractor shall comply, ensure that each subcontractor including a Subcontractor complies, and ensure that the terms of each Subcontract, is compliant at all times with the Market Stewardship Principles and Good Industry Practice.
- 3.16. In relation to contracts including the Subcontracts to which the Contractor is a party prior to the Commencement Date, the Contractor shall ensure that the terms of that subcontract complies with the Market Stewardship Principles and Good Industry Practice from the first date on which that subcontract can be amended (without cost to the Contractor), extended or renewed and the Contractor shall apply the Market Stewardship Principles and Good Industry Practice to that subcontract to the fullest extent possible prior to that date.
- 3.17. The Contractor shall provide the Authority with a copy of each Subcontract as soon as reasonably practicable after it has been entered into together with each amendment to that Subcontract as soon as reasonably practicable after that amendment has been made.
- 3.18. The Contractor:
  - 3.18.1. shall ensure that the terms of a Subcontract are at all times substantially in the same form as the Industry Standard Partnering Agreement;
  - 3.18.2. shall ensure that the terms of a Subcontract do not contain any terms which conflict with the terms of the Industry Standard Partnering Agreement;
  - 3.18.3. agrees that the Authority shall have no liability to the Contractor with respect to the use of the Industry Standard Partnering Agreement and shall indemnify the Authority on demand from and against all Losses suffered or incurred by the Authority arising out of or

connected to the use by the Contractor of the Industry Standard Partnering Agreement.

#### **4. Authority's Obligations**

- 4.1. Subject to reasonable notification by the Contractor of its requirements, the Authority shall give to the Contractor such instructions and/or decisions as pursuant to the Contract are required to be given by the Authority at such a time and in such a manner as shall enable the Contractor properly to perform the Contract.
- 4.2. The Authority shall supply or make available to the Contractor, without charge, such information as it is required to provide in accordance with the Specification in such time so as not to delay or disrupt the performance of the Contractor's duties under the Contract.
- 4.3. The Authority shall provide access to areas of land and building (including details of any restrictions) as stated in the Specification as it is reasonably able to do to enable the Contractor to carry out the Contract.
- 4.4. The Authority may provide site facilities to the Contractor for the carrying out of the Contract, which, if required, shall be as detailed and on such terms as set out in the Specification.
- 4.5. The Authority shall be subject to the provisions of the Schedules to this Contract as applicable.

#### **5. Scope of Contract**

- 5.1. At all times during the Contract Period the Contractor shall be an independent contractor 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 Contractor 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.
- 5.2. Other than as set out in the Contract, the Contractor agrees and acknowledges that it has not been given any rights of exclusivity or any volume guarantees whatsoever in relation to the volume of the Goods or Services provided under the Contract.

#### **6. Notices**

- 6.1. For the purposes of this clause 6, 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.

- 6.2. 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 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.
- 6.3. Either Party may change its address for service by serving a notice in accordance with this clause.

## **7. Mistakes in Information**

- 7.1. The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Goods or Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.
- 7.2. The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Goods or 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 Authority's Premises and the equipment necessary for the performance of the Contract, subject to all such matters being discoverable by the Contractor.
- 7.3. The Contractor acknowledges that it has:
  - 7.3.1. made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;
  - 7.3.2. raised all relevant due diligence questions with the Authority before the Commencement Date;
  - 7.3.3. satisfied itself that it has sufficient information to ensure that it can provide the Goods or Services; and
  - 7.3.4. entered into the Contract in reliance on its own due diligence alone.
- 7.4. Without prejudice to clause 7.3, the Contractor shall:

- 7.4.1. use its reasonable endeavours to check and verify that the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority are accurate; and
- 7.4.2. notify the Authority immediately if it discovers errors or discrepancies in the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority.

## **8. Conflicts of Interest**

- 8.1. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Contractor's Personnel is placed in a position where, in the reasonable opinion of the Authority:
  - 8.1.1. there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract; or
  - 8.1.2. the behaviour of the Contractor or the Contractor's Personnel is not in the Authority's best interest or might adversely affect the Authority's reputation.

The Contractor 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 8.1.1 or 8.1.2

- 8.2. The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the Contractor or the Contractor's Personnel and the duties owed to the Authority under the provisions of the Contract. 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.

## **9. Prevention of Fraud and Prevention of Corruption**

- 9.1. The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by the Contractor's Personnel in connection with the receipt of monies from the Authority.
- 9.2. The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 9.3. If the Contractor or its Personnel commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

- (a) terminate the Contract and recover from the Contractor 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 Goods or Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
  - (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.
- 9.4. The Contractor 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 the 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 the Contract or any such contract.
- 9.5. The Contractor 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 in connection with the Contract.
- 9.6. If the Contractor, its Personnel or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 9.4 or 9.5, the Authority may:
  - 9.6.1. terminate the Contract and recover from the Contractor 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 Goods or Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
  - 9.6.2. recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those clauses.

## **PAYMENT AND CONTRACT PRICE**

### **10. Contract Price**

- 10.1. In consideration of the performance by the Contractor of the Contractor's obligations under the Contract by the Contractor, the Authority shall pay the Contract Price in accordance with clause 11 below.
- 10.2. The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods or Services supplied in accordance with the Contract.

## **11. Payment and VAT**

- 11.1. The Contractor shall ensure that each invoice contains all appropriate references, including the date of the invoice, the Contractor's name and address, the Contractor's banking details, the relevant purchase order number supplied by the Authority, the agreed payment and a detailed breakdown of the Goods or Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.
- 11.2. The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 11.3. The Authority shall pay all sums due to the Contractor within thirty (30) days of Receipt of a valid invoice, submitted monthly in arrears. Payment to be made by BACS and in accordance with Schedule H (Pricing and Payment).
- 11.4. The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 11.4 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 11.5. The Authority may reduce payment in respect of any Goods or Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 11.6. The Contractor shall not suspend the supply of the Goods or Services unless the Contractor is entitled to terminate the Contract under clause 37.3 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly

invoiced in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.

- 11.7. Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice provided always that the Contractor has been paid by the Authority.

## **12. Recovery of Sums Due**

- 12.1. Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor 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 Contractor from the Authority under the Contract or under any other agreement or contract with the Authority or the Crown.
- 12.2. 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.
- 12.3. The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

## **13. Price Adjustment on Extension of the Initial Contract Period**

- 13.1. The Contract Price shall be firm for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period or the Extended Period pursuant to clause 31 the Authority shall, in the six (6) Month period prior to the expiry of the Initial Contract Period and the Extended Period, enter into good faith negotiations with the Contractor (for a period of not more than thirty (30) Working Days) to agree a variation in the Contract Price.
- 13.2. If the Parties are unable to agree a variation in the Contract Price in accordance with clause 13.1, the Contract shall terminate at the end of the Initial Contract Period or the Extended Period (as the case may be).
- 13.3. If a variation in the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

- 13.4. Any increase in the Contract Price pursuant to clause 13.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index ("CPI") (or such other index specified in the Pricing and Payment Schedule) between the Commencement Date and the date six (6) Months before the end of the Initial Contract Period or the Extended Period (as the case may be).

**14. Euro**

- 14.1. Any legislative requirement to account for the Goods or Services in Euro € (or to prepare for such accounting), instead of and/or in addition to Pounds Sterling £, shall be implemented by the Contractor at nil charge to the Authority.
- 14.2. The Authority shall provide all reasonable assistance to facilitate compliance with clause 14.1 by the Contractor.

**STATUTORY OBLIGATIONS AND REGULATIONS**

**15. Discrimination**

- 15.1. In providing the Goods or Services the Contractor shall comply with the Equality Act 2010 and all applicable amendments, regulations and Codes of Practice or any future or other legislation which concerns discrimination in employment and service delivery (the "Equalities Provisions").
- 15.2. The Contractor shall take all reasonable steps to procure the observance of the Equalities Provisions by those of its Personnel engaged in the provision of the Goods or Services.
- 15.3. The Contractor shall provide such information as the Authority may reasonably require for the purpose of assessing the Contractor's compliance with clause 15.2.
- 15.4. The Contractor shall notify the Authority immediately in writing upon becoming aware of any investigation or legal proceedings brought against the Contractor *[or its sub-contractors etc??]* under the Equalities Provisions.
- 15.5. In the event of any finding of unlawful discrimination being made against the Contractor *[or its sub-contractors etc??]* under the Equalities Provisions during the period of this Contract, the Contractor 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.

- 15.6. In the event of repeated findings of unlawful discrimination against the Contractor 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 15.5 above) the Authority shall be entitled to terminate the Contract with immediate effect.
- 15.7. If requested to do so by the Authority, the Contractor 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 Contractor.

**16. The Contracts (Rights of Third Parties) Act 1999**

- 16.1. 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 agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

**INFORMATION**

**17. Authority Data**

- 17.1. The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 17.2. The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Authority.
- 17.3. To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- 17.4. The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

- 17.5. If at any time the Contractor 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 Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

**18. Protection of Personal Data**

- 18.1. With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor.

- 18.2. The Contractor shall:

18.2.1. 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 Contractor during the Contract Period) and the Contractor shall at the very least comply with the provisions of the Information Security Schedule;

18.2.2. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Goods or Services or as is required by Law or any Regulatory Body;

18.2.3. 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 E (Information Security);

18.2.4. take reasonable steps to ensure the reliability of any Contractor's Personnel who have access to the Personal Data;

18.2.5. 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;



- 18.2.6. ensure that all Contractor's Personnel 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 18;
- 18.2.7. ensure that none of the Contractor'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;
- 18.2.8. notify the Authority (within five Working Days) if it receives:
  - 18.2.8.1. a request from a Data Subject to have access to that person's Personal Data; or
  - 18.2.8.2. a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 18.2.9. provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by:
  - 18.2.9.1. providing the Authority with full details of the complaint or request;
  - 18.2.9.2. 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;
  - 18.2.9.3. providing the Authority with any Personal Data it holds in relation to a Data Subject, within the timescales required by the Authority; and
  - 18.2.9.4. providing the Authority with any information requested by the Authority;
- 18.2.10. permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 25, the Contractor's data Processing activities (and/or those of its Personnel) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- 18.2.11. provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and

- 18.2.12. 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:
    - 18.2.12.1. 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
    - 18.2.12.2. any reasonable instructions notified to it by the Authority.
  - 18.3. The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 19. Freedom of Information**
- 19.1. The Contractor 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.
  - 19.2. The Contractor shall and shall procure that its sub-contractors shall:
    - 19.2.1. transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
    - 19.2.2. provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and
    - 19.2.3. 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.
  - 19.3. The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other

agreement 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.

19.4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

19.5. The Contractor acknowledges that (notwithstanding the provisions of this clause 19) the Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

19.5.1. in certain circumstances without consulting the Contractor; or

19.5.2. following consultation with the Contractor and having taken their views into account;

provided always that where clause 19.5.1 applies the Authority shall take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

19.6. The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

## **20. Confidentiality**

20.1. The Parties acknowledge that, except for any information 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 the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public. The Contractor 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:

- (a) national security;
  - (b) personal data;
  - (c) information protected by intellectual property law;
  - (d) information which it is not in the public interest to disclose (under a Freedom of Information Act analysis)
  - (e) third party confidential information;
  - (f) IT security; or
  - (g) prevention of fraud
- 20.2. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
- 20.2.1. treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 20.2.2. not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 20.3. Clause 20.2 shall not apply to the extent that:
- 20.3.1. 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 19;
  - 20.3.2. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 20.3.3. such information was obtained from a third party without obligation of confidentiality;
  - 20.3.4. such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 20.3.5. it is independently developed without access to the other Party's Confidential Information.
- 20.4. The Contractor may only disclose the Authority's Confidential Information to the Contractor's Personnel who are directly involved in the provision of the Goods or Services any of the Authority's Confidential Information and need to know, and shall ensure that the Contractor's Personnel are aware of and shall comply with this clause 20.
- 20.5. The Contractor shall not, and shall procure that the Contractor's Personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.

- 20.6. At the written request of the Authority, the Contractor shall procure that those members of the Contractor's Personnel identified in the Authority's notice sign a confidentiality undertaking on similar terms to the Contract prior to commencing any work in accordance with the Contract.
- 20.7. Nothing in the Contract shall prevent the Authority from disclosing the Contractor's Confidential Information (including the Management Information obtained under clause 24):
- 20.7.1. 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;
- 20.7.2. to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
- 20.7.3. for the purpose of the examination and certification of the Authority's accounts; or
- 20.7.4. 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.
- 20.8. The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 20.7 is made aware of the Authority's obligations of confidentiality.
- 20.9. Nothing in this clause 20 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the 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 IPR.
- 21. Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**
- 21.1. The Contractor undertakes to abide by, and ensure that its Personnel abide by, the provisions of:-

- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) Section 182 of the Finance Act 1989.
- 21.2. In the event that the Contractor and its Personnel fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.
- 22. Publicity, Media and Official Enquiries**
  - 22.1. Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.
  - 22.2. Both Parties shall take reasonable steps to ensure that their Personnel comply with clause 22.1.
- 23. Intellectual Property Rights**
  - 23.1. Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):
    - 23.1.1. furnished or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and
    - 23.1.2. prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority;and the Contractor shall not, and shall procure that the Contractor's Personnel shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights in the IP Materials.
  - 23.2. Subject to any pre-existing Intellectual Property Rights the Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 23.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.
  - 23.3. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor for the performance of the Contract.

- 23.4. The Contractor shall use best endeavours to ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying Goods or Services to the Authority.
- 23.5. The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Goods or Services and the Contractor 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 of this clause, except where such claim arises from:
- 23.6. items or materials based upon designs supplied by the Authority; or
- 23.7. the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- 23.8. The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 23.9. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor shall:
- 23.9.1. consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- 23.9.2. take due and proper account of the interests of the Authority; and
- 23.9.3. not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 23.10. The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party

for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor 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 23.5.1 or 23.5.2.

23.11. 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 Contractor in connection with the performance of its obligations under the Contract.

23.12. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor 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:

23.12.1. modify any or all of the Goods or Services without reducing the performance or functionality of the same, or substitute alternative Goods or 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 Goods or Services or to the substitute Goods or Services; or

23.12.2. procure a licence to use and supply the Goods or Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority;

and in the event that the Contractor is unable to comply with clauses 23.10.1 or 23.10.2 within 20 Working Days of receipt of the Contractor's notification the Authority may terminate the Contract by notice in writing.



23.13. The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) (and where appropriate worldwide) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of the Contract including the Goods or Services provided.

## **24. Monitoring**

24.1. The Contractor shall comply with the monitoring arrangements set out in the Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

24.2. Where requested by the Authority, the Contractor shall supply the Management Information to the Authority and to Cabinet Office in the form set out in the Monitoring Schedule during the Contract Period.

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

24.4. Upon receipt of the Management Information supplied by the Contractor in response to a request under 24.2 or receipt of information provided by the Authority to Cabinet Office under 24.3, the Authority and the Contractor shall consent to Cabinet Office:

(c) storing and analysing the Management Information and producing statistics; and

(d) sharing the Management Information or any statistics produced using the Management Information, with any other Contracting Authority.

24.5. In the event that Cabinet Office shares the Management Information or information provided under clause 24.3 in accordance with 24.4(b), 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 any body who is not a Contracting Authority (unless required by law). The Authority may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) Month's written notice of any changes

## **25. Audit**

25.1. The Contractor and its Personnel shall keep and maintain until 12 years after the end of the Contract Period, or as long a period as may be agreed

between the Parties, full and accurate records of the Contract including the Goods or Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

- 25.2. The Contractor and its Personnel shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor by the Comptroller and Auditor General under section 6(3)(d) of the National Audit Act of 1983.

## **CONTROL OF THE CONTRACT**

### **26. Assignment and Sub-Contracting**

- 26.1. Except where clauses 26.5 and 26.6 apply, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- 26.2. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 26.3. Where the Authority has consented to the placing of sub-contracts for the provision of services, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- 26.4. Alternatively, the Authority may require that, if the Contractor wishes to sub-contract any obligations under the Contract for the provision of services at any time it shall submit a list of sub-contractors to the Authority for approval. The Contractor shall obtain the Authority's prior written approval before

changing any of the sub-contractors so approved. The Authority shall not unreasonably withhold or delay such approval.

- 26.5. Notwithstanding clause 26.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including any interest which the Authority incurs under clause 11). Any assignment under this clause 26.5 shall be subject to:

26.5.1. reduction of any sums in respect of which the Authority exercises its right of recovery under clause 12;

26.5.2. all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

26.5.3. the Authority receiving notification under both clauses 26.6 and 26.7.

- 26.6. In the event that the Contractor assigns the right to receive the Contract Price under clause 26.5, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 26.7. The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- 26.8. The provisions of clause 11 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- 26.9. Subject to clause 26.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof as it sees fit provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 26.10. Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 26.9, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.
- 26.11. If the rights and obligations of the Authority under the Contract are assigned, novated or otherwise disposed of pursuant to clause 26.9 to a body which is not a Contracting Authority, or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

- 26.11.1. the rights of termination of the Authority in clauses 36 (Termination on Change of Control and Insolvency) and 37 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency or Default of the Transferee; and
- 26.11.2. the Transferee shall only be able to assign, novate or otherwise dispose its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- 26.12. The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 26.13. Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of whatever further actions, (including the execution of further documents), the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **27. Waiver**

- 27.1. The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise 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 the Contract.
- 27.2. 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 6.
- 27.3. A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **28. Variation**

- 28.1. Subject to the provisions of this clause 28, the Authority may request a variation to the Contract provided that such variation does not amount to a

material change to the Specification. Such a change is hereafter called a **"Variation"**.

28.2. The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

28.3. In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:

28.3.1. allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;

28.3.2. terminate the Contract following the arrangements provided by clause 38.

## **29. Severability**

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

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

## **30. Remedies Cumulative**

30.1. Except as otherwise expressly provided by the 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.

## **31. Extension of Initial Contract Period**

31.1. Subject to clause 13 (Price Adjustment on Extension of the Initial Contract Period or the Extended Period), the Authority may, by giving written notice to

the Contractor not less than three (3) Month(s) prior to the last day of the Initial Contract Period and the Extended Period, extend the Contract for such further period as may be specified in the notice. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause 13) throughout each such extended period.

- 31.2. The Authority may give written notice to the Contractor no later than 30 June 2017 that the Contract will expire on 31 December 2017 in which case the Contract shall expire automatically on that date. Such expiry shall not be treated as a termination of the Contract by the Authority (whether pursuant to clause 38 or otherwise) and the provisions relating to expiry set out in the Contract (including the relevant provisions of clause 39) shall apply.

### **32. Entire Agreement**

- 32.1. The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- 32.2. In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved, unless the Parties have agreed in writing to the contrary, in accordance with the following order of precedence:
- (1) the Contract Letter;
  - (2) the Special Conditions;
  - (3) the Schedules excluding Contractor's Tender as enclosed at Schedule GB;
  - (4) the Standard Terms and Conditions of the Contract;
  - (5) any other document referred to in the Contract Letter; and
  - (6) the Contractor's Tender as enclosed at Schedule GB.

### **33. Counterparts**

- 33.1. The 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.

## **LIABILITIES**

### **34. Indemnity and Insurance**

- 34.1. Neither Party excludes or limits liability to the other Party for:
- 34.1.1. death or personal injury caused by its negligence; or
  - 34.1.2. Fraud; or
  - 34.1.3. fraudulent misrepresentation; or
  - 34.1.4. 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.
- 34.2. Subject to clauses 34.1, 34.2.1 and 34.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully up to the value of the Contract Funding (called the Contract Funding Cap in this paragraph 34) against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Goods or Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Contractor's Personnel on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor
- 34.2.1. The Contract Funding Cap will not apply where such breach of clause 34.2 arises from a breach of the ESF Regulations. In which case, the Contractor shall keep the Authority fully indemnified.
- 34.3. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of any Authority Personnel or the breach by the Authority of its obligations under the Contract.
- 34.4. Subject always to clause 34.1, the aggregate liability of either Party for Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall unless agreed to the contrary not exceed £5,000,000.
- 34.5. Subject always to clause 34.1 in no event shall either Party be liable to the other for:
- 34.5.1. loss of profits, business, revenue, goodwill; and/or
  - 34.5.2. loss of savings (whether anticipated or otherwise); and/or
  - 34.5.3. indirect or consequential loss or damage.

- 34.6. The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 34.7. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- 34.8. The Contractor shall hold and shall ensure that all sub-contractors hold employer's liability insurance in respect of all eligible workers engaged in providing the Services in accordance with any legal requirement from time to time in force.
- 34.9. The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premia due under those policies.
- 34.10. If, for whatever reason, the Contractor fails to ensure that insurances required by the provisions of the Contract are maintained, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 34.11. The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 34.2.

### **35. Warranties and Representations**

- 35.1. The Contractor warrants and represents that:-
- 35.1.1. 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 Contractor;
- 35.1.2. in entering the Contract it has not committed any Fraud;



- 35.1.3. as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- 35.1.4. 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;
- 35.1.5. 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;
- 35.1.6. no proceeding or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 35.1.7. it owns, or has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 35.1.8. in the three (3) years prior to the date of the Contract:
- 35.1.8.1. 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;
- 35.1.8.2. it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- 35.1.9. 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.

## **DEFAULT, DISRUPTION AND TERMINATION**

### **36. Termination on Change of Control and Insolvency**

- 36.1. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor: -
- 36.1.1. 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
  - 36.1.2. 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
  - 36.1.3. 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
  - 36.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 36.1.5. 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
  - 36.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - 36.1.7. 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
  - 36.1.8. any event similar to those listed in clause 36.1.1 to 36.1.7 occurs under the law of any other jurisdiction.
- 36.2. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:
- 36.2.1. 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 Contractor's creditors; or
  - 36.2.2. a debt relief order or a debt restriction order has been made in respect of him; or

- 36.2.3. a petition is presented and not dismissed within fourteen (14) days or order made the Contractor's bankruptcy; or
- 36.2.4. a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 36.2.5. the Contractor 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
- 36.2.6. 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 Contractor's assets and such attachment or process is not discharged within fourteen (14) days; or
- 36.2.7. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005
- 36.3. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a partnership and:
  - 36.3.1. 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
  - 36.3.2. it is for any reason dissolved; or
  - 36.3.3. 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
  - 36.3.4. a receiver, or similar officer, is appointed over the whole or any part of its assets; or
  - 36.3.5. 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
  - 36.3.6. any of the following occurs in relation to any of its partners:
    - 36.3.6.1. 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

- 36.3.6.2. a petition is presented for his bankruptcy; or
  - 36.3.6.3. a receiver, or similar officer, is appointed over the whole or any part of his assets.
- 36.4. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a limited liability partnership and:
  - 36.4.1. 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
  - 36.4.2. it is for any reason dissolved; or
  - 36.4.3. 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
  - 36.4.4. 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
  - 36.4.5. 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
  - 36.4.6. a receiver, or similar officer, is appointed over the whole or any part of its assets; or
  - 36.4.7. it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 36.4.8. a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986
  - 36.4.9. References to the Insolvency Act 1986 in clause 36.4.1 shall be construed as references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 36.5. The Contractor 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

Goods or Services the Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

36.5.1. being notified that a change of control has occurred; or

36.5.2. 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.

### **37. Termination on Default**

37.1. The Authority may terminate the Contract with immediate effect if the Contractor commits a Default and if:

37.1.1. the Contractor has not remedied the Default to the satisfaction of the Authority within ten (10) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

37.1.2. the Default is not, in the opinion of the Authority, capable of remedy;  
or

37.1.3. the Default is a material breach of the Contract.

37.2. In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor 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.

37.3. If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor 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 Contractor 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 12.1.

### **38. Termination for Convenience**

38.1. The Authority shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the Contractor.

38.2. Where, following the expiry or termination of the Contract, there is a transfer of an undertaking or a service provision change, within the meaning of the

Transfer of Undertakings (Protection of Employment) Regulations 2006, Schedule D (Transfer of Undertakings) shall have effect.

**39. Consequences of Expiry or Termination**

- 39.1. Where the Authority terminates the Contract under clause 37 and then makes other arrangements for the supply of Goods or Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 38, no further payments shall be payable by the Authority to the Contractor (for Goods or Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.
- 39.2. Subject to clause 34, where the Authority terminates the Contract under clause 38, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor 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 Contractor as a result of termination under clause 38.
- 39.3. The Authority shall not be liable under clause 39.2 to pay any sum which:
- 39.3.1. was claimable under insurance held by the Contractor, and the Contractor 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;
- 39.3.2. when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to

- the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- 39.3.3. is a claim by the Contractor for loss of profit, due to early termination of the Contract.
- 39.4. In the event of any termination or expiry of the Contract:
- 39.4.1. the Authority shall be entitled to obtain a refund of the Contract Price paid by the Authority in respect of any part of the Contract which has not been performed by the Contractor;
- 39.4.2. 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;
- 39.4.3. the Contractor shall return to the Authority all Property and all other items belonging to the Authority in its possession (save for copies required by the Contractor for statutory audit or archive purposes);
- 39.4.4. subject to the payment of the appropriate portion of the Contract Price the Contractor shall provide the Authority with a copy of all deliverables undertaken to date (whether completed or not) in its state at that time and, at the Authority's option, return or destroy all other copies in the Contractor's possession or control; and
- 39.4.5. the Contractor shall at the Authority's request novate any agreements between the Contractor and any third parties that are relevant to the receipt of the Goods or Services by the Authority.
- 39.5. Upon expiry or termination of all or any part of the Contract, the Contractor shall provide all reasonable assistance and information to the Authority (and to any Replacement Contractor appointed by the Authority) if requested, to the extent necessary to effect an orderly assumption of the Goods or Services by the Authority or the Replacement Contractor.
- 39.6. Save as otherwise expressly provided in the Contract:
- 39.6.1. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 39.6.2. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under

clauses 9 (Prevention of Fraud and Prevention of Corruption), 11 (Payment and VAT), 12 (Recovery of Sums Due), 16 (Rights of Third Parties), 17 and 18 (Authority Data and Protection of Personal Data), 19 (Freedom of Information), 20 (Confidentiality), 21 (Official Secrets Acts 1911-1989), 23 (Intellectual Property Rights), 25 (Audit), 30 (Remedies Cumulative), 34 (Liability, Indemnity and Insurance), 35 (Warranties and Representations), 39 (Consequences of Expiry or Termination), 41 (Recovery upon Termination), 43 (Governing Law), 44 (Dispute Resolution) and clause A12 of the Special Conditions (Professional Indemnity).

#### **40. Disruption**

- 40.1. The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 40.2. The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 40.3. In the event of industrial action by the Contractor's Personnel the Contractor shall seek Approval to its proposals to perform its obligations under the Contract.
- 40.4. If the Contractor's proposals referred to in clause 40.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- 40.5. If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

#### **41. Recovery upon Termination**

- 41.1. On the termination of the Contract for any reason, the Contractor shall:
  - 41.1.1. immediately return to the Authority all Confidential Information, Personal Data and Materials subject to Intellectual Property Rights in its possession or in the possession or under the control of any



- permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Goods or Services;
- 41.1.2. immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor for the purposes of the Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- 41.1.3. assist and co-operate with the Authority to ensure an orderly transition of the provision of the Goods or Services to the Replacement Contractor and/or the completion of any work in progress;
- 41.1.4. promptly provide all information concerning the provision of the Goods or Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Goods or Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.
- 41.2. If the Contractor fails to comply with clauses 41.1.1 and 41.1.2, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 41.3. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clauses 41.1.3 and 41.1.4 free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **42. Force Majeure**

- 42.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the 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 the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a

period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

- 42.2. Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 42.3. 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 42.1 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.

## **DISPUTES AND LAW**

### **43. Governing Law**

- 43.1. Subject to the provisions of clause 44, the Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that the 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.

### **44. Dispute Resolution**

- 44.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute, such efforts shall involve the escalation of the dispute to the Director of Procurement (or equivalent) of each Party.
- 44.2. 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.
- 44.3. If the dispute cannot be resolved by the Parties pursuant to clause 44.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 44.5 unless the Parties agree that the dispute is not suitable for resolution by mediation.
- 44.4. The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or

arbitration) and the Contractor and the Contractor's Personnel shall comply fully with the requirements of the Contract at all times.

44.5. The procedure for mediation and consequential provisions relating to mediation are as follows:

44.5.1. a neutral adviser or mediator ("**the 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.

44.5.2. 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.

44.5.3. 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.

44.5.4. 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.

44.5.5. 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 Contract without the prior written consent of both Parties.

44.5.6. 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 44.6.

44.6. Subject to clause 44.2, the Parties shall not institute court proceedings until the procedures set out in clauses 44.1, 44.3 and 44.5 have been completed save that:

44.6.1. The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 44.7.

44.6.2. If the Contractor 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 Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 44.7.

44.6.3. The Contractor 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 44.7, to which the Authority may consent as it sees fit.

44.7. In the event that any arbitration proceedings are commenced pursuant to clause 44.6:

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

44.7.2. the Authority shall give a written notice of arbitration to the Contractor ("**the Arbitration Notice**") stating:

44.7.2.1. that the dispute is referred to arbitration; and

44.7.2.2. providing details of the issues to be resolved;

44.7.3. the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with clause 44.7.2 shall be applied and are deemed to be incorporated by reference to the 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;

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

- 44.7.5. 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 44.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 44.7.6. the arbitration proceedings shall take place in London and in the English language; and
- 44.7.7. the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

## **MONITORING AND MANAGEMENT INFORMATION**

### **45. Monitoring with the Cabinet Office**

- 45.1. Not applicable.

## **PROVISION OF CONTINGENCY SERVICES**

### **46. General**

- 46.1. The Contractor acknowledges and agrees that the following scenarios are possible:
- 46.1.1. One or more equivalent contracts to this Contract in one or more Contingency ESF Contract Areas is terminated due to the default of the contractors under those contracts (the "**Outgoing Contractors**"). In this scenario the Contractor may be required to enter into discussions with the Authority with a view to providing replacement services in respect of the relevant Contingency ESF Contract Areas, in accordance with clause 47.
- 46.1.2. This Contract is terminated by the Authority due to Default of the Contractor in accordance with clause 37. In this scenario a New Contractor may be required to provide replacement services in respect of the ESF Contract Area or the responsibility for the provision of the Services may be transferred to the Authority, in which case the Contractor shall comply with its obligations set out in clause 48.

### **47. Agreement for Contingency ESF Contract Areas**

- 47.1. In relation to the scenario described in clause 46.1.1, the Contractor shall, on written notice from the Authority, enter into discussions with the Authority with a view to entering into:
- 47.1.1. a services agreement substantially on the same terms as this Contract for the provision of services in the Contingency ESF Contract Areas substantially similar to the Services for a period not exceeding 12 months; and
- 47.1.2. one or more agreements for the transfer of the rights, title and interest in and to the relevant assets, and for the assignment, novation or management of relevant contracts, used or entered into by the Outgoing Contractors in relation to the Contingency ESF Contract Areas.
- 47.2. During any discussions held in accordance with clause 47.1, the Parties shall work together in good faith to address any key concerns of the Parties including inserting clauses within the proposed services agreement to ensure an appropriate transitional period, to include appropriate performance measures and to make any appropriate changes to the payment mechanism for that services agreement.

**48. Transfer of Services to a New Contractor or to the Authority**

- 48.1. In the relation to the scenario described in clause 46.1.2, the Contractor shall, during the Exit Period and following notice by the Authority, take whatever steps are reasonably necessary (and co-operate fully with Authority and the New Contractor) to facilitate the transfer of responsibility for the provision of the Services (or any of them) to the New Contractor and/or to the Authority (as notified by the Authority), which shall include:
- 48.1.1. liaising with the Authority and/or the New Contractor, and providing reasonable assistance and advice relating to the Services and their transfer to the Authority and/or the New Contractor, to allow the Services to continue without interruption or adverse effect following termination or expiry of this Contract;
- 48.1.2. allowing the New Contractor access (at reasonable times and on reasonable notice) to the Contractor Premises but not so as to interfere with or impede the provision of the Services;
- 48.1.3. providing to the Authority and/or to the New Contractor all and any information relating to the Services which is reasonably required for

the efficient transfer of responsibility for their performance but excluding information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor; and

48.1.4. transferring its rights, title and interest in and to assets used by the Contractor for the provision of the Services and acquired with ESF funding to the Authority and/or to the New Contractor with effect on and from the Termination Date.

48.2. With effect from the Termination Date, the Contractor shall, at the request of the Authority, novate each Subcontract to the New Contractor or to the Authority pursuant to the terms of the relevant Subcontract. Where the relevant Subcontract does not expressly provide for novation, the Contractor shall use its reasonable endeavours to obtain the Subcontractor's consent to the novation.

#### **49. Costs**

49.1. Each Party will be responsible for its own costs incurred in relation to clauses 46 to 48. Unless the Authority approves otherwise in writing, the Contractor shall not be entitled to submit any claim for payment under the Contract or otherwise use any ESF funding in respect of its costs incurred in relation to clauses 46 to 48.

49.2. Clause 49.1 shall not affect any payment arrangements that may be agreed by the Parties in the agreements referred to in clause 47.

## **SCHEDULE A: SERVICES**

### **SPECIAL CONDITIONS: PROVISION OF THE SERVICES**

#### **A1. Definitions and Interpretations**

In these Conditions:

**"Equipment"** means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

**"Key Personnel"** means those members of the Contractor's Personnel identified as such in the Specification.

**"Know-How"** means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Contractor's or the Authority's possession before the Contract.

**"Monitoring Schedule"** means the Schedule containing details of the monitoring arrangements.

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

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

**"Service Credits"** means any service credits payable by the Contractor for failure to meet the Service Levels, as referenced in the Contract Letter and the Specification Schedule.

**"Service Levels"** means the service levels to be met by the Services as referenced in the Contract Letter and set out in the Specification Schedule.

**"Services"** means the services to be supplied as detailed in the Specification Schedule G.

#### **A2. The Services**



- A2.1. The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the Tender and the provisions of the Contract in consideration of the payment of the Contract Price. The Contractor shall perform the Services in accordance with all applicable Service Levels referenced in the Specification or the Tender. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- A2.2. If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- A2.3. Subject to the Authority providing written consent in accordance with clause A3.2 (Provision and Removal of Equipment) below, timely supply of the Services shall be required, and shall meet the requirements stated in the Specification Schedule, and in relation to commencing the supply of the Services within the time agreed or on a specified date.

**A3. Provision and Removal of Equipment**

- A3.1. The Contractor shall provide all the Equipment necessary for the supply of the Services.
- A3.2. The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- A3.3. All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor. The Contractor shall provide for the haulage or carriage to and the removal from the Premises of Equipment when no longer required at its sole cost.
- A3.4. The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

A3.5. The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably possible:

A3.5.1. remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and

A3.5.2. replace such item with a suitable substitute item of Equipment.

A3.6. On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Contractor's Personnel.

#### **A4. Key Personnel**

A4.1. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.

A4.2. The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

A4.3. Any replacements of the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

A4.4. The Authority shall not unreasonably withhold its agreement under clause A4.2 or clause A4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

#### **A5. Licence to Occupy Premises**

A5.1. Any land or Premises made available to the Contractor by the Authority in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

- A5.2. The Contractor shall limit access to the land or Premises to such Contractor's Personnel as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Personnel co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- A5.3. Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- A5.4. The Contractor shall (and shall ensure that its Personnel shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Personnel other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- A5.5. The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner the Authority sees fit.

**A6. Offers of Employment**

- A6.1. For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of 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.

**A7. Environmental Requirements**

- A7.1. The Contractor 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.

**A8. Health and Safety**

- A8.1. The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Contract.
- A8.2. While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Contractor's Personnel and other persons working on those Premises.
- A8.3. The Contractor 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 personal injury or damage to property which could give rise to personal injury.
- A8.4. The Contractor 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 Contractor's Personnel and other persons working on the Premises in the performance of the Contract.
- A8.5. The Contractor 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.

**A9. Remedies in the event of Inadequate Performance**

- A9.1. Where a complaint is received about the standard of the Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause 37 (Termination on Default) of the General Terms.

- A9.2. In the event that the Authority is of the reasonable opinion that the Contractor is in Default in relation to the performance of the Services in accordance with the Contract, then the Authority may:
- A9.2.1. recover Service Credits for any Default; or
  - A9.2.2. withhold from payment or recover from the Contractor 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.
- A9.3. In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights under clause 37 (Termination on Default) of the General Terms, do any of the following:
- A9.3.1. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
  - A9.3.2. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or
  - A9.3.3. terminate, in accordance with clause 37 (Termination on Default) of the General Terms, the whole of the Contract.
- A9.4. Without prejudice to its rights under clause 12 (Recovery of Sums Due) of the General Terms, the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- A9.5. If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage

resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.

A9.6. In the event that:

A9.6.1. the Contractor fails to comply with clause A9.5 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

A9.6.2. the Contractor persistently fails to comply with clause A9.5 above;

A9.6.3. the Authority may terminate the Contract (or that part of the Contract) with immediate effect by notice in writing.

A9.7. The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Contractor.

#### **A10. Care of Property**

A10.1. Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to remove any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Personnel and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

A10.2. The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five (5) Working Days of receipt.

A10.3. The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

A10.4. The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods or Services, in accordance with the Authority's reasonable security requirements as required from time to time.

A10.5. The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

**A11. Service Levels**

A11.1. In the event that the Services do not meet the Service Levels, the Contractor shall automatically, without prejudice to any other rights and remedies of the Authority, credit the Authority with Service Credits as calculated in accordance with the Contract. The Authority shall claim the Service Credits within six Months of the end of the Month in which it has been credited with them by the Contractor.

A11.2. Where applicable the Contractor shall automatically credit the Authority with Service Credits in accordance with the Payment and Pricing Schedule. Service Credits shall be shown as a deduction from the amount due from the Authority to the Contractor in the next invoice then due to be issued under the Contract. If no invoice is due to be issued then the Contractor shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Contractor as a debt within 10 Working Days of issue.

A11.3. Where Service Credits are provided as a remedy for Default in respect of the relevant Services it shall be the Authority's exclusive financial remedy except where:

A11.3.1. the Specification otherwise provides;

A11.3.2. the aggregate number of Defaults (whether the Default relates to the same or to different parts of the Services) exceeds the number stipulated in the Specification;

A11.3.3. the failure to perform the Services in accordance with the Service Levels has arisen due to theft, gross negligence, fraud, or wilful default; or

A11.3.4. the Default results in:

A11.3.4.1. corruption or loss of data; or

A11.3.4.2. the Authority becoming entitled to terminate (whether or not the Authority exercises that right) the Contract for the Contractor's Default pursuant to clauses 36 and 37 of the General Terms.

**A12. Professional Indemnity**

A12.1. The Contractor shall effect and maintain appropriate professional indemnity insurance cover of an amount not less than £5,000,000 per incident or such higher amount as the Authority may reasonably require during the Contract Period and shall ensure that all Contractor's Personnel involved in the supply of the Services do the same. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of the Contract, unless the Contract has been entered into by way of a deed in which event the period shall be twelve (12) years.



## **SCHEDULE B: GOODS**

### **SPECIAL CONDITIONS: THE GOODS**

#### **B1. Definitions and Interpretations**

In these Conditions:

**"Goods"** means any such goods as are to be supplied by or on behalf of the Contractor (or by the Contractor's sub-contractor) under the Contract as specified in the Specification and the Tender.

**"Installation Works"** means, as the context so requires:

- (a) collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification and the Tender; or
- (b) where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification and the Tender, each set of installation works.

#### **B2. The Specification**

B2.1. The Contractor shall supply and, where relevant, install the Goods in accordance with the Specification and the Tender and with all applicable provisions of the Contract.

#### **B3. The Goods**

B3.1. If requested by the Authority, the Contractor shall either provide the Authority with samples of Goods or performance demonstrations of Goods for evaluation and approval at the Contractor's cost and expense.

B3.2. The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.

B3.3. The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract.

#### **B4. Delivery**

B4.1. Subject to the Prisons Schedule, the Contractor shall deliver the Goods at the time(s) and date(s) specified in the Specification, to the Premises or location

agreed. Unless otherwise specified, deliveries shall only be accepted during normal business hours.

- B4.2. Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods have been removed from the transporting vehicle at the Premises and accepted by the Authority. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.
- B4.3. Time of delivery shall be as stated in the Specification Schedule and if the Contractor fails to deliver the Goods within the time promised or specified in the Specification, the Authority may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.
- B4.4. The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within five (5) Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Authority.
- B4.5. The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B4.6. Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.
- B4.7. Unless otherwise stated in the Specification, there shall be no charge for delivery of the Goods to the Premises or for packaging used by the Contractor. Returnable packaging will only be returned at the Contractor's risk and expense.

## **B5. Risk and Ownership**

- B5.1. Subject to clause B4 above, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause B7 below) pass to the Authority when delivery is completed to the Authority's reasonable satisfaction.
- B5.2. Ownership of the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause B7 below), pass to the Authority at the time of delivery (or payment, if earlier).

**B6. Non Delivery**

- B6.1. Where the Goods, having been placed in transit, fail to be delivered to the Authority on the due date for delivery, the Authority shall, (provided that the Authority has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor to deliver substitute Goods within the timescales specified by the Authority.

**B7. Inspection, Rejection and Guarantee**

- B7.1. The Authority or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor's premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge, including further testing and inspection if reasonably required by the Authority. No failure to make complaint at the time of such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and, in particular, the Authority retains the right to reject the Goods in accordance with clause B7.2 below.
- B7.2. The Authority may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to other rights and remedies) either:
- B7.2.1. have the Goods promptly, and in any event within five (5) Working Days, either repaired by the Contractor or replaced by the

Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

- B7.2.2. treat the Contract as discharged in whole or in part by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned, together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

For the avoidance of doubt, the Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this clause B7.2.

- B7.3. The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Authority's acceptance of them.
- B7.4. The Contractor hereby guarantees the Goods for a period of 24 Months or such other period as may be agreed between the Parties from the date of delivery against faulty materials or workmanship. If the Authority shall within that period or within twenty-five (25) Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge
- B7.5. Any Goods rejected or returned by the Authority as described in clause B7.2 shall be returned to the Contractor at the Contractor's risk and expense.

## **B8. Labelling and Packaging**

- B8.1. On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Goods shall be packed and marked in a proper manner and in accordance with the Authority's instructions and any statutory requirements and any

requirements of the carriers. In particular the Goods shall be accompanied by an advice note with the contract number (or other reference number if appropriate) and the net weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

- B8.2. The Goods shall be accompanied by a delivery note showing the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

## **B9. Training**

- B9.1. Where indicated in the Specification, the Contract Price shall include the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

## **B10. Contract Performance**

- B10.1. The Contractor shall ensure that:

B10.1.1. the Goods conform in all respects with the Specification and, where applicable, with any sample or performance demonstration approved by the Authority;

B10.1.2. the Goods operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification and any particulars specified in the Contract;

B10.1.3. the Goods conform in all respects with all applicable Laws; and

B10.1.4. the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

## **B11. Manner of Carrying out the Installation Work**

- B11.1. Subject to the Prisons Schedule, the Contractor shall not deliver any materials or plant nor commence any work on the Premises without obtaining prior Approval. Notwithstanding the foregoing, the Contractor shall, at the Authority's written request, remove from the Premises any materials brought into the Premises by the Contractor, which in the reasonable opinion of the Authority are either hazardous, noxious or not in accordance with the

Contract and substitute proper and suitable materials at the Contractor's expense as soon as reasonably practicable.

B11.2. Any access to, or occupation of, the Premises which the Authority may grant the Contractor from time to time shall be on a non-exclusive licence basis free of charge. The Contractor shall use the Premises solely for the purpose of performing its obligations under the Contract and shall limit access to the Premises to such of the Contractor's Personnel as is necessary for that purpose. The Contractor shall co-operate (and ensure that its Personnel co-operate) with such other persons working concurrently on the Premises as the Authority may reasonably request.

B11.3. When the Contractor reasonably believes it has completed the Installation Works it shall notify the Authority in writing. Following receipt of such notice, the Authority shall inspect the Installation Works and shall, by giving written notice to the Contractor:

B11.3.1. accept the Installation Works, or

B11.3.2. reject the Installation Works and provide reasons to the Contractor if, in the Authority's reasonable opinion, the Installation Works do not meet the requirements set out in the Specification.

B11.4. If the Authority rejects the Installation Works in accordance with clause B11.3.2, the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the Installation Works do not, within [5] Working Days, meet the requirements set out in the Specification, the Authority may terminate the Contract with immediate effect by notice in writing.

B11.5. The Installation Works shall be deemed to be completed when the Contractor receives a notice issued by the Authority in accordance with clause B11.3.1. Notwithstanding acceptance of any Installation Works in accordance with that clause, the Contractor shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the Installation Works.

B11.6. Throughout the Contract Period, the Contractor shall:

B11.6.1. have at all times all licences, approvals and consents necessary to enable the Contractor and Contractor's Personnel to carry out the Installation Works;

B11.6.2. provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Installation Works;

B11.6.3. not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

B11.7. On completion of any Installation Works the Contractor shall remove its plant, equipment and unused materials and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Contractor's Personnel.

## **B12. Liquidated Damages**

B12.1. If the Contractor fails to deliver the Goods by the date(s) agreed, stipulated in the Specification or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the "**Agreed Delivery Date**"):

B12.1.1. the Contractor shall pay the Authority a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods are delivered to the Authority, equal to such percentage of the Contract Price for the relevant Goods as the Authority shall stipulate in the Specification ("**Liquidated Damages Threshold**"). Subject to clause B12.3, during the period in which liquidated damages are payable under this Condition B12.1.1 ("**Liquidated Damages Period**") the liquidated damages payable in accordance with this clause B12.1.1 shall be the Authority's only remedy for any loss or damage suffered or incurred by the Authority in relation to the failure by the Contractor to deliver the Goods by the Agreed Delivery Date; and

B12.1.2. where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Authority shall be entitled to:

- (i) claim any remedy available to it (whether under the Contract or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and
- (ii) without prejudice to clause B12.1.2(i), the Authority shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the Contractor.

B12.2. The Contractor shall not be obliged to pay any sums pursuant to clause B12.1.1 if and to the extent the failure by the Contractor to deliver the Goods by the Agreed Delivery Date directly results from the Authority's Default provided that the Contractor notifies the Authority immediately of such circumstances in sufficient detail to enable the Authority to remedy the situation. Except as set out in this clause B12.2, no payment or concession to the Contractor by the Authority or other act or omission of the Authority shall in any way affect its rights to liquidated damages pursuant to clause B12.1 or be deemed to be a waiver of the right of the Authority to recover any damages unless such waiver has been expressly made in writing by the Authority.

B12.3. Notwithstanding clause B12.1.1, the Contractor does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Authority, whether or not such performance or re-performance gives rise to additional costs for the Contractor and the cost of re-performance shall be borne solely by the Contractor and shall not be re-charged to the Authority whether by way of costs, reimbursement or otherwise.

B12.4. Having given careful consideration to this matter, all monies payable by the Contractor under clause B12.1.1 are considered by the Parties to be a genuine pre-estimate of the losses which the Authority will incur in relation to the Contractor's failure to deliver the Goods by the Agreed Delivery Date it being impossible to quantify the actual aggregate losses sustainable by the Authority in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Authority might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of the Contract; neither excessive, extravagant,



unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Contractor waives absolutely any entitlement to challenge the enforceability in whole or in part of this clause B12. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.

B12.5. Each Party confirms that (a) it has taken specific legal advice on the effect of this clause and (b) based on such advice, it does not enter into the Contract in anticipation that, or with any expectation that this clause will be unenforceable for any reason.

## **SCHEDULE C: PRISONS**

### **SPECIAL CONDITIONS: PRISONS**

#### **C1. Access to Authority Premises**

- C1.1. Where the Contractor's Personnel are required to have a pass for admission to the Premises the Authority shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued. Contractor's Personnel who cannot produce a proper pass when required to do so by any of the Authority's personnel, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Authority's Premises or required to leave those premises if already there.
- C1.2. The Contractor shall promptly return any pass if at any time the Authority so requires or if the person to whom the pass was issued ceases to be involved in the performance of the Contract. The Contractor shall promptly return all passes on completion or earlier termination of the Contract.
- C1.3. Contractor's Personnel attending the Premises may be subject to search at any time. Strip searches shall only be conducted on the specific authority of the Authority under the same rules and conditions applying to the Authority's personnel. The Contractor is referred to the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008. The Contractor is also referred to the definition of misconduct contained in the said Rules and clause 3 of the General Terms and Conditions.

#### **C2. Security**

- C2.1. Whilst on the Premises the Contractor's Personnel shall comply with all security measures implemented by the Authority in respect of staff and other persons attending those premises. The Authority shall provide copies of its written security procedure to the Contractor on request. The Contractor and all members of the Contractor's Personnel shall be prohibited from taking any photographs on the Premises unless the Authority has given prior Approval and an Authority representative is present so as to have full control over the subject matter of each photograph to be taken. No such photograph shall be published or otherwise circulated without the Authority's prior written approval.
- C2.2. The Authority shall have the right to carry out any search of Contractor Personnel or of vehicles used by the Contractor at the Premises.

C2.3. The Contractor shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters, and when required by the Authority shall:

C2.3.1. take all reasonable measures to make any Contractor's Personnel identified by the Authority available to be interviewed by the Authority, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Contractor's Personnel shall have the right to be accompanied by and to be advised or represented by the other person whose attendance at the interview is acceptable to the Authority; and

C2.3.2. subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Contract. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

**C3. Offender Management Act 2007**

C3.1. Nothing in the Contract shall be deemed to provide any authorisation to the Contractor in respect of any provision of the Offender Management Act 2007. The Contractor in providing the Goods or Services will comply with the provisions of PSO 1100 as published by the Authority from time to time.

## **SCHEDULE D**

### **TUPE AND EMPLOYEES**

#### **1. Definitions**

For the purpose of this Schedule D (TUPE and Employees), unless the context otherwise requires:

“Contractor Personnel” means the personnel of the Contractor and those of any Employing Sub-Contractor who are directly employed, assigned or engaged in providing the Services (or relevant part thereof) under this Contract;

“Employee Liability Information” has the same meaning as in regulation 11(2) of TUPE;

“Employing Sub-Contractor” means any sub-contractor of the Contractor which becomes the employer of any Previous Contractor Transferring Employee or any other person who is assigned to carry out the Services to be carried out by the Contractor under this Contract;

“Employment Codes of Practice” means the Cabinet Office Statement of Practice dated January 2000 entitled Staff Transfers in the Public Sector as amended or replaced from time to time;

“Initial Sub-Contractor” means an Employing Sub-Contractor to which any Previous Contractor Transferring Employees transfer on a Relevant Transfer Date;

“Previous Contractor” means Compass Contract Services (UK) Limited (or any sub-contractor thereof) and/or any other provider of services that are being replaced by the Services to be delivered by the Contractor under this Contract;

“Previous Contractor Transferring” means an employee who immediately before the Relevant Transfer Date is an employee of a Previous Contractor and assigned to carry out the services to be

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| Employees”                     | carried out by the Contractor under this Contract;  |
| “Relevant Date”                | means each date with effect from which the provision of any of the Services under this Contract terminate;  |
| “Relevant Employees”           | means those individuals who immediately prior to the Relevant Date are employed, assigned or engaged in the provision of the Services or, in the case of the termination of the provision of part but not all of the Services, the relevant part of the Services and who become employees of the Replacement Contractor on the Relevant Date; |
| “Relevant Transfer”            | means the transfer to the Contractor or an Employing Sub-Contractor (as applicable) of Previous Contractor Transferring Employees pursuant to this Contract or TUPE or any successor legislation, as applicable;  |
| “Relevant Transfer Date”       | means the date on which a Relevant Transfer is effected for the Previous Contractor Transferring Employees;   |
| “Replacement Contractor”       | means any third party service provider appointed by the Authority to supply any Goods or Services which are substantially similar to any of the Goods or Services, and which the Authority receives in substitution for any of the Goods or Services following the expiry, termination or partial termination of the Contract.                |
| "Subsequent Relevant Transfer" | means a transfer of employees assigned, engaged or employed in the provision of the Services or part of the Services from the Contractor or any Employing Sub-Contractor to a Replacement Contractor or a sub-contractor of a Replacement Contractor pursuant to this Contract and/or TUPE;   |
| "Subsequent                    | means the date on which a Subsequent Relevant   |

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| Transfer Date"                     | Transfer of a Subsequent Transferring Employee takes place under this Contract and/or TUPE;   |
| "Subsequent Transferring Employee" | means an employee assigned, engaged or employed in the provision of the Services or part of Services who is transferred pursuant to this Contract and/or TUPE from the Contractor or an Employing Sub-Contractor to a Replacement Contractor or a sub-contractor of a Replacement Contractor; |
| "TUPE"                             | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) or any successor legislation.   |

## 2. **TUPE and Employees**

Transfer of Previous Contractor Transferring Employees from a Previous Contractor

- 2.1 If, as a result of the Contractor providing the Services to the Authority under this Contract, TUPE applies such that there is a Relevant Transfer of Previous Contractor Employees from the Previous Contractor to the Contractor or to any Employing Sub-Contractor (but not otherwise), paragraphs 2.2 to 2.12 shall apply.
- 2.2 Subject to paragraph 2.5 (Transfer of Employees from a Previous Contractor) the Contractor shall on the Relevant Transfer Date become the employer of the Previous Contractor Transferring Employees and all of the Previous Contractor's rights, duties, powers, liabilities and obligations in respect of any contract of employment with the Previous Contractor Transferring Employees still in force immediately before the Relevant Transfer Date (including but not limited to collective agreements with recognised unions) shall transfer to the Contractor and the Contractor shall comply with all the requirements and obligations which TUPE, Transfer of Employment (Pension Protection) Regulations 2005 (where applicable), or any successor legislation or any Employment Codes of Practice or other relevant Government guidance imposes on a transferee both before and after a Relevant Transfer.
- 2.3 Subject to paragraph 2.5 (Transfer of Employees from a Previous Contractor) the Authority shall use reasonable endeavours to ensure that all

salaries and other emoluments (but excluding leave entitlement) including tax and national insurance payments, contributions to retirement benefit schemes, allowances, expenses and bonus and commission payments relating to the Previous Contractor Transferring Employees and appertaining to the period up to the Relevant Transfer Date shall be borne by the Previous Contractor. All salaries and other emoluments relating to the Previous Contractor Transferring Employees and appertaining to the period from and including the Relevant Transfer Date shall be borne by the Contractor.

- 2.4 In the event that the Contractor does not commence provision of the Services on the date specified in the Contract as the Service Commencement Date, the Contractor shall be liable to the Authority and to the Previous Contractor for all costs and liabilities incurred in respect of the employment by the Previous Contractor of the Previous Contractor Transferring Employees during the period between the date specified in the Contract as the Services Commencement Date and the date on which the Contractor commences provision of the Services (inclusive), save to the extent that the Authority is responsible for the delay in the Service Commencement Date.
- 2.5 If the Previous Contractor Transferring Employees or any of them transfer to any Employing Sub-Contractor by virtue of the operation of TUPE, any successor legislation or otherwise, the Contractor shall procure that such employer of the Previous Contractor Transferring Employees shall comply with and discharge the obligations of the Contractor set out in paragraph 2.1 to 2.4 (Transfer of Employees from a Previous Contractor).
- 2.6 No less than one month prior to the Relevant Transfer Date, the Authority shall provide the Contractor with the information listed in Appendix 1 of this Schedule D (TUPE and Employees) together with the Employee Liability Information in respect of the Previous Contractor Transferring Employees to the extent that such information and Employee Liability information has been provided to the Authority by the Previous Contractor.
- 2.7 The Authority shall provide the Contractor with any update to the information provided under paragraph 2.6 (Transfer of Employees from a Previous Contractor) as soon as is reasonably practicable to the extent that updates have been provided to the Authority by the Previous Contractor.
- 2.8 The Authority does not warrant the accuracy of the information provided under paragraph 2.6 (Transfer of Employees from a Previous Contractor) or as updated under paragraph 2.7 (Transfer of Employees from a Previous

Contractor) but shall use reasonable endeavours to procure that the Previous Contractor shall warrant the accuracy of the information provided under paragraph 2.6 (Transfer of Employees from a Previous Contractor) or as updated under paragraph 2.7 (Transfer of Employees from a Previous Contractor).

2.9 The Contractor shall indemnify and keep indemnified the Authority and any Previous Contractor against any costs, losses, expenses, claims, liabilities, awards or damages in connection with or as a result of:

- 2.9.1 any claims or proceedings by any Previous Contractor Transferring Employees or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority or any Previous Contractor at any time arising out of or in connection with any acts or omissions of the Contractor or any Employing Sub-Contractor on or after the Relevant Transfer Date including, without limitation, claims for breach of contract, loss of office, unfair dismissal, redundancy, sex or race discrimination, loss of earnings, non payment of pension contributions or otherwise (and all costs and expenses thereof);
- 2.9.2 any claims or proceedings by any Previous Contractor Transferring Employees or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority or any Previous Contractor at any time arising out of or in connection with any acts or omissions of the Contractor or any Employing Sub-Contractor and relate to pension rights in respect of periods of employment on or after the Relevant Transfer Date;
- 2.9.3 the Contractor's or any Employing Sub-Contractor's failure or alleged failure to comply with its/their obligations to inform or consult or both with the Previous Contractor Transferring Employees or any other employee of the Contractor or any Employing Sub-Contractor or their employee or trade union representatives pursuant to TUPE or any successor legislation;



- 2.9.4 any substantial change made or proposed to be made by the Contractor or any Employing Sub-Contractor in the terms of employment or working conditions of any of the Previous Contractor Transferring Employees which is detrimental to any of the Previous Contractor Transferring Employees;
  - 2.9.5 any substantial change made or proposed to be made by the Contractor or any Employing Sub-Contractor in the terms of employment or working conditions of any person who would have been a Previous Contractor Transferring Employee and/or any person who would have transferred under TUPE and/or this Contract but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE on or before the Relevant Transfer Date as a result of any such changes;
  - 2.9.6 a change in the identity of the employer of all or any of the Previous Contractor Transferring Employees where that change is a significant change and to the detriment of all or any of the Previous Contractor Transferring Employees;
  - 2.9.7 a change in the identity of the employer of any person who would have been a Previous Contractor Transferring Employee and/or any person who would have transferred under TUPE and/or this Contract but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of TUPE on or before the Relevant Transfer Date as a result of the change of employer;
  - 2.9.8 the Contractor's failure to procure any Employing Sub-Contractor's compliance with paragraph 2.5 (Transfer of Employees from a Previous Contractor); or
  - 2.9.9 any breach by the Contractor of its obligations under paragraphs 2.2 to 2.4 (Transfer of Employees from a Previous Contractor).
- 2.10 The Authority shall use reasonable endeavours to procure that the Previous Contractor shall indemnify and keep indemnified the Contractor against any

costs, losses, expenses, liabilities, awards or damages in respect of any claims or proceedings (and all costs and expenses thereof):

- 2.10.1 by any Previous Contractor Transferring Employee or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Contractor at any time arising out of or in connection with any acts or omissions of the Previous Contractor which occurred on or prior to the Relevant Transfer Date including without limitation claims for breach of contract, loss of office, unfair dismissal, redundancy, sex, race or other discrimination, loss of earnings, non payment of pension contributions or otherwise (and all costs and expenses thereof) provided that such claims, losses, costs, expenses and liabilities are not payable as a result of any act or omission of the Contractor;
- 2.10.2 any claims or proceedings by any Previous Contractor Transferring Employees or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Contractor at any time arising out of or in connection with any acts or omissions of the Previous Contractor and relate to pension rights in respect of periods of employment on or prior to the Relevant Transfer Date;
- 2.10.3 by any person or persons (or by their appropriate representative (as defined in TUPE or any successor legislation)) who are not Previous Contractor Transferring Employees or who are not disclosed as such to the Contractor in the Employee Liability Information provided by the Contractor in accordance with paragraphs 2.6 and 2.7 (Transfer of Employees from a Previous Contractor) who claims that his or her or their contracts of employment or liability in relation to their contracts of employment are or have been transferred to the Contractor in accordance with TUPE or any successor legislation including, for the avoidance of doubt,
  - (a) the reasonable cost to the Contractor of employing such person or persons for any period during which

statutory redundancy consultation must be undertaken plus a period of up to one month prior to the termination of their employment; and

- (b) the cost to the Contractor arising out of the dismissal of such person or persons (such dismissal costs to be limited to the payment of contractual notice and contractual redundancy payments),

provided that such person or persons are given notice by the Contractor to terminate their employment within one month of the Contractor becoming aware of such claim; or

- 2.10.4 by any Previous Contractor Transferring Employee or any other employee of the Previous Contractor or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Contractor at any time as a result of the Previous Contractor's failure or alleged failure to comply with its/their obligations to inform or consult or both pursuant to TUPE or any successor legislation.

### **Post Transfer Reporting**

- 2.11 The Contractor shall notify the Authority of the following information relating to the Previous Contractor Transferring Employees as part of the normal reporting regime of the Contract on a monthly basis in a format agreed between the Contractor and the Authority from time to time (or failing such agreement, in such form as may be required by the Authority):

- 2.11.1 proposed, agreed or imposed changes to terms and conditions of service in respect of Previous Contractor Transferring Employees;
- 2.11.2 disputes relating to TUPE, any successor legislation or any other legislation relating to collective consultation requirements which are regarded as unresolved by a recognised Trades Union and/or employee representatives;
- 2.11.3 any court action or tribunal proceedings relating to TUPE, any successor legislation or any other legislation relating to collective consultation requirements;

- 2.11.4 completed court action or tribunal proceedings relating to TUPE, any successor legislation or any other legislation relating to collective consultation requirements;
- 2.11.5 "out of court" settlements relating to TUPE, any successor legislation or any other legislation relating to collective consultation requirements; and
- 2.11.6 proposed dismissals of any Previous Contractor Transferring Employees by reason of redundancy (whether voluntary or otherwise),

such reports to also include information relating to staff transferred under TUPE or any successor legislation to any Employing Sub-Contractors as a result of this Contract.

- 2.12 The information referred to in paragraph 2.11 (Post Transfer Reporting) may also be used in considering the Contractor's bid at re-let, or in considering the Contractor's bid(s) for other contracts let by the Authority.

#### Information on Re-tender, Expiry or Termination

- 2.13 During the period of eighteen months preceding the Expiry Date or at any other time as directed by the Authority or once notice to terminate this Contract or the provision of part of the Services under this Contract has been given (for whatever reason) or where there is a reasonable expectation on the part of the Authority that a Subsequent Relevant Transfer may take place, the Contractor shall:
  - 2.13.1 upon the Authority's request, fully and accurately disclose to the Authority the information listed in Appendix 2 to this Schedule D (TUPE and Employees) relating to the Contractor Personnel that are employed, assigned or engaged in the provision of the Services (or part of the Services which is subject to the Subsequent Relevant Transfer)
  - 2.13.2 provide the information promptly and in any event not later than one month from the date when a request for such information is made and at no cost to the Authority;

- 2.13.3 permit the Authority to use the information for informing any tenderer for any services which are substantially the same as any part of the Services provided pursuant to this Contract; and
  - 2.13.4 enable and assist the Authority, any tenderer or potential tenderer and such other persons as the Authority may determine to communicate with and meet the Contractor Personnel (as required) and their trade union or other employee representatives.
- 2.14 During the period of three months preceding the Expiry Date or at any other time as directed by the Authority or once notice to terminate this Contract or the provision of part of the Services under this Contract has been given (for whatever reason) or where there is a reasonable expectation on the part of the Authority that a Subsequent Relevant Transfer may take place, the Contractor shall:
  - 2.14.1 upon the Authority's request fully and accurately disclose to the Authority such information listed in Appendix 2 to this Schedule D (TUPE and Employees) relating to the Contractor Personnel that are employed, assigned or engaged in the provision of the Services (or part of the Services which is subject to the Subsequent Relevant Transfer);
  - 2.14.2 provide the information promptly and in any event not later than one month from the date when a request for such information is made and at no cost to the Authority;
  - 2.14.3 permit the Authority to use the information for informing any tenderer for any services which are substantially the same as any part of the Service provided pursuant to this Contract; and
  - 2.14.4 enable and assist the Authority, any tenderer or potential tenderer and such other persons as the Authority may determine to communicate with and meet the Contractor Personnel (as required) and their trade union or other employee representatives.

2.15 The Contractor shall indemnify and keep the Authority and any Replacement Contractor indemnified fully in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of information by the Contractor under paragraphs 2.13 and 2.14 (Information on Re-tender, Expiry or Termination), inaccuracies in the information provided by the Contractor under paragraphs 2.13 and 2.14 (Information on Re-tender, Expiry or Termination) or the Contractor's failure to provide information under paragraphs 2.13 and 2.14 (Information on Re-tender, Expiry or Termination).

2.16 Once the information referred to at paragraph 2.13 (Information on Re-tender, Expiry or Termination) has been passed to the Authority during the eighteen (18) months preceding the Expiry Date or once notice to terminate this Contract or provision of part of the Services under this Contract has been given (for whatever reason) or within six months of the Expiry Date, (whichever is the earlier), the Contractor shall not and shall procure that any third party (including any Employing Sub-Contractor) shall not:

2.16.1 materially amend the rates of remuneration, terms of employment or hours to be worked by Contractor Personnel, including holidays; or

2.16.2 replace, dismiss (other than by reason of gross misconduct) or redeploy any of the Contractor Personnel, or increase the number of Contractor Personnel assigned to the provision of the Services or relevant part of the Services; or

2.16.3 reorganise any working methods or assign to any person wholly or mainly employed or engaged in providing the Services or relevant part of the Services any duties unconnected with the Services or relevant part of the Services under this Contract,

without the prior written agreement of the Authority, such agreement not to be unreasonably withheld.

2.17 Without prejudice to paragraphs 2.14 to 2.15, the Contractor agrees to provide the Employee Liability Information in relation to the Contractor Personnel to the Authority (and/or, where relevant, the Replacement Contractor) at such time or times as are required by TUPE, and, at the time of providing such Employee Liability Information, the Contractor shall warrant that the Employee Liability Information:

- 2.17.1 is complete and accurate at the time it is provided to the Authority or the Replacement Contractor, as appropriate;
- 2.17.2 will be updated to take account of any changes to such information, as required by TUPE.
- 2.18 The Authority may assign the benefit of the warranty in paragraph 2.17 to a Replacement Contractor.
- 2.19 The Contractor shall (and shall ensure that any Sub-Contractor shall) upon the reasonable request of the Authority enable and assist the Authority and such other persons as the Authority may reasonably determine, including any Replacement Contractor, to communicate with and meet the Contractor Personnel and their representatives as, when and where the Authority determines.
- 2.20 The Contractor agrees that a Replacement Contractor can elect to consult representatives of the Contractor Personnel before the Service Commencement Date. If such election is made, the Contractor will provide information and such other reasonable assistance, including access to the Contractor Personnel and their representatives, as the Replacement Contractor reasonably requires in order to assist the Replacement Contractor to comply with collective consultation requirements under section 198A and/or section 198B of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULR(C)A") as amended or TUPE.

#### **Indemnities on expiry, termination or cessation of the Contract**

- 2.21 Where the Contractor or any Employing Sub-Contractor shall cease (for whatever reason and whether directly or indirectly) to provide the Services (or part thereof) to be provided under this Contract, the Contractor shall indemnify and keep indemnified the Authority and any Replacement Contractor against any costs, losses, expenses, liabilities, awards or damages in respect of any claims or proceedings (and all costs and expenses thereof):
- 2.21.1 where there is a Subsequent Relevant Transfer, by any Subsequent Transferring Employee or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority and/or a Replacement Contractor at any time arising out of or in connection with any acts or omissions of the Contractor or any Employing Sub-Contractor which

occurred on or prior to the Subsequent Transfer Date including without limitation claims for breach of contract, loss of office, unfair dismissal, redundancy, sex, race or other discrimination, loss of earnings, non payment of pension contributions or otherwise (and all costs and expenses thereof) provided that such claims, losses, costs, expenses and liabilities are not payable as a result of any act or omission of the Authority or a Replacement Contractor;

2.21.2 where there is a Subsequent Relevant Transfer, by any Subsequent Transferring Employee or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority and/or a Replacement Contractor at any time arising out of or in connection with any acts or omissions of the Contractor or any Employing Sub-Contractor and which relate to pension rights in respect of periods of employment on or prior to the Subsequent Transfer Date (and all costs and expenses thereof) provided that such claims, losses, costs, expenses and liabilities are not payable as a result of any act or omission of the Authority or a Replacement Contractor;

2.21.3 by any person or persons (or by their appropriate representative (as defined in TUPE or any successor legislation)) who are not Subsequent Transferring Employees or who are not disclosed as such to the Authority in accordance with paragraph 2.14 (Information on Re-tender, Expiry or Termination) who claims that his or her or their contracts of employment or liability in relation to their contracts of employment are or have been transferred to the Authority or a Replacement Contractor in accordance with TUPE or any successor legislation including, for the avoidance of doubt,

(a) the reasonable cost to the Authority or the Replacement Contractor of employing such person or persons for any period during which statutory redundancy consultation must be undertaken plus a



period of up to one month prior to the termination of their employment; and

- (b) the cost to the Authority or the Replacement Contractor arising out of the dismissal of such person or persons (such dismissal costs to be limited to the payment of contractual notice and contractual redundancy payments),

provided that such person or persons are given notice by the Authority or the Replacement Contractor to terminate their employment within one month of the Authority or the Replacement Contractor becoming aware of such claim; or

- 2.21.4 by any Subsequent Transferring Employee or any other employee of the Contractor or any Employing Sub-Contractor or by their appropriate representative (as defined in TUPE or any successor legislation) made against the Authority and/or the Replacement Contractor at any time as a result of the Contractor's or any Employing Sub-Contractor's failure or alleged failure to comply with its/their obligations to inform or consult or both pursuant to TUPE or any successor legislation.

2.22 The Contractor shall be responsible for all emoluments and outgoings in respect of the Contractor Personnel and the Subsequent Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to, and including, the Subsequent Transfer Date (including any bonuses or commission which are payable after the Subsequent Transfer Date but attributable in whole or in part to the period on or before the Subsequent Transfer Date) and the Contractor will indemnify the Authority and the Crown (both for themselves and any Replacement Contractor) against any costs, claims, liabilities and expenses (including reasonable legal expenses) incurred or suffered by the Authority or any Replacement Contractor in respect of the same.

2.23 Where the Contractor or any Employing Sub-Contractor shall cease (for whatever reason and whether directly or indirectly) to provide the Services (or part thereof) to be provided under this Contract and there is no

Subsequent Relevant Transfer, the Contractor shall have sole responsibility for all costs and liabilities (of whatever kind) of dismissing the Contractor Personnel, and all costs and liabilities arising from their employment with the Contractor, and shall indemnify and keep indemnified the Authority and any Replacement Contractor against any costs, losses, expenses, liabilities, awards or damages in respect of any claims or proceedings (and all costs and expenses thereof) made against the Authority or any Replacement Contractor by any Contractor Personnel.

Section 1.01 Contracts (Rights of Third Parties) Act 1999

- 2.24 A Replacement Contractor may enforce the terms of paragraph 2.15 (Information on Re-tender, Expiry or Termination) and paragraph 2.23 and 2.23 (Indemnities on expiry, termination or cessation of the Contract) against the Contractor or any Employing Sub-Contractor in accordance with the Contracts (Rights of Third Parties) Act 1999.
- 2.25 The consent of a Replacement Contractor or any of its sub-contractors is not required to rescind or vary or terminate this Contract.

**Further assistance**

- 2.26 The Contractor shall procure that any Employing Sub-Contractor complies with and discharges the obligations imposed on the Contractor in this Schedule as if those obligations applied directly to that Employing Sub-Contractor.

## Appendix 1

<<Attached separately>>

## Appendix 2: Employee Information

Name (Surname, forename, title and initials)

Date of Birth

Home address

Job title

Work location

National Insurance Number

National Insurance contribution rate

Annual salary and rates of pay band/grade

Shifts, unsocial hours or other premium rates of pay

Conditioned hours of work

Overtime history for preceding 12 month period

Allowances and bonuses for preceding 12 month period

Tax Code

For pension purposes the notional reckonable service date

Annual leave reckonable service date

Pensionable pay history for 3 years to date of transfer

Percentage of any pay currently contributed under additional voluntary contribution arrangements

Any other voluntary deductions from pay

Bank/building society account details for payroll purposes

Annual holiday entitlement and accrued holiday entitlement

Details of any active disciplinary/inefficiency or grievance proceedings

All documents, manuals, codes, handbooks, procedure guides publication agreements (including collective agreements)

Current terms and conditions of employment and benefits (including retirement benefits), any other letters or documents or collective agreements affecting terms and agreements affecting terms and conditions of employment

Whether registered disabled

Any performance assessment details

Existing training or sponsorship commitments

Outstanding loan/advances on salary or debts

Those currently on maternity leave or other long term leave of absence

Sickness and absence records for the immediately preceding 4 year period

Emergency contact details

5 months' copy pay slip data

Cumulative pay for tax and pension purposes

Cumulative tax paid

Any other information requested by the Authority

1. Total number of individual members of staff that currently undertake the work and who may therefore be transferred. Alternatively the contractor should provide information why any of their staff or those of any Employing Sub-Contractors who currently undertake the work will not transfer

2. The total number of posts or proportion of posts expressed as full-time equivalent value that currently undertakes the work that is to transfer.

3. The preceding 12 months total pay costs – pay, employee/employer ERNIC and overtime
4. Total redundancy liability
5. Additional information about factors that may influence staffing levels and costs.
6. Contractor's and Employing Sub-Contractor's general employment terms and conditions applicable to those members of staff identified at 1.

In respect of those members of staff included in the total at 1. above:

1. Age (not date of birth)
2. Employment status (i.e. Fixed term, casual, permanent)
3. Length of current period of continuous employment
4. Weekly conditioned hours of attendance (gross)
5. Standard annual holiday entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years)
6. Pension scheme membership
7. Pension and redundancy liability information
8. Annual salary
9. Details of any regular overtime payments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment)
10. Details of attendance patterns that attract enhanced rates of pay or allowances
11. Regular/recurring allowances
12. Outstanding financial claims arising from employment (i.e. season ticket loans, transfer grants)
13. Any other information requested by the Authority

1. Total number of individual members of staff that currently undertake the work and who may therefore be transferred. Alternatively the contractor should provide information why any of their staff or those of any Employing Sub-Contractors who currently undertake the work will not transfer
2. The total number of posts or proportion of posts expressed as full-time equivalent value that currently undertakes the work that is to transfer.
3. The preceding 12 months total pay costs – pay, employee/employer ERNIC and overtime
4. Total redundancy liability
5. Additional information about factors that may influence staffing levels and costs.
6. Contractor's and Employing Sub-Contractor's general employment terms and conditions applicable to those members of staff identified at 1.

In respect of those members of staff included in the total at 1. above:

1. Employee's full name
2. Age (not date of birth)
3. Employment status (i.e. Fixed term, casual, permanent)
4. Length of current period of continuous employment
5. Weekly conditioned hours of attendance (gross)
6. Standard annual holiday entitlement (not "in year" holiday entitlement that may contain carry over or deficit from previous leave years)
7. Pension scheme membership
8. Pension and redundancy liability information
9. Annual salary
10. Details of any regular overtime payments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment)

11. Details of attendance patterns that attract enhanced rates of pay or allowances
12. Regular/recurring allowances
13. Outstanding financial claims arising from employment (ie. season ticket loans, transfer grants)
14. Information of any disciplinary procedure taken against an employee within the previous two years
15. Information of any grievance procedure taken by an employee within the previous two years
16. Information of any court or tribunal case, claim or action brought by an employee against the transferor within the previous two years
17. Information of any court or tribunal case, claim or action that the transferor has reasonable grounds to believe that an employee may bring against the transferee, arising out of the employee's employment with the transferor
18. Information of any collective agreement which will have effect after the transfer, in its application in relation to the employee
19. Details of long term or serious ill-health or disability affecting any employee's capacity to work; and
20. Any other information requested by the Authority



## **SCHEDULE E: INFORMATION SECURITY**

### **SPECIAL CONDITIONS: INFORMATION SECURITY**

#### **Section I: Process measures to manage information risk**

- E1. The Contractor must:
  - E1.1. identify, keep and disclose to the Authority upon request a record of those members of the Contractor's Personnel and any sub-contractors with access to or who are involved in handling Authority Data ("users"); and
  - E1.2. provide to the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected personal data and ICT security incidents and its procedures for reducing risk and raising awareness; and
  - E1.3. immediately report information security incidents to the Authority. Significant actual or potential losses of personal data may be shared with the Information Commissioner and the Cabinet Office by the Authority.

#### **Section II: Specific minimum measures to protect personal information**

- E2. The Contractor must be particularly careful to protect Authority Data whose release or loss could cause harm or distress to individuals. The Contractor must:
  - E2.1. handle all such Authority Data as if it were confidential while it is processed or stored by the Contractor or its sub-contractors, applying the measures in this Schedule.
- E3. When Authority Data is held on paper it must be kept secure at all times, locked away when not in use or the premises on which it is held secured. If Authority data held on paper is transferred it must be by an approved secure form of transfer with confirmation of receipt. When Authority Data is held and accessed on ICT systems on secure premises, the Contractor must apply the minimum protections for information set out in the Specification, or equivalent measures, as well as any additional protections as needed as a result of the Authority's risk assessment. Where in exceptional circumstances equivalent measures are adopted the Contractor must obtain the Authority's prior approval in writing.

- E4. Wherever possible, Authority Data should be held and accessed on paper or ICT systems on secure premises protected as above. This means the Contractor should avoid the use of removable media (including laptops, removable discs, CD-ROMs, USB memory sticks, PDAs and media card formats) for storage or access to such data where possible. Where the Authority agrees that this is not possible the Contractor should work to the following hierarchy, recording the reasons why a particular approach has been adopted in a particular case or a particular business area:
- E4.1. best option: hold and access data on ICT systems on secure premises:
  - E4.2. second best option: secure remote access, so that data can be viewed or amended without being permanently stored on the remote computer. This is possible for Authority Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise agreed with the Authority;
  - E4.3. third best option: secured transfer of Authority Data to a remote computer on a secure site on which it will be permanently stored. Both the Authority Data at rest and the link should be protected at least to the FIPS 140-2 standard or equivalent. Protectively marked Authority Data must not be stored on privately owned computers unless they are protected in this way;
  - E4.4. in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.
- E5. Where the Authority agrees that it is not possible to avoid the use of removable media, the Contractor should apply all of the following conditions: -
- E5.1. the Authority Data transferred to the removable media should be the minimum necessary to achieve the business purpose, both in terms of the numbers of people covered by the Authority Data and the scope of Authority Data held. Where possible only anonymised Authority Data should be held;
  - E5.2. the removable media should be encrypted to a standard or at least FIPS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password;
  - E5.3. user rights to transfer Authority Data to removable media should be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business purposes and subject to monitoring by the Contractor and the Authority; and

- E5.4. the individual responsible for the removable media should handle it – themselves or if they entrust it to others – as if it were the equivalent or a large amount of their own cash.
- E6. Where the Authority agrees that the second condition of encryption in paragraph 5 cannot be applied due to business continuity and disaster recovery considerations, such unprotected Authority Data should only be recorded, moved, stored and monitored with strong controls.
- E7. All material that has been used for confidential Authority Data should be subject to controlled disposal. The Contractor must:
  - E7.1. destroy paper records containing protected personal data by incineration, pulping or shredding so that reconstruction is unlikely; and
  - E7.2. dispose of electronic media that has been used for protected personal data through secure destruction, overwriting, erasure or degaussing for re-use.
- E8. The Contractor must have appropriate mechanisms in place in order to comply with the Authority's requirements as set out in this Schedule, including adequate training in handling confidential data for the Contractor's Personnel.
- E9. The Contractor must:
  - E9.1. put in place arrangements to log activity of data users in respect of electronically held protected personal information, and for managers to check it is being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality. Summary records of managers' activity must be shared with the Authority and be available for inspection by the Information Commissioner's Office on request;
  - E9.2. minimise the number of users with access to the Authority Data.

## Annex A

### Minimum scope of Authority Data which is protected personal data

In the absence of specific instructions from the Authority, all the data identified in the table below is data whose release or loss in the Authority's view could cause harm or distress to individuals. The Contractor and its sub-contractors must treat the information identified below as protected personal data.

| <b>1. one or more of the pieces of information which can be used along with public domain information to identify and individual</b>   | <b>combined with</b> | <b>2. information about that individual whose release is likely to cause harm or distress</b>  |
|--|----------------------|--|
| Name/addresses (home or business or both)/post code/e-mail/telephone numbers/ driving licence number/date of birth<br><br>[Note that driving licence number is included in this list because it directly yields date of birth and first part of surname] |                      | Sensitive personal data as defined by s.2 of the Data Protection Act, including records relating to the criminal justice system, and group membership<br><br>DNA or fingerprints/bank, financial or credit card details/mother's maiden name/National Insurance number/Tax, benefit or pension records/health records/employment record/school attendance or records/material relating to social services including child protection and housing |

Protected personal data could be information contained in a database with 1000 or more entries containing facts mentioned in box 1, or an electronic folder or drive containing 1000 or more records about individuals. Again, this is a minimum standard. Information on smaller numbers of individuals may warrant protection because of the nature of the individuals, nature or source of the information, or extent of information.

**SCHEDULE F: INTELLECTUAL PROPERTY RIGHTS**  
**SPECIAL CONDITIONS: INTELLECTUAL PROPERTY RIGHTS**

CATS (Case Assessment Tracking System)

F1.1 The CATS intellectual property remains with the Authority and any wider use must only be with the Authority's permission.

F1.2 CATS is provided on a non - exclusive basis.

## SCHEDULE G: SPECIFICATION



National Offender  
Management Service



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Reference: NOMS CFO

### **Schedule G Specification**

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Appendix C- Young People

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Appendix I – Financial Allocation and Throughput

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Appendix K – Payment Model

## **G1 Preamble**

### **The National Offender Management Service**

- G1.1 The National Offender Management Service (NOMS) is an Executive Agency of the Ministry of Justice (MoJ). NOMS role is to commission and provide offender management services in the community and in custody ensuring best value for money from public resources. NOMS works to protect the public and reduce reoffending by delivering the punishment and orders of the courts and supporting rehabilitation by helping offenders to reform their lives. NOMS operates under an Agency Framework which governs the relationship with the Ministry of Justice. The Framework sets out the arrangements for the governance, accountability, financing, staffing and operation of the Agency and is agreed between the Secretary of State and the NOMS Chief Executive. This is then approved by the Chief Secretary to the Treasury.
- G1.2 Ministers have clearly set out their expectations for offender management in a number of recent announcements and programmes of reform. Reducing re-offending remains a key objective for NOMS. A significant part of meeting that objective comes from both the provision of skills, training and support mechanisms which increase the employability potential of offenders / ex-offenders and ensuring that they are connected directly to mainstream support and employment opportunities.
- G1.3 At a local level, Governing Governors, Directors of privately-managed prisons and as of June 2014, Chief Executive Officers of Community Rehabilitation Companies (CRCs) will ensure that targets and standards set for custodial and community provision are met. Policy and strategy for NOMS is set centrally and delivered through a combination of contracts with Private Sector suppliers and Service Level Agreements with Public Sector prisons. This mix of national direction and local delivery supported by contract management and monitoring is reflected in the structures of the NOMS Co-Financing Organisation (CFO). Policy Leads, Operational Performance Managers and Contract Managers work closely with national and local stakeholders to ensure complementarity of the provision of the Authority with that of other Agencies.
- G1.4 NOMS is responsible for 106 Public Sector prisons which account for around 82% of prison places, 14 privately managed prisons operating under contract, 21 Community Rehabilitation Companies supervising low and medium risk offenders serving community sentences or who are released under licence from prison and the retained National Probation Service (NPS), which offers similar services for high risk offenders. There are a number of Service-wide contracts providing significant infrastructure and system support (e.g. prisoner escort and electronic monitoring). NOMS also manages partnerships with a range of public and third sector partners including police, local authorities, health and education providers and organisations across the voluntary and social enterprise sectors. NOMS is involved in co-commissioning over £1 billion worth of services, which play a crucial role in achieving objectives, particularly around the rehabilitation of offenders including the co-commissioning of the Offender Learning and Skills Service (OLASS) in custody and prison healthcare services.
- G1.5 The landscape of offender resettlement services will change significantly once successful Transforming Rehabilitation (TR) preferred bidders are in place and



delivering services in early 2015. From March 2014, the introduction of the Offender Rehabilitation Act will result in an extension of statutory supervision after release for approximately 45,000 short-sentenced prisoners. Offenders released from custody will generally be subject to licence or supervision conditions which give CRCs a very wide discretion to require them to undertake rehabilitative activities. Some (but not all) Community Orders and Suspended Sentence Orders will in future include a new 'rehabilitation activity requirement' which will similarly give CRCs a very wide discretion. This ability to require offenders to undertake rehabilitative activities (particularly those given short custodial sentences of under 12 months, who are not currently subject to such requirements on release), combined with new custodial arrangements which will enable them to engage with most offenders "through the gate", provide a sound platform for CRCs to reduce reoffending. CRCs will be providing resettlement services in 90 prisons so that offenders are held closer to their home, thus facilitating more effective delivery of through-the-gate services. TR provision will also apply to offenders sentenced as juveniles who subsequently transition from the youth to the adult system.

- G1.6 Additionally, NOMS is contracted by the Youth Justice Board (YJB) to deliver custodial places for young people under 18, or in some cases aged 18 but remaining in the under 18 estate. Young people can be held in either an under 18 Young Offender Institution (YOI), a Secure Training Centre (STC) or a Secure Children's Home (SCH).
- G1.7 The Crime and Disorder Act 1998 lays out the minimum statutory requirements for Youth Offending Teams (YOTs) who are responsible for supervising young people in the community, as well as providing support to young people in custody. Further information about young people and reforms to youth custody can be found in **Appendix C**.
- G1.8 NOMS is also contracted by the Immigration Enforcement section of UK Visas and Immigration (UKVI) within the Home Office to provide in excess of 1,000 places at 4 Immigration Removal Centres. NOMS also hold a significant number of foreign nationals who have completed their sentences within the prison estate on behalf of the Home Office.
- G1.9 Either as a result of individual sentence progression or in response to population pressures within the prison system, offenders may be held in more than one prison during their sentence. On release, individuals returning to their local community can face significant barriers including difficulties re-establishing family and personal relationships, securing accommodation, maintaining programmes of drug/alcohol treatment and abstinence, accessing health services, connecting with mainstream provision (e.g. DWP Work Programme) or local support networks and accessing education, training and employment opportunities. These barriers can be more difficult to address for those who have been held for part of their sentence a considerable distance from their home area. For those groups of offenders where there are only a limited number of prison places and establishments (e.g. high security, young people and female estates), this issue may impact more significantly.
- G1.10 Further information can be found at:  
<http://www.gov.uk/government/organisations/national-offender-management-service>

## European Social Fund Provision

- G1.11 NOMS was granted status by the European Social Fund (ESF) Managing Authority for England as a national co-financing organisation (CFO) in January 2009 with a remit to deliver a programme of work across England alongside other national co-financing organisations (Department for Work & Pensions and Skills Funding Agency) and a number of region specific CFOs. In recognition of the unique nature of the client group, NOMS will remain as the only CFO for the 2014 – 2020 ESF Operational Programme with other organisations operating funding opt-in models in conjunction with Local Enterprise Partnerships (LEPs).
- G1.12 The focus of NOMS CFO is to help offenders move towards mainstream provision or into employment by addressing their barriers to work through facilitating access to comprehensive support mechanisms appropriate to their individual circumstance and assessed need. Emphasis will be on those furthest from mainstream activity, with an additional focus on a number of specific hard-to-reach groups within each ESF Contract Area (ECA). Delivery is built around a case management model and operates across both custody and the community. It is envisaged that up to 70% of programme commencements will take place in custody, with a focus on through the gate activity (complementary to Transforming Rehabilitation delivery). The remaining commencements will take place in the community. It is expected that as the programme progresses, the delivery split will become 50:50, with more participants continuing to access CFO services through the gate. A shortlist of custodial delivery sites has been agreed with Deputy Directors of Custody (DDC) and can be found in each Regional Annex. Additional information regarding prison delivery sites can be found at **Appendix B**. The Authority will be awarding one contract for each ECA. Where an ECA contains a sub-region with special ESF designation, the contractor may be required to segregate all outcomes and expenditure related to the sub-region from that of the rest of the contract.
- G1.13 The financial allocation for this procurement round, once administration and management costs for the Authority have been removed is £115.28m to be delivered via 9 contracts. Detail regarding the initial national allocation of £115.28m and associated throughput is available at **Appendix I**. Within each ECA, the Authority will ring-fence 8.7% of the allocation for a Development Fund made available to providers once the Programme is running. This fund is intended to be used by providers to deliver activities which will better prepare participants for engagement with mainstream learning and skills provision. Further information about the intended use of this ring-fenced allocation is provided at G4.5iv.
- G1.14 The programme will commence from April 2015 and run until December 2020. The period of April – end June 2015 will be a set-up phase during which providers will not be required to deliver participant throughput, rather the focus should be on addressing logistical concerns and preparing staff. During this period comprehensive awareness sessions covering a range of areas will be delivered by NOMS CFO to successful providers in preparation for programme delivery. Providers will be required to demonstrate that they have sufficient key staff in place at contract commencement to participate in these sessions. Participant throughput is required from July 2015. Providers should be aware that the existing CFO contracts will run to end June 2015 and therefore they are advised to include transition planning as part of their activity for the period April – end June 2015.

- G1.15 NOMS will run the third round CFO programme on 5¾ year contracts (69 months), commencing April 2015 and running to December 2020. Please note that a break clause will be included within the contracts so that December 2017 could serve as a breakpoint at which the Authority reserves the right to terminate the contracts. This may be enacted at the Authority's discretion if, for example, shifts in national priorities and programmes results in the service provision being delivered under the contracts no longer demonstrating additionality over that of the mainstream.
- G1.16 Subject to the 2014 – 2020 ESF Operational Programme being extended beyond December 2020 the Authority may be permitted to extend the relevant contracts to take account of the longer Programme period. In recognition of additional monies previously being allocated to NOMS mid-Operational Programme period, providers should build sufficient flexibility into their delivery to support any extension granted by the Authority up to December 2022. An extension would be supported by additional finances and proportionate participant throughput.
- G1.17 Furthermore, flexibility should be built in to support additional throughput and finances within the original contract period (to December 2020) as a result of any time-bound allocation from the Managing Authority, or any other additional monies that may be available to the Authority.
- G1.18 Providers are required to adhere to all ESF Rules and Regulations pertaining to and/or still relevant to the 2014 – 2020 ESF Operational Programme and are reminded that any activity and associated expenditure must be fully compliant with the same. The authority reserves the right without exception to refuse to reimburse any expenditure occurred which is not fully compliant.
- G1.19 It is important to note that this procurement and any subsequent contract award are subject to EU Commission sign-off of the 2014-2020 ESF Operational Programme for England.**

## **G2 Background to the requirement**

### **Current provision gaps**

- G2.1 NOMS has strengthened its partnership working to ensure offenders have access to employment support, notably with Jobcentre Plus, the DWP Work Programme and the National Careers Service. The Offenders' Learning and Skills Service (OLASS) aligns skills, training and learning with preparation for employability as offenders near release. This also supports the agenda of making prisons places of work. However, OLASS provision is not available in every prison (as some private prisons fall outside the OLASS arrangements) nor is engagement with learning mandatory for over 18's, unless it forms part of a court order or part of an offender's sentence plan. Within the OLASS arrangements, mandatory assessment procedures for all newly received prisoners in England were implemented from August 2014 and are being undertaken by the OLASS providers. This will ensure that all offenders receive a learning assessment (focusing upon English and maths skills as well as identifying hidden disabilities) rather than those that just go onto learning. A new National Careers Service (NCS) has been procured by the Skills Funding Agency which commenced in October 2014 and includes an in custody element of delivery providing advice

and guidance to prisoners about suitable routes to employment and the related learning. The new contractors will work to a revised specification that has outcomes based payments and will ensure that prisoners are supported into further learning or sustainable employment post-release. Additionally, not all offenders are ready to engage with the mainstream provision available in the community and many need support to identify and navigate the array of services available that are relevant to their individual needs and circumstances. Engagement is hampered by low-level literacy, drug and alcohol issues, fractured or poor educational experiences, motivational issues, family breakdown as well as the intergenerational effects of offending, chaotic lifestyles and the impact of offending and anti-social behaviour upon family and the wider local community. Working in partnership with a range of different partners and providers is therefore essential.

- G2.2 NOMS will continue to forge closer strategic links to improve delivery of offender services, not only between prisons, CRCs, the National Probation Service and youth offending services, but also across government partners including The Department for Business, Innovation & Skills (BIS), the Skills Funding Agency, DWP and the Youth Justice Board (YJB).
- G2.3 In addition to the large scale rehabilitation reforms currently being implemented, the Ministry of Justice has published a number of reviews pertinent to the management and provision of women offenders and young adults and the future of youth custody. These reviews highlight the significance of employment, training and education for offenders and both set out key recommendations to drive improvements in resettlement services and develop methods of engagement and ways of working with these specific offender groups.
- G2.4 Those working with offenders in both custodial and community settings have identified the importance of individualised case-managed employment services for offenders, notably wraparound support to improve engagement and motivation with mainstream provision. The structure and stability provided in prison can dissipate in the community. This is compounded often by issues such as confidence, self-esteem, communication and high prevalence of learning difficulty, rendering successful engagement with mainstream services a significant problem. Levels of motivation, aims and circumstances can change rapidly following release and as such there is scope to ensure tailored support is available to continue work started in prison.

There is a need for positive continuity of service, particularly for the hardest to reach offenders as they transition from custody to community. The need to ensure support for offenders serving short sentences of less than 12 months brings its own set of challenges but clearly delivers an environment in which service providers can make a substantial difference both to reducing re-offending and to enabling an often stubbornly difficult and complex group to positively re-engage with society.

### **Bridging the service gaps**

- G2.5 The European Social Fund (ESF) Operational Programme is part of the European Growth Programme for England in 2014-2020. It will deliver the Growth Programme's priorities to increase labour market participation, promote social inclusion and develop the skills of the workforce. Supporting disadvantaged groups remains a priority for the next ESF Operational

Programme. To achieve this, it is important to consider all available delivery mechanisms to ensure that services are appropriately sequenced and complement each other. Current mainstream provision is not accessible for many offenders and the benefits can be limited for those who have been excluded from such activity. This is the basis for NOMS CFO provision. The specific detail of resettlement delivery by CRCs across England is being finalised although the overarching model is intended to make it easier for providers to target resources at the right point in an offenders' sentence. Identifying potential gaps in provision and adding value to existing services are the areas that NOMS CFO will focus on in the next funding round.

The consultation process identified specific delivery sites and potential provision gaps where NOMS CFO should focus activity in custody. Bidders are expected to make contact with relevant stakeholders (using the points of contact provided), to discuss specific regional areas for focus and any additional information available to The Authority has been included in the final version of each ECA Annex or contained within the CFO Data Room. This will allow providers to ensure that proposed delivery will not duplicate existing or planned services under TR and other mainstream provision.

G2.6 A key priority for ESF is the promotion of social inclusion. Offenders are considered to be a significant group which experience multiple difficulties and barriers to accessing employment, training and education. A recent cohort study (the Surveying Prisoner Crime Reduction survey) found that 68% of surveyed offenders were not in employment in the four weeks before entering custody, and that many of those who were in employment lost their jobs as a direct result of their imprisonment. Disclosure of a criminal record was also reported as a cause for the loss of employment, and the study also found that only 53% of the surveyed offenders had a qualification compared to 85% of the working age population.<sup>1</sup> Substance misuse was prevalent, with both male and female offenders surveyed showing high levels of hazardous drinking and illegal drug use compared to the general population, and it was found that female offenders reported poorer mental health than women in the general population.<sup>2</sup> The same survey found that 36% of offenders were considered disabled (including mental health), much higher than the general population, and that disability was linked to employment, substance misuse, homelessness, and experiences of abuse or violence.<sup>3</sup> These findings reinforce earlier longitudinal studies, which have identified issues with unemployment, lack of qualifications, unstable accommodation, substance misuse and mental health among the offender population.<sup>4</sup> Within NOMS there is also a section of the offender population which is often not able to access opportunities offered by mainstream funding – this is the group which NOMS CFO targets.

G2.7 NOMS CFO is not a standalone programme. It is designed to complement and support mainstream provision, increasing value for money from other projects and better preparing those socially excluded to make a positive contribution to

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<sup>1</sup> Hopkins, K. (2012) The Pre-Custody Employment, Training and Education Status of Newly Sentenced Prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) survey, Ministry of Justice Research Series 3/12.

<sup>2</sup> Light, L. et. al. (2013) Gender differences in Substance Misuse and Mental Health Amongst Prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) survey, Ministry of Justice.

<sup>3</sup> Cunliffe, C. et. al. (2012) Estimating the Prevalence of Disability Amongst Prisoners: Results from the Surveying Prisoner Crime Reduction (SPCR) survey, Ministry of Justice Research Summary 4/12.

<sup>4</sup> Stewart, B. (2008) The Problems and Needs of Newly Sentenced Prisoners: Results from a National Survey, Ministry of Justice.<sup>4</sup>

society. NOMS CFO aims to complement existing mainstream activity by bridging the service gaps experienced by offenders. Transforming Rehabilitation will change the way offenders access resettlement services and this must be taken into account by potential providers. Under TR, through the gate plans aim to release 80% of prisoners from a designated resettlement prison in their home area. In support of this, the prison estate is undergoing a programme of reconfiguration to significantly reduce the necessity for prisoners to transfer around the estate which can pose challenges to continuity of service delivery. It is envisaged that the creation of resettlement prisons will present opportunities to create better continuity of service for offenders, in relation to wider mainstream and co-commissioned services. All regions are now following new allocation routes to meet the MoJ's commitment to having prisoners in the right place at the right time to benefit from new resettlement services.

It is anticipated however that not all prisoners will be released from a prison in their home area and therefore an element of prisoner movement around the estate will still be necessary, particularly where establishments operate as a national resource. The provider shall therefore be required to adhere to protocols for transitioning participants across regions/contracts, details of which are described in Section 5 of this schedule. Providers are encouraged to refer to the MoJ Transforming Rehabilitation Target Operating Model to ensure that they understand the implications of the same upon any inter-prison transfers by participants on the ESF programme.

Despite these changes, it is not anticipated that CRCs will drastically reduce the demand for individualised ETE focused support in the community. CRCs will face particular challenges addressing the additional supervision responsibilities of offenders with short sentences i.e. working with more cases and for longer.

More detail about TR can be found at **Appendix A**.

G2.8 In delivering the CFO programme, the Authority will promote a joined up approach with partners and stakeholders. It will take particular care to link to the major MoJ Transforming Rehabilitation (TR) provision, DWP Work Programme, and to ensure data arrangements are considered and put in place to draw on and link to available data sets, enabling a legal exchange of data relating to an offender's engagement with learning and training to be shared with partners. The CFO is contributing to a cross-Government data sharing project with the aim of achieving data sharing agreements between NOMS and its partners (including Skills Funding Agency, DWP, BIS and the National Careers Service) in order to be able to share information about an offender's education, training and employment activity/progress.

G2.9 Delivery will:

- Contribute to the relevant ESF Operational Programme Priority Axis - **Priority Axis 1** will help people who are out of work or at a disadvantage to participate and progress in the labour market and reduce social exclusion;
- Contribute to the relevant ESF Operational Programme Investment Priority - **Active Inclusion** will help people who are some distance from the labour market and may face multiple disadvantages to tackle their barriers to work and to move towards or into employment or to sustain employment;
- Contribute to the relevant ESF Operational Programme Investment Priority - **Sustainable Integration of Young People**, focusing on helping young



people, particularly those not in education, employment or training (NEET) to participate in the labour market and learning;

- Complement policies and initiatives to promote social justice by supporting additional and/or more intensive provision tailored to local needs;
- Tackle inactivity particularly by helping disadvantaged groups overcome barriers and move towards employment;
- Build on the principles and support the outcomes of the Local Enterprise Partnership (LEP) Strategies;
- Demonstrate linkages, progressions and added value to mainstream delivery, Jobcentre Plus/Skills Funding Agency and MoJ/NOMS-led delivery for offenders;
- Build on current resources rather than duplicate or displace;

G2.10 The Authority will adopt a partnership approach to ensure that activity does not duplicate provision and that value is added to existing provision. The Provider shall be expected to ensure that work complements rather than competes with other ESF provision. Of particular importance will be effective partnership working with LEPs, where delivery in the community is taking place. The Authority will continue to engage with LEPs across all ECAs, to ensure that information can be updated and shared with commissioners. There is an expectation that providers will continue close working with LEPs and all ESF Opt-in Organisations, to ensure effective alignment of provision.

G2.11 NOMS CFO Programme allows flexibility to deliver services and produce outcomes which ultimately have the potential to realise wider cross-Departmental benefits. Strategic partners have contributed to the design of the Programme and continue to work with NOMS to ensure provision is aligned with their respective mainstream and ESF offers. This will continue throughout the implementation phase, to ensure that developments within other sections of business can be incorporated into the mobilisation process.

G2.12 The Programme targets those offenders with the most complex needs who are typically least able and/or motivated to access mainstream provision (see section G7 for description of cohort). NOMS CFO performance management framework, the payment mechanism and CATS assessment tool all work to ensure that the Programme maximises benefits for those groups most at risk of being excluded from the mainstream offer. The ultimate aim of this approach is to reduce an individual's long-term dependency on cross-Departmental provision.

### **G3 National overview**

G3.1 NOMS is committed to strengthening the integration of service delivery between directly funded, co-commissioned providers and wider partners to secure better outcomes for offenders, their families and their local communities. The annual NOMS Commissioning Intentions Strategy<sup>5</sup> sets out overarching commissioning priority areas for custodial and community service delivery, the detail of which is negotiated and agreed between NOMS and local custodial and community delivery leads. Commissioning Intentions are currently being reviewed for 2015.

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<sup>5</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/280922/commissioning-intentions-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/280922/commissioning-intentions-2014.pdf)

G3.2 NOMS Commissioning Intentions 2014 provides a useful strategic context for positioning the contribution of NOMS CFO ESF provision. It is well recognised that offenders can present with a wide range of needs that impact on their ability to engage with interventions and services, successfully complete their sentence, and live independent crime-free lives. As such, it is essential that services are responsive to offenders' individual needs and characteristics to maximise outcomes. Providers should also be aware of the importance of evidence-based commissioning and in particular the Evidence and Segmentation document which accompanies the Commissioning Intentions from 2014 document.<sup>6</sup> Many of the commissioning requirements accord with supporting those who face multiple disadvantages to tackle their barriers to work and social exclusion, including drives to;

- Strengthen partnership working to ensure that offenders have access to support and services to both prepare for and enable access to employment, education and training.
- Align services with Offender Learning and Skills Service (OLASS 4) providers in prisons. Put in place local partnership working arrangements (for example with National Careers Service and Community Rehabilitation Companies) and determine what learning opportunities will be offered in each prison. Support initiatives to make prisons places of work and strengthen the focus on employability. Enhance access to mainstream learning and employment services for offenders on return to the community.
- For the young people sub-group (16-18), support the 'Transforming Youth Custody' programme to increase education provision in custody.
- Facilitate the ongoing operation of mandating day one entry of prison leavers onto the DWP Work Programme and any future changes through the introduction of Universal Credit for adult offenders.
- Work with local authorities to promote inclusion of, and maximise benefits to offenders' families.
- Work together with NHS England and Public Health England in line with the National Partnership and Co-commissioning Agreement to ensure that NHS commissioned health services (including clinical and non-clinical substance misuse services) in custody support both health and justice outcomes.
- Work together with Local Authorities to ensure that adult offenders with care and support needs are appropriately identified, their needs are assessed and they are supported to live with decency and as independently as possible; and that arrangements are made for continuity of care when an individual moves.
- Continue to improve access to a pathway of new and existing services for offenders with severe personality disorders. Services are primarily targeted at men who present a high risk of serious harm to others and women who present a high risk of committing further violent, sexual or serious criminal damage offences. Services are co-commissioned with NHS England to support health and justice outcomes.
- Increase the amount of commercial and economically beneficial work in prisons undertaken by prisoners. It is essential that NOMS and prisons engage proactively with business to secure work on a commercial basis

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<sup>6</sup> <http://www.justice.gov.uk/downloads/about/noms/evidence-segmentation-2014.pdf>



under the brand of ONE3ONE Solutions. This will be delivered via a combination of large-scale multi-site commercial contracts, and smaller scale localised contracts managed directly by prisons. This will provide other opportunities to add value to whatever is in place and use what prisoners learn in workshops to assist in securing employment on release.

- G3.3 Nationally, NOMS continues to strengthen its employment and skills services, working collaboratively with the Department for Business, Innovation and Skills (BIS), the Skills Funding Agency and its OLASS providers, the National Careers Service, the National Apprenticeship Service and the Department for Work and Pensions. NOMS has also introduced a comprehensive national Employer Engagement Strategy which supports a reinvigorated Employers Reducing Re-offending Reference (EFFRR) Group<sup>7</sup>, enabling the pooling of resources between the private, public and voluntary sectors to provide industry standard training and work opportunities both pre and post release.

### **NOMS CFO Delivery Structure**

- G3.4 NOMS CFO must align with local delivery at establishment and community level. Economies of scale prevent the alignment of ECAs with TR contract package areas, but protocols will be implemented to ensure that partnership working and information sharing can take place. NOMS CFO is able to report across a range of geographical boundaries, to provide information as required. The NOMS CFO programme will operate across 9 English ECAs;

- North East
- North West
- Yorkshire
- East Midlands
- West Midlands
- East of England
- South East
- London
- South West (excluding Cornwall)

- G3.5 Some of the above ECAs will encompass one or more of the sub-regions designated by ESF as transition regions. Information to illustrate which prisons are included within each ECA for delivery purposes is contained within the respective Regional ECA Annex. Variations to delivery including any required ring-fencing of targets can also be found within the respective regional annexes.

ESF transition regions:

- Devon (South West ECA)
- Lincolnshire (East Midlands ECA)
- East Riding of Yorkshire, Hull, NE and N Lincs (East Midlands and Yorkshire ECAs)
- Shropshire & Staffordshire (West Midlands ECA)
- South Yorkshire (Yorkshire ECA)
- Merseyside (North West ECA)

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<sup>7</sup> <http://www.ppdg.co.uk/employers/effrr-homepage>

- Lancashire (North West ECA)
- Tees Valley & Durham (North East ECA)
- Cumbria (North West ECA)

G3.6 The programme will deliver against the ESF Operational Programme Priority Axis 1 - to help people who are out of work or at a disadvantage to participate and progress in the labour market and reduce social exclusion. Offenders and ex-offenders are recognised as a key group within this priority objective deemed to be at significant risk of social exclusion.

#### **G4 Core delivery model**

G4.1 In order to deliver CFO services, providers must utilise the role of Case Manager within their staffing structure. This will be the central function for the improvement of offender access to mainstream activity and to address barriers to employment, training and education. Providers will be expected to map existing provision within delivery sites and provide services appropriately, based on identified need. This should be done in conjunction with stakeholders and providers of resettlement services. All delivery must complement existing resettlement services and add value to available provision.

G4.2 Case Management Model – Prison or community based Case Managers under CFO will deliver services to address the requirement outlined within this specification as well as the Regional ECA Annexes. When considering appropriate CFO provision, providers should consider the importance of how the effectiveness of activities and interventions will be established and developed. Providers will be encouraged to consider how CFO activities can support the principles of evidence-based commissioning (in liaison with NOMS Commissioning Services Group) to help to fill gaps in NOMS/MoJ knowledge bases. This will ensure that CFO delivery adds value to core NOMS interventions and those provided by other agencies.

The European Social Fund (ESF) Managing Authority for England will commission and fund an external independent evaluation of the programme in the form of a cohort survey. The survey will look at the experiences of participants both whilst they are on the NOMS CFO programme and for a number of months after they have left the programme. The provider will be required to grant access for the evaluators to sites, staff and programme participants and ensure that contact details for participants are entered and kept up to date on the CATS application.

G4.3 Under Transforming Rehabilitation proposals, core custodial offender management, (known as case management for low/medium risk of serious harm offenders sentenced to less than 12 months) will continue to be carried out by the prison staff for all offenders, regardless of whether they will be managed by the NPS or respective CRC on release. This includes, for example, carrying out sentence calculations, early release assessments, and making licence/supervision preparations. All aspects of the CFO programme should run alongside a prisoner's sentence plan. CFO Case Managers must remain in close contact with the Offender Management Unit (OMU) in each establishment to ensure CFO activities are informed by and contribute to core custodial offender management activities.

G4.4 The role of the CFO Case Manager can be summarised as follows.

- **Enrolments** - Case Managers will assess each potential participant for entry on to the project. Potential project participants will be identified through the mandatory Case Assessment and Tracking System (CATS). However, to support both custodial and community enrolments, Case Managers will be expected to liaise closely with offender management staff, induction processes and CRCs to identify potential participants suitable for CFO delivery.
- **Assessment** – an appropriate assessment methodology will be applied to capture the needs requirements of potential participants. NOMS CFO providers will utilise CATS to complete the CFO assessment, but they will also be encouraged to refer to the relevant sections of the Basic Custody Screening Tool (BCST) which will be completed by prison staff for all new receptions into prison custody including all remanded, sentenced and recalled prisoners within the first 72 hours of their sentence. Access will only be available if the necessary documentation is in place to facilitate the legal exchange of this information.
- In resettlement prisons, a resettlement plan is completed by the responsible CRC within 5 working days. CFO providers should also consult this where possible, prior to undertaking the CFO assessment. This will also be dependant on the necessary documentation being put in place (see above) All providers of contracted prisons have agreed to implement the TTG model by completing the BCST. In the community, Providers are encouraged to liaise with the Responsible Officer, Supervising Officer or Supervisor (as appropriate) and reference available sentence planning information prior to undertaking the CFO assessment.
- CFO participants must be assessed using the CFO assessment to satisfy ESF requirements as part of the enrolment process in both custody and community. Other assessments available may provide Case Managers with helpful detail about a participant and Case Managers are strongly encouraged to access the same. However, they should be mindful of the possibility that information contained in existing assessments may be out of date, or there may be information gaps, particularly in ESF specific areas.
- The focus of the CFO is upon those offenders which are the hardest to reach. Potential participants who are assessed as not meeting the appropriate criteria should not be enrolled on to the programme. There is less incentive for providers to select participants who will more easily achieve outcomes, as the payment model is constructed to ensure that appropriate interventions will attract payment. Targets have been set with regard to the specific cohort required by the programme. There is an expectation that in the majority of cases where a participant secures employment or is referred onto mainstream provision that the CFO case is closed. Where continued delivery is justified this will need to be evidenced on CATS and will only be exception, not the norm.
- **Case Assessment and Tracking System (CATS)** - managed by the Case Manager, who will complete the assessment, action plan, referral, reviews and target stages on this single IT system. The system enables

a Case Manager to manage their workload accordingly and must be completed appropriately to generate provider payment.

- **Planning** – each participant will have a tailored action plan that effectively sequences interventions and referrals as appropriate to individual need. Case Managers must demonstrate linkages between assessment and actions. Providers should endeavour to make use of other available offender records such as the Basic Custody Screening Tool (BCST), resettlement action plans drawn up by the CRC, OASys and NOMIS records in determining appropriate actions. The planning of CFO activity should also take account of relevant information from the OMU in conjunction with sentence planning (including risk information) which is co-ordinated by the Offender Supervisor. In the community, providers should liaise with those responsible for offender management activities (within both CRC and NPS as appropriate) to ensure appropriate CFO action plans are developed which align to both sentence planning and risk information.
- **Referral** – Case Managers will make referrals to partner agencies or providers (both internal and external to CFO structures/contracts) and ensure that interventions are joined up. For adult offenders, providers should aim to develop clear referral protocols to activities both within custodial and community settings with CRC and NPS as appropriate. Where referrals into activity/interventions can be made automatically by prison staff, Case Managers should work with participants and the OMU to ensure that they are able to maximise opportunities and deliver preparatory services as appropriate. Specific consideration must be given to preparing adult offenders to access Transforming Rehabilitation provision and the DWP Work Programme.
- **Core Activity** – this will include motivating participants to engage, co-ordination of activity, service delivery, liaison with all relevant departments/agencies to ensure that the offender is accessing the most appropriate interventions pre and post release and providing a consistent overview of the individual ETE (employment, training and education) journey. The key aim is to appropriately prepare participants to access available services. This is the main day to day function of the Case Manager.
- **Targets** – ensuring that individual targets are met (a breakdown is provided in each of the regional specific requirements – Financial Allocation and Throughput section).
- **Risk** – Case Managers will liaise with those responsible for the delivery of offender management arrangements in both custodial and community settings and will operate within a risk of harm framework, to ensure that all CFO participant achievements are appropriate both within custody and suitable for ETE post release within public protection arrangements (For the youth sub-group this may include contributing to the YOTs' assessment of risk of serious harm). Regular reviews should take place to ensure that Case Managers have up-to-date information about risk of harm levels.

- **Additional Delivery Mechanisms –**

- (i) Mentoring – Case Managers will make use of mentoring support as a way to motivate, engage and focus offenders. It is expected that this will play a significant role in through-the-gate support where required. Providers should be mindful that mentoring work should be designed to target gaps at local level and avoid duplication with that provided by CRCs and NPS.

Providers should be aware of the different models and methods of mentoring such as peer mentoring and effective means of engagement, particularly for young people and young adult offenders. Providers are also encouraged to consider how mentoring can be used as an effective support mechanism for the hard-to-reach sub groups.

Providers should ensure that mentoring activity is appropriately managed and co-ordinated in a robust manner with organisations in the supply chain being able to effectively recruit, train and support a network of volunteers.

Providers also need to be aware of the recently introduced security vetting requirements for offenders undertaking a mentoring role who are serving their sentence either in custody or in the community. Details can be found in Agency/Prison Service/Probation Instruction AI 26/2014-PSI 39/2014-PI55/2014. See Section G11.1 'General Requirements' for guidance on how to access NOMS instructions.

- (ii) Social Enterprise – Providers will develop links with one or more social enterprise models offering support and/or employment opportunities for offenders. Providers are encouraged to work with stakeholders across both custody and community to design models of delivery which can provide services across a number of establishments/prisons and community delivery sites. Transport, warehousing and the green economy offer opportunities particularly suited to both the client group and the custodial estate.

Providers are encouraged to make use of the different social enterprise models – either as partners in the direct delivery supply chain or via links to social enterprise consortia or networks. Providers are encouraged to utilise existing network structures to market the benefits of employing ex-offenders and influence other local and regional partners to do the same.

There may be an opportunity to align this social enterprise activity with provision as described below at G4.5iv.

G4.5 There will be a requirement to provide elements of provision which will be delivered across all ECAs. Providers will be expected to deliver elements of (i), (ii) and (iii) described below, although not necessarily at all delivery sites. These include;

- (i) *Accommodation services* (see also **Appendix E**) - Accommodation advice and support should be delivered as standard for all participants identified as having a need in this area and as such should form part of the core delivery offer. The focus for CFO activity should be on enhancing existing

accommodation work, particularly that provided by the CRCs and filling gaps as appropriate. This may be particularly relevant for the hard to reach groups. Some ECA level hard-to-help groups traditionally have greater need with regard to securing and sustaining accommodation, recognising that housing needs are often related to and/or complicated by other risk factors such as substance abuse, employment and mental health issues. Furthermore, research suggests that offenders are not always accustomed to seeking help from outside agencies to solve accommodation problems and that in order to sustain their accommodation, offenders may need advice in managing money, debt and skills for living independently in the community which could involve the use of a mentor, particularly for hard to reach groups.

Providers should demonstrate that adequate support is available to support both the general cohort and ECA level hard-to-help groups via either their supply chain or within their own organisation. CFO Providers are particularly encouraged to assist with the development and maintenance of strategic partnerships with Local Authorities, especially if those links do not already exist and engage in innovative work within the social housing sector to ensure that housing stock is more readily available to participants and that offenders are supported appropriately to access and maintain housing opportunities. Providers are encouraged to include housing partners in their supply chains, to strengthen local links and work towards improving accommodation opportunities across the region.

Providers should be aware that accommodation is an “assurance measure” within CRC contracts meaning it is a formal performance measure with targets and contract remedies for poor performance. CRCs will thus in a relevant month have to place a percentage of allocated persons on release from custody into settled accommodation. As such the CFO offer pertaining to accommodation advice and support should demonstrate how it will enhance accommodation provision already in place.

- (ii) *Family links* (see also **Appendix F**) - . Providers should ensure that links to participants’ family and community support networks are maximised working across both custody and community. Providers should consider the differing nature of potential issues around accessing and maintaining positive family support for priority groups including as women, young offenders and older offenders. In custody, Visitor Centres afford opportunities to engage directly with prisoners’ families to offer support which could include offering support sessions with the participant and their family, support work in the community with the participant on RoTL or CFO involvement in prison Family Days. However, providers should be mindful of embedding CFO work within multi agency partnerships when working in Visitor Centres and should operate within appropriate boundaries to support the family’s wishes and develop activities based on trust and respect. NOMS Commissioning Intentions recognises the important contribution that supporting offenders’ families can make to reducing re—offending and the likelihood of inter-generational crime and requires prisons to engage with Local Authorities around support for offenders’ families and for the Troubled Families programme specifically. The core criteria for this are adult unemployment, children out of school and youth crime and high cost. Although flexibility of approach across partners is a key part of the design, there are additional criteria at local level including adult offending and that some adult offenders will feature in those families.

Work to support positive family relationships may also provide an opportunity to link to appropriate social enterprise activity.

Use of the Development Fund may be helpful in relation to family support across and between both custody and community.

CFO activity to support positive family relationships for offenders is also encouraged in the community and providers should consider appropriate community delivery options such as linking in with local VCSEs, local play associations, Local Authority multi-agency community Hubs, Children's Centres and schools for example, as well as links to Troubled Families Provision via Local Authorities. Information about family circumstances obtained from partnership and co-commissioning approaches when used alongside NOMS segmentation model can help better target casework based support and transformational interventions on those offenders with higher risk of reoffending, or most likely to be responsive.

Providers should be aware that NOMS is currently undertaking a review of Visitor Centre provision across the custodial estate in preparation for possible re-tendering. There are a number of Family Support/Engagement Workers across the estate, primarily under contracts with Visitor Centre services and it is anticipated that their services may be included in any future competition. As such, proposals for CFO activity should be focused and targeted appropriately to avoid duplication.

As part of the new Transforming Rehabilitation operating model, in custody, providers will offer a resettlement service for all offenders before their release. This may include family support where it is needed.

- (iii) *Activities to support offender health* – NHS England provides a range of support services for offender health needs. Participant health requirements should be incorporated into the provider offer where appropriate and the development of suitable local partnerships with NHS England delivery providers is expected. Stakeholders have identified specific areas of health related delivery that will be a CFO focus in each ECA and providers will be expected to make appropriate links with regional NHS Commissioners and delivery providers once contracts are let. This will ensure that CFO delivery mechanisms and provision can add value to existing NHS provision. This joint approach will enable CFO and NHS England delivery providers to provide appropriate services for offenders in custody and the community, complementary to those already offered.

Health and Justice Services are interdependent and work together to deliver both health and reoffending outcomes for prisoners/patients. Despite being independent organisations both NOMS and NHS England, along with Public Health England, have aligned their priorities and responsibilities. These are documented in a National Partnership Agreement<sup>8</sup> that describes a desire to develop a shared understanding of how both NOMS and NHS England can work together to co-commission and deliver health services, supported by Public Health England, that promote change and help save lives.

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<sup>8</sup> [www.justice.gov.uk/downloads/about/noms.working-with-partners/national-partnershp-agreement-commissioning-delivery-healthcare-prisons2013.pdf](http://www.justice.gov.uk/downloads/about/noms.working-with-partners/national-partnershp-agreement-commissioning-delivery-healthcare-prisons2013.pdf)

The Public Health Outcomes Framework for England promotes services in prisons that improve health and wellbeing, tackle health inequalities and wider determinants of health and contribute to reducing reoffending<sup>9</sup>. To achieve this the National Partnership Agreement describes a number of shared outcomes and joint priorities such as prisoners experiencing a measurable improvement in their health and wellbeing, particularly in respect of recovery from substance misuse addiction and mental health problems. Prisoners should also expect continuity of care between prisons and following release back into the community.

NOMS CFO activity can deliver a complementary contribution to achieve these shared outcomes and support some of the joint priorities of NOMS and NHS England. Providers will be required to demonstrate that discussions have taken place with appropriate health provider representatives and that proposed services add value and complement services provided by NHS England. This is of particular importance where hard to reach groups are targeted in region for additional support.

Providers should also be aware that The Care Act (DH2014) will reform social care provision in England from April 2015 and ensure social care for adults in prisons and Approved Premises is provided on the basis of equivalence to those living in the community. From April 2015, English local authorities will be responsible for assessing and meeting the *eligible* social care needs of adult prisoners in England and residents of Approved Premises. Therefore all adults with disabilities or long term health conditions may be eligible for social care support (including someone in a Young Offenders Institution who is over 18).

Further background information is contained within **Appendix H**.

- (iv) *Development Fund* – The Authority has ring-fenced a proportion of each ECA's allocation to be used as a Development Fund to enhance the CFO delivery model across the ECA. The fund will become available once Providers are in place and delivery is well established in order that applications for the fund can be formulated in consultation with prisons, CRCs and NPS –also taking into account LEP priorities. Providers will be expected to use the ring-fenced fund to bridge gaps in meeting needs of the participant cohort with the overall aim of increasing their ability to participate within the local (ECA level) economy. The Authority will consider proposals from providers once the fund becomes available, but reserves the right to remove the ring-fenced element and return the monies to the main ECA allocation if applications do not prove appropriate. Providers should note that the funds are ring-fenced initially for the purposes of the ITT, but there is no requirement at this stage to include anything more than the allocated total figure within the budget breakdown (simply as a single budget line).

The ring-fenced monies are intended to fund additional activity which will support offenders in both custody and community to prepare for and be better able to engage with mainstream learning and skills provision. This fund must be used creatively to increase offender skill sets and address barriers which present challenges in engaging with OLASS, NCS and other

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<sup>9</sup> The Public Health Outcome Framework for England – <http://healthandcare.dh.gov.uk/public-health-outcomes-framework>



learning and skills provision in both custody and community. It is expected that the fund will be split 50:50 between custody and community.

Providers are particularly encouraged to consider use of the Development Fund to enhance support for the hard to reach sub groups in each ECA where engagement with the mainstream poses an even greater challenge. Consultation with stakeholders suggests that there are often gaps in targeted delivery for the CFO hard to reach sub groups, particularly around independent living skills to facilitate integration and adjustment to living in the community. The Development Fund should also be utilised in relation to the additional delivery areas within the Programme intended to support social inclusion – families, accommodation and health.

The Development Fund is intended to enhance the provider's overall delivery model across the ECA but is not to be used to directly facilitate individual participant outcomes (as with the Discretionary Access Fund (DAF)). Activity supported by the Development Fund should of course provide a positive addition to the pathway on which to base outcomes and as such there are no additional targets associated with this fund.

Use of this fund must represent additionality and complement local commissioning arrangements and use of the Development Fund must not present a funding opportunity which may result in an establishment defaulting to using up the CFO Development Fund before drawing down OLASS provision. Providers should consider best use of partners in their supply chain to ensure activity from the Development Fund remains sufficiently local, targeted and responsive to offender needs. Providers should be aware that NOMS and its partners are also working towards implementing better data sharing arrangements between prisons and service providers so that more is known about previous assessments of prisoners, and their respective progress and achievement as well as current levels of need.

As the Development Fund will only become available once the Programme is well established, providers will be expected to consider how the fund can best be used over the remaining duration of the programme. There will be no additional targets set, rather sets of deliverables and deadlines will be agreed as part of a business case approval process. Providers will be required to submit business cases to draw down the Development Fund and these must demonstrate support from stakeholders (e.g. Head of Learning, Skills and Employment, Cluster HoLS for custody). Submitted business cases should demonstrate how the use of the Development Fund will aid progression for the target group within the CFO programme and beyond to mainstream engagement. Providers will be expected to maintain regular engagement with the Cluster HoLS and Heads of Reducing Re-Offending to review the use of the Development Fund, particularly regarding alignment with OLASS and NCS.

- G4.6 The ECA level requirements (see separate annexes) will detail the relevant applicable elements. It is anticipated that the standard percentage split of programme commencements between the custodial and the community elements of the programme is to be taken as 70:30 in favour of custodial enrolments, although this will level out to approximately 50:50 in terms of delivery across the programme. The percentage of participants continuing services into the community (through the gate) may differ between ECAs, as will the amount of

community only delivery. Providers will be required to ensure that programme starts are balanced 70:30 within region, but individual delivery sites may vary, depending on participant eligibility and suitability.

- G4.7 For delivery to adult offenders, it is envisaged that providers will be based in establishments where possible, although clustering may be utilised if appropriate. In-reach delivery should only be adopted where staff are not able to be based in specific sites. Co-location with other resettlement provision is recommended where possible. Space within prisons can be limited and providers should be mindful of potential difficulties when forming their delivery offer. The Authority will continue to explore options with prison representatives during the procurement process to ensure bidders are aware of any limitations at any specified delivery site. The most current information can be found in each Regional ECA Annex.

## **G5 Programme Provision**

- G5.1 NOMS CFO will operate a single 'participant pathway' model. However, the model will have sufficient flexibilities built into the Supportive Measures, Short Courses and Vocational/Educational/Training stages (see **Appendix K** to address the differing funding priorities and gaps in provision at both the local and ECA level.

- G5.2 For planning purposes including determining levels of throughput and achievements, the average unit cost for the Service Delivery Models (SDM) across all ECAs is £1,500. However, in practice, it is expected that there will be significant variance in actual unit cost depending upon the complexity of need of individual participants and infrastructure support required to address issues such as rurality, levels of local provision and ECA level policy requirements.

- G5.3 **Service Delivery Model: England Competitiveness**

This will be delivered at the level of 9 ECAs designated as **North East, North West, Yorkshire, West Midlands, East Midlands, East of England, London, South West and South East**.

- G5.4 Participants previously enrolled in a different England Competitiveness ECA will be transferred as a live case at their current position on the participant pathway. It is expected that providers will work with any live cases that are transferred into their area and will be able to access payment stages not yet reached. The sending provider will still be able to access the participant's CATS record for seven days post-transfer to the receiving provider. This will enable them to update case notes and submit achievements for the purpose of claiming payments. The receiving provider will also be able to submit achievements for the purpose of claiming achievements during this seven day period. However, the principle of only one payment being available per participant per payment stage will remain in place and as such the achievement which is submitted and approved by the Data Integrity Team first will be the one that attracts the payment. Providers are expected to cover costs associated with work which does not attract a participant pathway payment from the service fee portion of their financial allocation.

## **Payment Model**

- G5.5 The payment model has been designed to provide payment at specific stages in the participant's journey once designated milestones have been achieved. Evidence must be promptly added to CATS and available for the Authority to confirm quality and compliance. Full detail explaining the payment model and the associated stages is contained within **Appendix K**. Guidance on eligibility and evidence for claims can be found in the Participant Achievement Guidance within Schedule H, Pricing and Payment.

## **Transfer of Participants between ECAs**

### **G5.6 Transfer Protocols**

- G5.7 When a participant transfers between contract regions, they automatically appear on the caseload (within the CATS application) of the receiving provider. The receiving provider is required to continue to progress them from their current point in the participant pathway. Any payment stages not yet APPROVED are in-scope to attract payments for the receiving provider.
- G5.8 The participant record on CATS will be open to enter and SUBMIT for both the sending and receiving provider for 7 days post transfer (note these are actual days, not 'working days'). At the expiration of seven days, access will be denied for the sending provider. There will be no further opportunity for them to add, amend or send additional supporting documentation to support a previously submitted claim.
- G5.9 Any information and associated certified documentation previously submitted on CATS forming part of an APPROVED stage will remain locked. The receiving provider will be able to add additional information at any stage or conduct additional activity as appropriate to progressing the participant. However, this will not attract any additional payments associated with the participant pathway.
- G5.10 Any information and associated certified documentation previously submitted on CATS by the previous provider but not yet checked (neither APPROVED or REJECTED), will remain locked until a decision has been made by the Data Integrity Team. If REJECTED, the associated information will become unlocked on CATS.
- G5.11 There is no requirement for the receiving provider to redo any work/stages. However, they can go back and add detail of additional activity at previous stages. They will not receive an additional payment for doing so. The principle being that a payment for each stage is only available once per participant.
- G5.12 Where a sending provider enters an achievement without submitting it, they run the risk of another achievement at that stage being submitted by the receiving provider, (which can then be approved and payment made). In terms of the transfer model, a provider could enter an achievement (but not submit it), the case then transfers to another provider who enters and submits an achievement. The payment would be given to the second provider who submitted the achievement (assuming the Data Integrity checks are passed).
- G5.13 There is no direct connection between the service fee component of the payment mechanism and the Participant Pathway. Where further work is required with a participant at a stage earlier than the one currently 'unlocked' or available to SUBMIT for payment, then the provider is expected to cover the same as part of their service fee. An example in practice would be where a participant has

decided to pursue a different employment option than that originally envisaged and therefore a further SHORT COURSE is required to support this shift of focus.

**G6 Discretionary Access Fund (DAF)**

G6.1 In addition to the above activities, 3% of the funding allocation will be used for a discretionary fund to allow for the spot purchasing of courses or goods to support participants into work. This discretionary fund can also be used to help individuals overcome specific barriers to work such as travel (e.g. to an interview, to work), pay for childcare or equipment required. There will be set criteria to be satisfied before this can be utilised.

G6.2 Spot purchasing can be used to increase the employability of individuals via the purchase of courses/equipment/accreditations that may not otherwise be available to the participant. Examples include:

- Short term vocational courses such as Fork Lift Truck courses
- Items of equipment essential to secure an individual a job, i.e. tools of the trade for a hairdresser or electrician etc.
- Health and safety equipment required to support an employment placement.

G6.3 The following should be considered:

- Whether the course is essential or desirable to the future employment/further education or training of the participant;
- If the course/training costs have been commensurate with the motivation and commitment of the participant to complete the activity;
- If using in custody/ROTL - whether the establishment has conducted a risk assessment of the activity and is willing to authorise attendance. In the community it is the responsibility of the provider to conduct an appropriate risk assessment in liaison with those responsible for the delivery of statutory offender management arrangements

G6.4 The Provider is expected to adhere to all ESF requirements when administering and procuring items through the Discretionary Access Fund. The Authority will be conducting 100% finance checks upon the administration of this fund at both the Prime and sub-contractor level as appropriate to local arrangements. Further information can be found at <http://www.dwp.gov.uk/esf> Providers are advised that it is their responsibility to keep themselves up-to-date with any changes to guidance or issue of new guidance as relevant to the 2014 – 2020 ESF Operational Programme.

G6.5 On a monthly basis in arrears all hard evidence will be required to be submitted to the NOMS CFO Finance Team at Daresbury Park. Processes will be in place for the submission of evidence, which will be confirmed within provider contracts. All finance evidence for submission must be captured in the relevant CATS report and the DAF outcome must already be recorded on the CATS application by the provider.

G6.6 Examples of accepted evidence of expenditure are as follows:

*Prime documents:*

- Invoice/receipt from supplier
- Credit card statement along with receipt

- Copy of cheque accompanied with bank statement
- Train tickets/Bus receipts

The following items will be deemed as ineligible for the purpose of the DAF fund, this is not an exhaustive list, and clarification will be given as appropriate.

- Passports
- Driving lessons
- Furniture/white goods (classed as assets and therefore returnable to ESF upon project closure)
- Gym membership (general)
- Deed poll
- NHS treatments including prescriptions
- Opticians
- Cosmetic procedures i.e.: tattoo removal, dental work

G6.7 The DAF must be linked to an ESF participant on the CATS application and reflect appropriate action as determined by assessment and review. All expenditure must be ESF eligible.

G6.8 Expenditure must not exceed £999.99 per single item/course (exclusive of VAT).

G6.9 The DAF will be the only available budget line for expenditure at the individual participant level.

## **G7 General Eligibility Criteria**

G7.1 The general eligibility requirements for the CFO programme have been agreed with the ESF Managing Authority and NOMS. All enrolments must be:

- Resident in the UK with permission to work
- Unemployed (all prison starters are considered unemployed at enrolment)
- Over 16 years of age (North West, West Midlands, London) must be under YOT supervision
- Over 18 years of age (all other regions)
- Serving a custodial sentence (with up to 3 years left to serve) (note: in the case of women offenders only, those currently on remand are also eligible)
- Completing a post custody licence/supervision period or serving a community order

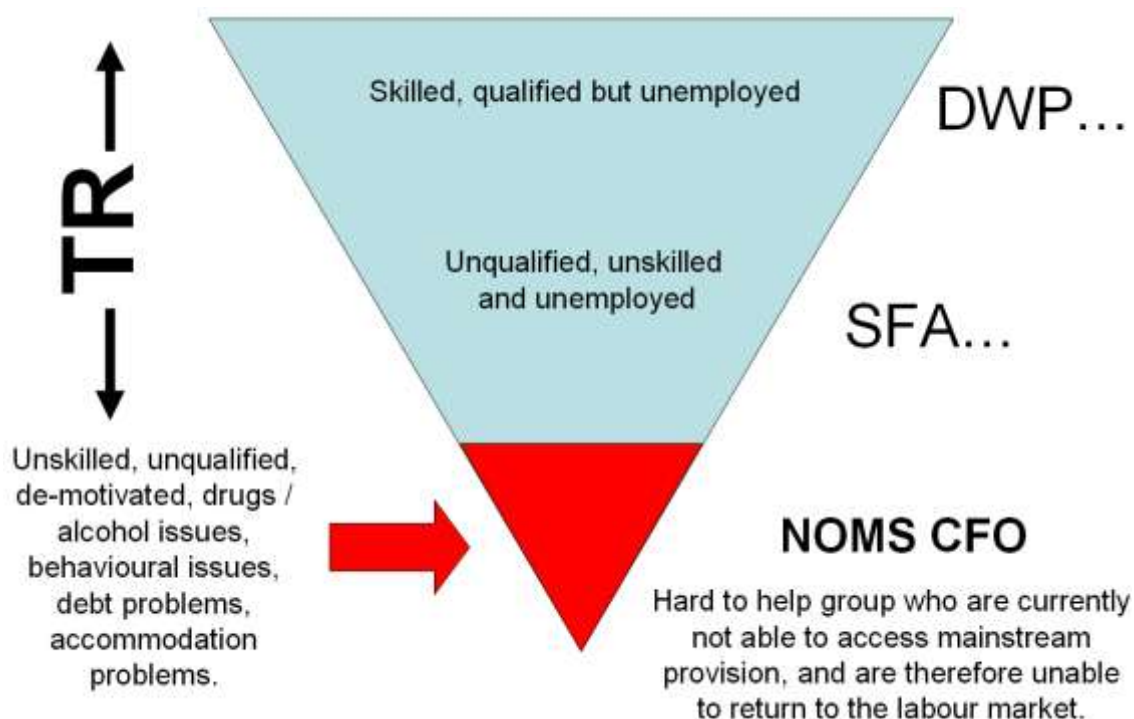
It will be the responsibility of the provider to ensure that all participants enrolled on to the CFO programme meet the required eligibility criteria, as well as assessing the appropriateness of the potential participant.

G7.2 Providers will be expected to liaise with NPS/CRCs and their respective providers to ensure that offenders serving short sentences (less than 12 months) will receive appropriate services. Similarly, where it is determined that services should continue through the gate, case conferencing should take place to ensure that services will not be duplicated. Providers will select participants based on assessment results, rather than on the basis of length of sentence. There is no minimum requirement in terms of sentence length or time remaining in

custody/under supervision, although providers must determine if there is sufficient time to deliver appropriate services.

### Target Groups – Entire Cohort

G7.3 All participants must be deemed to be NOMS clients (i.e. either sentenced or on remand in custody (women only), under supervision/licence in the community or serving a community sentence). NOMS CFO does not work with those deemed to be *at risk* of offending i.e. as a diversionary activity. The main focus of the programme is to target those furthest from mainstream activity, as shown in the diagram below:



G7.4 The NOMS programme will generally be targeted at the groups listed in the table below and this should be reflected in the general cohort. However, at the ECA level there may be a requirement to target additional groups (see individual ECA level requirements).

G7.5 Priority Groups that will be targeted across all ECAs are:

- Sentenced prisoners with up to 3 years to serve or on remand (women only)
- Offenders completing a post-custodial licence/supervision period or serving a community order
- People from minority ethnic communities;
- People with disabilities and health conditions, including those linked to the misuse of drugs/alcohol. Targeting of provision should be upon those registered disabled, participants with learning disabilities, mental health issues and drug/alcohol misuse issues. Identification can be based on participant self-declaration or supporting evidence. Providers should be aware that there is a possibility that the new ESF designation of disability for the purposes of reporting against targets may be restricted to registered disabled.
- Over 55s;
- Ex-service personnel



- Young People - additional eligibility criteria applies at 7.9 (see 7.6-7.8 and **Appendix C**) -
- Women – this will include those on remand (see 7.6, 7.9-7.10 and **Appendix D**)

G7.6 NOMS CFO will have a specific focus on young people and women in the 2014-20 Programme. These are both ESF priority groups and there is an expectation that specialist delivery will be available as part of provider services for these cohorts:

### **Young People (under 18)**

G7.7 Transforming Youth Custody is the Government's long term vision to reform the youth justice system for offenders under 18. The focus for CFO activity will be to provide support tailored for young people in the community, alongside Youth Offending Teams. There is also an expectation of in-reach support for young people in Young Offender Institutions.

G7.8 Within the Transforming Youth Custody reform, resettlement initiatives include developing youth employer forums in London and Greater Manchester and establishing four strategic resettlement consortia in areas where there are high levels of custodial releases, bringing together local authorities, custody providers and wider community agencies to improve resettlement outcomes. CFO activity is intended to provide an additional contribution to these initiatives to assist young people to access employment, training and education. Additional information about the structure and priorities for young peoples' provision can be found at **Appendix C**.

G7.9 Integration of young people (particularly those not in employment, education or training - NEETS), is an ESF investment priority for the 2014-2020 Operational Programme. The main outcome will be young participants in education, training or employment with attached training in line with the 12/13 Government legislation for raising the age for participation in education upon leaving the programme. Within the NOMS CFO programme, a young person is defined as aged between 16-17, and young adults as 18-24.

**Young People and Young Adults** - The ESF definition of 'young people' is anyone aged between 16 and 24, however NOMS CFO is separating the delivery requirement into offenders aged under 18 and those over 18 (up to the age of 24), depending on whether the participant is designated as a 'young person' within the Youth Justice Board classification. All regions will be expected to have a focus on participants aged between 18-24, with 3 regions (North West, West Midlands and London) delivering specific services to participants under 18.

Within the NOMS CFO programme, a young person is defined as aged between 16-17, and young adults as 18-24. The Youth Support Worker model will work with 16-17 year olds and 18-year olds leaving YOIs and under YOT supervision only with the exception of cases that transfer to NPS/CRCs after enrolment to the ESF programme.

### **Women**

- G7.10 In October 2013, the Ministry of Justice published the Women's Custodial Estate Review<sup>10</sup>, which will see the female prison estate reconfigured to allow prisoners to be held closer to their homes and families and improve their chances of successful reintegration into the community. These changes are designed to better meet the specific rehabilitation and resettlement needs of women offenders taking into account the priority for women to maintain contact with their children and families during sentence and make links with their local communities which continue after they are released.
- G7.11 Women are an ESF priority group. Providers should ensure that in targeting potential participants they do so with a corresponding 'gender focus'. This can include actively encouraging more women to take part in ESF, as well as making sure that the support offered is appropriate and helps meet the needs of disadvantaged women - for example by ensuring flexible support, promoting self-efficacy, providing confidence building and offering care support where needed. Additional information about the structure and priorities for women's provision can be found at **Appendix D**.

### **Target Groups – ECA Level Focus**

- G7.12 Requirements to target groups additional to those listed above or shifts in emphasis at the ECA level are detailed within the 'Target Groups – ECA Level Focus' section of the individual ECA specific requirements.

### **Target Groups – Hard-to-help Sub-Project**

- G7.13 There is a requirement to set up 5 sub-projects targeted at identified extremely hard-to-help sub-sets of the offender cohort within each ECA. Typically the throughput is 50-100 for the entire programme period (i.e. July 2015 – Dec 2020). In all instances the requirement is to set these sub-projects up and begin throughput of the same in 2015. The most appropriate hard to help groups for each region have been identified by stakeholders as part of the consultation process. Delivery will take place in custody and the community as appropriate to each group. Providers will be required to ensure that delivery to these groups aligns with and complements any other specialist provision already in place. Hard to help sub project delivery may enhance existing provision or provide a new targeted service with a clear rationale for that choice of activity and how it meets the requirements as set out in the regional annex of the ECA.
- G7.14 NOMS recognises that the complex needs of these groups are such that outcomes may be more difficult to achieve. There is an expectation that specialist provision and providers may be required for specific sub-groups and that there is a particular focus on supportive measures and intensive and/or innovative activity which may occur at an earlier stage of an individual's 'resettlement journey'. In practice, this may mean working for individuals longer and providing a wider range and greater number of outcomes. The intention is to move participants in these groups towards the labour market, via ESF and mainstream provision. Therefore, the provider is allowed to offset low numbers of employment achievements claimed by these groups against higher numbers for the general cohort. With the exception of those regions operating sub-groups for 16-18 year olds, there will be no specific targets allocated for the sub-groups, rather

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<sup>10</sup> <https://www.gov.uk/government/publications/a-new-approach-to-managing-female-offenders>



throughput etc. will be monitored in terms of overall performance expectations for the entire contract. Additional information can be found in each Regional Annex.

## **G8 Management Information – CATS (Case Assessment and Tracking System)**

- G8.1 CATS (Case Assessment and Tracking System) is the case management system that must be used by all providers for recording any work done with participants. The system is centralised and all providers benefiting from NOMS CFO Contracts will be required to record all engagements, activity and work done on behalf of participants through CATS. No exception to this will be granted, nor will any payments be made for achievements claimed outside of this process.
- G8.2 CATS is provided by the Authority on a non-exclusive basis to the provider and must only be used for the term and associated delivery of this contract. CATS intellectual property rights remain with the Authority and any wider use must only be with express permission from the Authority. The system will continue to be developed and subsequent versions may be implemented throughout the funding period. Providers may be required to increase data capture or adapt processes accordingly to accommodate future iterations. Any amendments will be supported by guidance from the Authority.
- G8.3 CATS will be rolled out to providers during the contract implementation phase (April – June 2015). Roll-out will be supported by written guidance, telephone and email support and training sessions. The provider is required to make all Case Managers and other key personnel available to undertake training in use of the system during this period, though training will be available on request through until the end of the project. Training is mandatory for anyone wishing to use CATS.
- G8.4 CATS will capture demographic data required by ESF, facilitate the case management process and provide data relating to achievements, sequencing of interventions and quality of case notes which assist the Authority to effectively manage the performance and monitor the quality of the delivery of the contract. This system will also provide data which allows the Authority, subject to appropriate authorisation and consent to contribute to other corporate agendas (e.g. data collection and information sharing with other Government Departments and Agencies).
- G8.5 The CATS application will be networked between all prison establishments, National Probation Service premises and CRCs participating in the NOMS CFO Programme. Additionally, CATS will be accessible to non-criminal justice agencies / third party providers through secure internet routes. All access is subject to minimum system requirements, and local security / operating procedures as outlined within the contract
- G8.6 The system includes an assessment tool, reporting system, action planning tool and achievements section to record and evidence achievements and measure progress. A contractual requirement will be placed upon participating providers to ensure that all participants have a single case file created on CATS by the Case Manager. This will allow provision of core data on entry and access to the CFO programme. Collation of data will therefore be automatic, and controlled through a wide range of statistical reports that can be drawn from CATS.
- G8.7 Some data will be automatically sourced from linking CATS with core NOMS databases (e.g. P-NOMIS) minimising duplicate data entry and ensuring core

data is available. Whilst other data will be entered manually by the provider, CATS is structured to make this both a user-friendly process, and to ensure that data cleansing of entries can be conducted. This will ensure that gaps in data or incorrect entries are picked up and corrected.

- G8.8 The use of CATS will allow participants to be tracked effectively, despite the complex problems inherent in capturing data relevant to the case management process as participants' transition from custody to community. The system allows for capture of both custody and community interventions, reconviction data and information pertaining to geographic transfers.
- G8.9 CATS also allows for the tracking of inputs and a wide range of achievements so that the actual impact and distance travelled resulting from CFO activity for each individual can be recorded. This allows for comprehensive management information to be produced.
- G8.10 CATS will underpin assessment of performance against Contracts, and will provide any evidence required for Contract payments to be authorised. The breadth of data available through CATS will allow the quality of provision funded by the CFO to be continually monitored and for improvement plans to be developed and implemented with the provider.
- G8.11 **Appendix J** contains further information on the CATS specification to which the provider must comply. The provider shall also be required to comply with any registration process and security requirements that will be utilised to set up approved users on the system.

## **G9 Monitoring**

- G9.1 The provider shall be required to comply with the monitoring requirements, which will be detailed in Schedule J, Monitoring and Management Information at ITT stage. The Authority will conduct regular monitoring visits to review the delivery of the required services within each region. These visits will include both reviewing the activities of the Contractor and of any sub-contractors used by the Contractor in the fulfilment of the contract.

## **G10 Audit**

- G10.1 All contracted provision will be subject to local audit processes within a national framework. The provider will be subject to a programme of audit visits at which their costs and claims and adherence to contract will be reviewed (these visits will be applied at Prime/lead level and sub-contractor level as appropriate). NOMS CFO will conduct checks to ensure that providers have used payments for their intended purpose. A formal procedure relating to claims and expenditure will be itemised within provider contracts. Additionally, the Authority will attend the provider site annually to carry out a Quality Management System audit.
- G10.2 The provider is required to comply with any audit requirements placed upon it and the Authority by the ESF Managing Authority. This may include but is not restricted to allowing access to premises, key staff and documentation used to compile financial returns and support claims for achievements. Access to the same is required to deadlines specified by the Authority in order to meet

deadlines placed upon the Authority by the ESF Managing Authority or authorised audit representatives.

- G10.3 Audit representatives may include but are not restricted to those appointed by the ESF Managing Authority, European Commission Audit & Control Team, European Court of Auditors, or National Audit Office. There will also be a requirement to allow similar levels of access to Managing Authority representatives to carry out Article 13 Verification visits and Systems Audits.
- G10.4 The Authority will as a minimum attend the provider site annually to carry out a financial audit based on a sample of transactions from the General Ledger against reported expenditure.
- G10.5 The CFO will keep well documented audit trails of all its financial and operation activity. The Phoenix financial system used by the Authority will be used in conjunction with other financial monitoring systems to accurately detail expenditures of the CFO and to reconcile all payments made. Details of decisions made and the process which led to these decisions will be documented using minutes of meetings, evidence of authorisation and robust management processes, supported by transparent accountable management structures.
- G10.6 In addition to the activity outlined at G10.1 the Authority may also, at its sole discretion, undertake visits to subcontractors used by the contractor as part of the delivery of the services under this contract or named by the contractor in its Tender Response. These visits will be supportive in nature with the aim of ensuring that both the contractor and the subcontractor are working in line with the Market Stewardship Principles described in Schedule P.

## **G11 General Requirements**

### **Prison Service Instructions (PSIs) and Agency Instructions (AIs).**

G11.1 The Provider shall at all times maintain strict compliance with current Probation Instructions (PIs), Prison Service Orders (PSOs) (which will not be updated but phased out and replaced by Prison Service Instructions (PSIs)) and Agency Instructions (AIs). Apart from PSOs, all instructions have an expiry date which can be up to four years from the date of issue; they can also be re-issued to extend their validity, or cancelled or amended before the expiry date if required.

Agency Instructions (AIs) are policies which apply to HQ and Regional HQ (agency) staff within NOMS.

Probation Instructions (PIs) are policies which apply to National Probation Service (within NOMS) and the Community Rehabilitation Companies (CRCs) (NOMS policy will only apply to CRCs in certain cases).

Under 18 Youth Offending Institutes (YOIs) hold young people and operate within many of the same rules and policies as young adult YOIs and prisons. All young people are subject to the YOI Rules and must also comply with most of the policy instructions found in PSIs and PSOs. Where there are particular differences between the regimes appropriate for young people and those specified for adult prisoners, a clear definition of the differences will be provided. PSI 08/2012 'Care and Management of Young People',

has been written to provide guidelines to ensure that Young People are treated lawfully and decently whilst in custody.

- Prison Service Instructions (PSIs & PSOs)

PSOs convey mandatory actions to NOMS Headquarters and establishments (Prisons and YOIs). They are long-term policy documents containing mandatory instructions that were intended to last for an indefinite period. PSOs are currently being phased out and replaced by PSIs. A list of those which are still extant can be found at: <http://www.justice.gov.uk/offenders/psos>

PSIs contain new policy. They convey mandatory instructions and have a definite expiry date (up to 4 years). They are now the principle document for conveying new policy to Prison Service establishments. A list of the current PSIs can be found at: <http://www.justice.gov.uk/offenders/psis>

- Probation Instructions (PIs) initially known as Probation Circulars

PIs are policy documents which convey guidelines to the National Probation Service and in certain cases Community Rehabilitation Companies (CRCs), they have a definite expiry date and are mostly stand-alone instructions. A list of current Probation Instructions can be found at:

<http://www.justice.gov.uk/offenders/probationservice/probation-instructions>

(Joint PSI/PIs can be found at the above PSI link)

## **Regulatory Health and Safety requirements**

G11.2 The provider shall comply with the Health and Safety requirements as set out in Clause A8 in the Contract. Further information can be found on the Health and Safety Executive (HSE) website: <http://www.hse.gov.uk/legislation/hswa.htm>

## **Risk management**

G11.3 The provider shall be required to have risk management policies, systems and processes in place that adequately address key risks related to this project including, but not limited to:

- Risk of non-delivery;
- Risks associated with resource issues (e.g. having adequate staff cover for planned and unplanned absences);
- Risk of non-compliance with the Contract;
- Risk of under-performance by a sub-contractor.

G11.4 The provider's risk management policies, systems and processes shall also address the risk review arrangements in place and specific actions for mitigation and management of any risks identified.

## **Equal Opportunities, diversity and health**

G11.5 For NOMS, working with ex-offenders, a group in society generally experiencing multiple disadvantages and not accessing mainstream services, ensuring equality and equal access for all is at the heart of its business. The Authority recognises the need to embed its commitment to diversity in all its

activities including in the commissioning, contracting and delivery of Third Party provision and it seeks to do so by being compliant with both the spirit and the letter of the law. The provider shall, therefore, be required to demonstrate how they will support this compliance during this Programme.

- G11.6 The Authority has a duty arising from the Equality Act 2010 and has a policy statement that we expect all people working with NOMS to adhere to: *“NOMS is committed to fairness for all. We treat our staff properly and ensure equality of opportunity. We deliver our services fairly and respond to individual needs. We insist on respectful and decent behaviour from staff, offenders and others with whom we work. We recognise that discrimination, harassment and bullying can nevertheless occur and we take prompt and appropriate action wherever we discover them”.*
- G11.7 The Equality and Human Rights Commission (EHRC) has responsibility for ensuring the statutory duties are met. The Authority has a unified approach to equalities issues, with a Single Equality Scheme and a cross-cutting Equality Impact Assessment (EIA) process covering all diversity strands. An EIA is a systematic appraisal of the effects of a function, policy or practice on different groups of people. It involves the collection of relevant monitoring data and other evidence and consultation with stakeholders with the aim of discovering any adverse impact on any group and putting in place measures to address it. It is expected that all providers contribute to this agenda by not only ensuring that their practices and provision comply with the law but that they positively contribute to the agendas that they represent.
- G11.8 A number of studies and reports have highlighted the challenges the Authority is facing in addressing issues of equality of opportunity and gender equality in its delivery of services. Providers will be familiar with the key report by the Social Exclusion Unit in 2002 *‘Reducing Re-offending by Ex-Prisoners’* (2002) which states that many ex-offenders have experienced a lifetime of social exclusion. Compared with the general population, offenders are thirteen times as likely to have been in care as a child, thirteen times more likely to have been unemployed, fifteen times as likely to be HIV positive, 80% have poor writing skills, 60-70 % are drug users, and over 70% suffered from at least two mental disorders with 20% of male and 37% of female offenders having attempted suicide in the past. The Ministry of Justice publishes a range of key documents that help to understand the offender population (including separate releases on race and women in the justice system) including the Surveying Prisoner Crime Reduction Study (SPCR), a longitudinal cohort study to investigate offender characteristics and needs and experiences in prison and on release: <https://www.gov.uk/government/publications/results-from-the-surveying-prisoner-crime-reduction-survey>. A recent summary of evidence on re-offending can be found at: <http://www.justice.gov.uk/publications/research-and-analysis/moj>

NOMS has also commissioned NACRO to produce guidance documents for working with Gypsy, Roma and offenders from the travelling community as well as guidance on working with lesbian, gay and transgender offenders (LGBT). Further information on key statistics can be found in the NOMS Offender Equalities Annual Report: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/256911/noms-offender-equalities-annual-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256911/noms-offender-equalities-annual-report.pdf)

- G11.9 There are a number of recent studies on women in the criminal justice sector notably the Corston Report (2007), *HMCIP – Thematic report on Women in Prison* (2010) and responses from NOMS including *A Distinct Approach: a guide to working with women offenders* (2012), each outlining the issues in relation to service provision for women offenders. The Corston Report highlighted that equal treatment of men and women in the criminal justice system does not result in equal outcomes and asked for increased provision of effective and non-damaging interventions for women. "A Distinct Approach: a guide to working with women offenders" provided suggestions for good practice when working with women in the criminal justice system and more recently, the MoJ published the Women's Custodial Estate Review in October 2013 proposing further changes to better support women in prison and the resettlement services designed to support them. A stocktake of provision for women offenders in the community in 2013 demonstrated improvements in gender specific services for women coupled with innovation and increasing diversity within the delivery landscape. Women have consistently accounted for approximately 5% of the prison population since 2007 and accounted for this proportion as of November 2013. At the same time point, women accounted for just over 15% of offenders in the community under supervision by the Probation Service on Court Orders, a proportion which has remained similar since 2009. Further information can be found within the NOMS Offender Equalities Annual Report at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/256911/noms-offender-equalities-annual-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/256911/noms-offender-equalities-annual-report.pdf)
- G11.10 In September 2013, the House of Commons Justice Select Committee published their report on older prisoners highlighting that older prisoners are the fastest growing group within the prison population; the number of those aged 60 grew by 120% and those aged 50-59 by 100% between 2002 and 2013. Resettlement needs for this group are demonstrated to be different from the rest of the prison population and NOMS is committed to working with partners in health and local government to address any urgent needs.
- G11.11 BAME groups also face disadvantage as many individuals of working age are not engaged in paid work. The numbers are particularly high for the under 26 group.
- G11.12 The provider shall be expected to deliver services that are sensitive to the specific requirements of each of the above groups.

### Quality management

- G11.13 The provider shall have and maintain a Quality Management System (QMS) that must demonstrate its ability to consistently provide Contracted services that meets Customer and Contract requirements along with applicable Statutory and Regulatory requirements. The provider shall give details of any external Certification awarded in support of this Quality Management System.
- G11.14 The provider must aim to enhance customer satisfaction through the effective application of the system, including processes for continual improvement of the system and the assurance of conformity to contract and applicable Statutory and Regulatory requirements.
- G11.15 In the event that a provider does not have existing quality systems and procedures, they will be required to demonstrate how they will successfully



implement a Quality Management System to help manage quality of the contract.

G11.16 QMS processes should be based around the following eight Quality Management principles:

- 1) CUSTOMER FOCUS
- 2) LEADERSHIP
- 3) PEOPLE INVOLVEMENT
- 4) PROCESS APPROACH
- 5) SYSTEMS APPROACH TO MANAGEMENT
- 6) CONTINUAL IMPROVEMENT
- 7) FACTUAL APPROACH TO DECISION-MAKING
- 8) MUTUALLY BENEFICIAL SUPPLIER RELATIONSHIP

G11.17 The Authority will as a minimum attend the provider site annually to carry out a Quality Management System audit.

G11.18 The provider will have a designated QMS Representative for the contract who will ensure that all processes needed for the QMS are established, implemented and maintained.

### **Implementation and exit plans**

G11.18 The provider shall ensure that they have a fully detailed plan for mobilising each area of delivery. The implementation plan should clearly show:

- Realistic timescales;
- Key stages and milestones, clearly showing all contingent activities;
- Consideration for security clearances;
- Staff and other resources, including recruitment;
- Reflection of parallel milestones and activities where the provider has bid for more than one region;
- Partnership and/or sub-contractor agreements/commitments;
- Delivery plan agreed with regional Stakeholders;
- Marketing/publicity strategy;
- Recruitment of participants;
- Identified risks and contingencies;

G11.19 The provider shall also be required to detail a structured exit strategy that would be executed at the expiry of the Contract. The exit strategy should detail key stages and activities for provider exit of the contract, to ensure a seamless transition with any incoming New Contractor and management of participant exit from the programme.

### **ESF publicity, media and audit requirements**

G11.20 In accordance with the appropriate Schedule, the provider shall fully observe the European Commission's requirements and regulations regarding ESF

projects, as amended from time to time and as currently found at: <https://www.gov.uk/government/collections/european-social-fund-2007-to-2013> In particular, the provider shall also comply with the requirements relating to publicity and media to ensure that sufficient publicity is given to all ESF supported activity and that Participants and the general public are made aware of ESF and what it has achieved. Providers should note that updated guidance for the new ESF Operational Programme will become available following sign-off by the European Commission.

G11.21 In addition, CFOs and their providers (both ESF and match funded) must acknowledge the financial support from the European Social Fund and European Union. CFOs are responsible for ensuring that all ESF and match funded supported activity:

- Is publicised to ESF and match funded participants and the general public;
- Complies with the information and publicity requirements of the Secretary of State as set out in the CFO Agreement; and
- The European Commission as set out in:

Articles 2-10 'Information and Publicity' of [Commission Regulation \(EC\) No. 1828/2006](#).

And

Article 69 'Information and Publicity' of [Council Regulation No. 1083/2006](#)

G11.22 CFOs must comply with requests from DWP Internal Audit & Investigations (IAI), National Audit Office, the European Commission, the European Court of Auditors and other authorised organisations to examine any documents held by the CFO or its providers (including sub-contractors) that relate to the delivery of ESF programmes (including match funding activity). The CFO and its providers must also provide access to premises where the relevant documentation is held and reasonable assistance (including provision of onsite, photocopying, facsimile & telecommunications facilities) to facilitate the examination of such documents.

### **Partnerships / Sub-contracting**

G11.23 In accordance with guidance as available from the Managing Authority, there must be no more than one level of subcontracting beyond the CFO, other than to cater for proposals from partnerships. Where partnerships bid successfully, allocation of ESF funds between the partners might not strictly be regarded as subcontracting, although there will need to be an accountable partner with which the CFO will contract.

G11.24 The provider shall have a robust contracting model (i.e. prime provider, consortium or partnership proposals), detailing key roles and purpose. The provider shall also be required to demonstrate the engagement and commitment with each partner and/or sub-contractor organisation and the structure (i.e. reporting lines) that will be established for this Contract.

G11.25 The Provider shall be required to ensure partnership and/or sub-contracting relationships are robustly monitored and managed to ensure successful delivery of this Contract, and ensure that robust contingency arrangements



exist to mitigate the risk of any partner and/or sub-contractor failing to engage prior to, and post award of Contract. The Authority may adopt some or all of the elements of the Industry Standard Partnering Agreement (ISPA) and associated market stewardship principles.

### **Sustainable Development, Corporate Social Responsibility and Social Value**

- G11.26 Sustainable Development means encouraging economic growth whilst protecting the environment and improving the quality of life – all without affecting the ability of future generations to do the same. Although this is a national programme, the Authority will have a strong emphasis on local delivery. It will deliver sustainable development at ECA level through the following ways:
- G11.26.1 Sustainable Development and the (Public Services) Social Value Act 2012 will be an integral part of the CFO procurement process: the Ministry will achieve this goal through implementation of the “Greening Government Commitments” and other similar commitments as they evolve through government. They have at their core the themes of cutting greenhouse gases, reducing water consumption, waste minimisation and recycling as well as the reduction of supply chain impacts. Alongside this there are the Government’s transparency commitments covering climate change adaptation, biodiversity, procurement of food and catering services and sustainable construction. This will meet the challenge to deliver a comprehensive action plan and reporting process to meet these commitments.
- G11.26.2 Sustainable Development and Social Value will be considered at the very beginning of a potential contract let, and will continue to be used throughout the life of the contract.
- G11.26.3 The Authority will take a consultative approach with providers and will seek to signpost delivery organisations to relevant resources. It will encourage and support providers to develop their own Environmental Policies, Action Plans and reporting.
- G11.26.4 Projects supported by the Authority, whilst helping to improve the employability of participants, should consider environmental or community impacts by:
- Building a sustainable development aspect into all delivery wherever possible and where opportunities allow;
  - Minimising travel;
  - Using innovative delivery methods;
  - Supporting skills and jobs identified that will work towards improving green skills and the low carbon economy;
  - Identify skills needed in local work areas that will have a positive effect on the environment and give participants skills for a sustainable future;
  - Encouraging placements through social enterprises, local and charitable organisations and strategic partnerships with an environmental bias
- G11.26.5 The provider shall be required to demonstrate how they will proactively support and administer the Authority’s requirements relating to both sustainable development and corporate social responsibility (CSR) by providing relevant sustainable development and CSR information as required.

### **Data management**

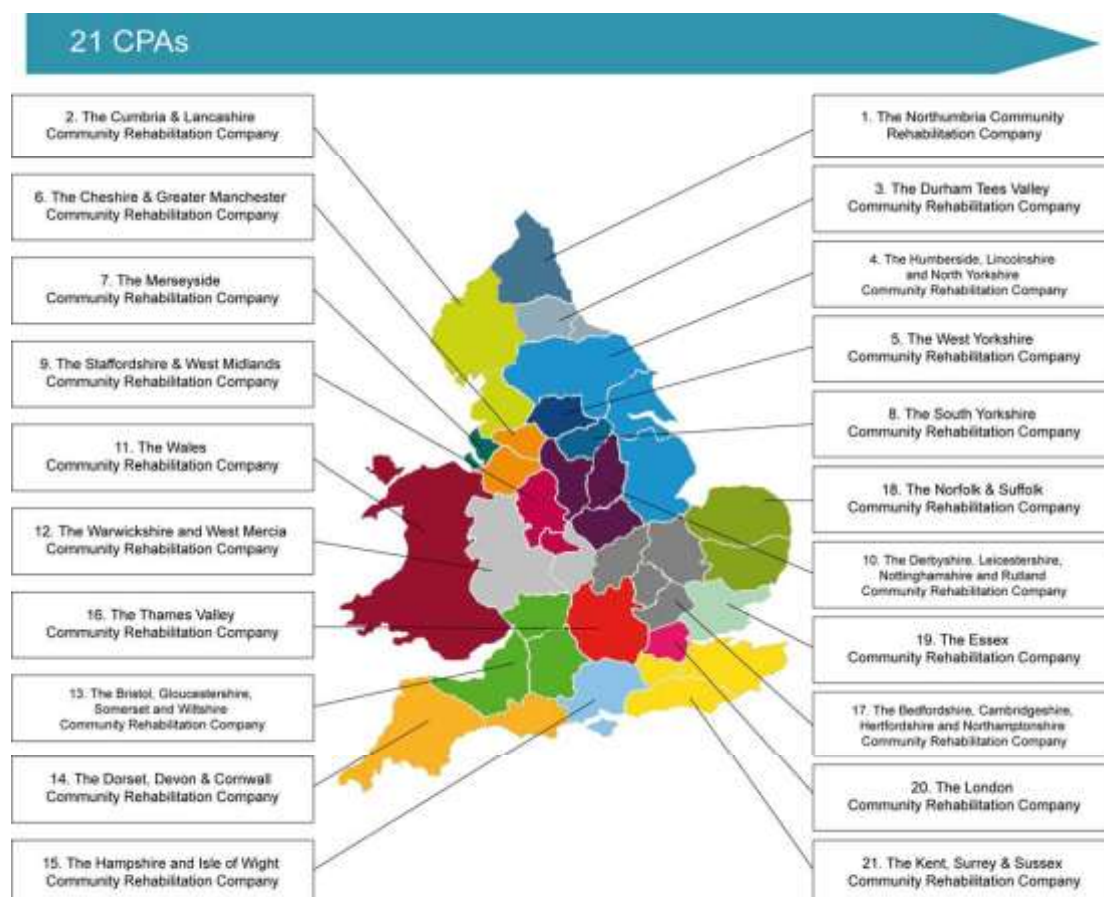
- G11.24 The provider shall ensure that any system on which the provider holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- G11.25 The provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site [in accordance with the Business Continuity and Disaster Recovery Plan]. The Provider shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than agreed monthly intervals.
- G11.26 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the provider's Default so as to be unusable, the Authority may:
- G11.26.1 require the provider (at the provider's expense) to restore or procure the restoration of Authority Data and the provider shall do so as soon as practicable but not later than agreed; and/or
- G11.26.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the provider any reasonable expenses incurred in doing so.
- G11.27 Before any contract delivery can commence, the provider must apply the minimum protections for information as set out in the relevant SyOps in Schedule N and as per the Data Sharing Agreement in Schedule N, Appendix 4.
- G11.28 All staff who use or have access to data related to offenders who are being funded by the NOMS CFO programme must have signed the relevant SyOps (as detailed in Schedule N) prior to them delivering any aspect of the contract.

## Appendix A – Transforming Rehabilitation

- A1. The Rehabilitation Programme is intended to transform the way the Ministry of Justice manage offenders in custody and the community to achieve a reduction in the rate of re-offending whilst continuing to protect the public. MoJ published “Transforming Rehabilitation: A Strategy for Reform” – The Government’s response to the consultation document “Transforming Rehabilitation: a revolution in the way we manage offenders” in May 2013. On 13 March 2014, the Offender Rehabilitation Bill received Royal Assent. The new Offender Rehabilitation Act means that for the first time virtually all offenders will receive at least 12 months supervision in the community on release from custody. The provisions in the Act will be implemented as part of the Transforming Rehabilitation reforms and mobilisation following selection of the various preferred bidders. The rehabilitation of offenders across England and Wales is managed by the 21 Community Rehabilitation Companies (CRCs) and the National Probation Service (NPS).
- A2. MoJ’s Transforming Rehabilitation reforms are now well underway with former Probation Trusts having transferred to the 21 Community Rehabilitation Companies (CRCs) from June 1<sup>st</sup> 2014 and a list of preferred bidders who will be the new owners of the CRCs announced October 29th 2014. The Ministry of Justice remains on track to sign contracts with the new providers in the coming weeks, as planned, then to deliver a safe transition to new providers in the early part of 2015. This will enable support to be extended to short sentenced prisoners for the first time, under the provisions of the Offender Rehabilitation Act 2014 and for payment by results to begin to operate late in 2015. The NPS sits within National Offender Management Service and provides services under a service level agreement (SLA). NOMS as an executive agency of the Authority (Secretary of State for Justice) will manage the contracts with the CRCs and provide oversight of the SLA with the NPS. HMI Probation will carry out inspections across the new system, with a remit covering both the NPS and CRCs.
- A3. CRCs are the “providers of probation services” under the Offender Management Act 2007 by virtue of the fact that they have entered into a contract with the Secretary of State for probation provision. CRCs will manage the rehabilitation of offenders in custody and the majority of offenders (of low to medium risk) in the community sentenced to Community Orders (COs), Suspended Sentence Orders (SSOs) and those subject to licence conditions or supervision requirements and will deliver innovative rehabilitative support to offenders. The NPS will directly manage offenders who pose a high risk of serious harm to the public (including those whose risk has escalated to high during the course of their sentence) or those released from custody who have committed the most serious offences, and will have a key role at certain stages of the process for all offenders, for example in advising the courts on sentencing, determining allocation and dealing with enforcement action, working closely with CRCs. Nearly all offenders leaving prison will be subject to a 12 month supervision period in the community.
- A4. The majority of offenders will be located in prisons designated for resettlement purposes in their home location for the final months of their time in custody. This will enable closer relationships to be built between the offender and community support and, by concentrating these services in fewer prisons, focus resources where they are best deployed. This model will aim to release at least 80% of adult male offenders from a resettlement prison designated to their ‘home’ CPA

following a period of at least three months or a shorter period if an offender is sentenced to less than twelve months in custody. *A map showing each of the 21 CPAs can be seen below at A5.* Further information on the rehabilitation reforms including the Target Operating Model, the list of resettlement prisons and payment mechanism for the Rehabilitation Programme can be found at: [www.justice.gov.uk/transforming-rehabilitation](http://www.justice.gov.uk/transforming-rehabilitation).

#### A5. CPA map of 21 Rehabilitation Programme Contract Package Areas (CPAs)



- A6. The National Probation Service (NPS) delivers the necessary focus on the exercise of public interest decisions and issues of public protection. The NPS sits within NOMS with its Director of Probation directly accountable to the NOMS CEO. The NPS is structured to facilitate best alignment with existing Probation local delivery and partnership structures. As such, the basic building block of the NPS structure is the local delivery unit (LDU), based on local authority boundaries. The structure aligns LDUs within police/PCC boundaries and allows for best alignment with CRC delivery arrangements. There are approximately 150 LDUs operating in clusters reporting to a Deputy Director at divisional level. Additional information about the structure of the NPS can be found within the Rehabilitation Programme Target Operating Model.
- A7. In England, there are six divisions led by a NPS Deputy Director. The precise regional boundaries of each division will be finalised after the transfer of the CRCs in the various CPAs to the new providers to ensure best alignment. The provisional areas for the English divisions are:

**South East and Eastern** – to cover the former Probation trust areas: Kent; Surrey & Sussex; Bedfordshire; Cambridgeshire; Northamptonshire; Essex; Hertfordshire; Norfolk & Suffolk

**South West** – to cover the former Probation Trust areas: Thames Valley; Hampshire; Devon & Cornwall; Dorset; Avon & Somerset; Gloucestershire; Wiltshire

**North West** – to cover the former Probation Trust areas: Merseyside; Cumbria; Lancashire; Cheshire; Greater Manchester

**North East** – to cover the former Probation Trust areas: Northumbria; Durham Tees Valley; York and North Yorkshire; Humberside; West Yorkshire; Lincolnshire; South Yorkshire

**Midlands** – to cover the former Probation Trust areas: Derbyshire; Leicestershire; Nottinghamshire; Staffordshire & West Midlands; Warwickshire; West Mercia

**London** – to cover the former London Probation Trust area.

## **Appendix B – Delivery sites**

- B1 *Custodial delivery sites:* The expectation is that 70% of programme starts will commence in prison establishments. A shortlist of prison delivery sites for each ECA is contained within the respective regional ECA Annex, outlining the establishments in scope for CFO delivery. The expectation is that there will be a minimum level of delivery across each ECA, incorporating ESF, cohort and throughput requirements. Within each regional shortlist, prisons will be identified as either a required or optional delivery site.

All prisons in the shortlist have been identified in liaison with the Deputy Director of Custody for each ECA. These may be resettlement or non-resettlement prisons, providing ESF activity can demonstrate clear added value. Given that the CRCs' resettlement delivery will be focused on the beginning and the end of the custodial period (or throughout the custodial period for short sentenced offenders and remand prisoners), CFO delivery may be required throughout the sentence, particularly for those offenders serving longer sentences in designated resettlement prisons to better prepare offenders to engage with CRC pre-release activity in the last 3 months before release.

As part of the final ITT, bidders will need to articulate their delivery offer across the relevant ECA, detailing which prisons will receive CFO provision, including a rationale for delivery, or why a site will not form part of the offer.

- B2 Following on from the NOMS review of the women's custodial estate, the Transforming Rehabilitation reforms mean that all women's prisons (including those which are dual-designated as prison and Young Offender Institution) will be designated resettlement prisons. As with adult male establishments where there will be more than one CRC provider supporting offenders from various home release areas, CFO provision must be particularly mindful of the need to demonstrate clear added value underpinned by effective data sharing and referral processes.



- B3 Most Young Offender Institutions (YOIs) will be designated as resettlement prisons providing resettlement services to young adults in custody. A large number of establishments are currently dual-designated to accommodate young adults and adult male prisoners and many of these will be designated as resettlement prisons. As with the shared adult male and women's resettlement prisons, CFO provision at these sites must be particularly mindful of the need to demonstrate clear added value underpinned by effective data sharing and referral processes.
- B4 Under the Ministry of Justice's reforms, those prisons that are not designated as resettlement prisons will not have specific resettlement services. However, existing provision and funding of mainstream and co-commissioned services (i.e. those addressing health needs, substance misuse, employment, education and training) and provision of offending behaviour courses will remain in place. Where indicated via regional requirements, CFO activity will take place working alongside existing mainstream and co-commissioned provision.
- B5 The contracted estate accounts for a significant proportion of the prison estate and some private prisons will operate as resettlement prisons - this is particularly relevant where private prisons function as local prisons servicing the courts. Private prisons will deliver the initial activities around the resettlement needs screening and private prison staff will complete the first part of the Basic Custody Screening Assessment to determine the resettlement needs of all prisoners. The majority of the contracted estate will cease contractual delivery of mandated resettlement services in its establishments; however some contracted establishments' resettlement interventions form an integral part of their contract, and consequentially cannot be extracted. As such, providers' proposals for CFO delivery in private prisons should be mindful of both the existing services provided by the prison and those being introduced by the CRC.
- B6 *Community delivery sites:* In terms of community delivery sites, providers will be expected to liaise with CRCs and NPS to determine appropriate targeting of offenders who may benefit from CFO support – either for offenders on licence/supervision or those serving community sentences. Providers should focus community delivery in line with ECA level targets, noting the ESF priority groups such as women and young offenders.

### Appendix C –Young People

- C1 Young people in custody often come from very difficult backgrounds, with a range of complex needs including mental and physical health problems and emotional and behavioural difficulties. Many young people leaving custody have significant resettlement issues with a recent HMIP study showing that 84% of young people surveyed had an accommodation and/or ETE need identified. These wider needs can often drive offending behaviour and act as a barrier to educational progress and engagement with mainstream support. Transforming Youth Custody is the Government's long term vision to reform youth custody for offenders under 18, placing education and learning at the heart of reforms. At present 71% of young offenders released from custody reoffend within 12 month and 51% of the young people released from a custodial sentence in 2011 had 11 or more previous offences.
- C2 NOMS is contracted by the Youth Justice Board to deliver custodial places for young people under 18, or in some cases aged 18 but remaining in the under 18

estate with young people being held in under 18 young offender institutions (this data does not include STCs or SCHs). The youth custodial population has fallen since 2003/04, with as of the 31<sup>st</sup> October 2014, 764 currently detained across England and Wales (data supplied from PNOMIS). There are 221 young people (29%) sentenced to a period in custody of less than two years and the remainder subject to a Detention and Training Order (with an average length of time in custody of about 296 days). Of the 764 young people, all were male (100%) and 47.6% were from a black or minority ethnic background.

- C3 There are currently 140 Youth Offending Teams (YOTs) based within local authority areas in England. YOTs are multi-agency teams responsible for supervising young people in the community bringing together staff from police, probation, education, health, housing, mental health and social services to tackle youth crime. YOTs were set up by the Crime and Disorder Act 1998 and have two principal statutory functions:
- to co-ordinate the provision of youth justice services for all those in the authority's area who need them; and
  - to carry out such functions assigned in the youth justice plan formulated by the local authority.

YOTs are mostly coterminous with local authorities in England, although there are some instances where a single YOT covers two or more local authorities.

- C4 Offenders who are sentenced as young people under the age of 18 (unless a decision has been made to transition them to the adult system, either at the point of release or during community supervision) will not be subject to the MoJ's Rehabilitation Programme and thus will not be managed by CRCs or the NPS. These young offenders will remain supervised in the community by the Youth Offending Team. The YJB and NOMS have transition frameworks/protocols in place to manage young people who transfer from YOT to probation services and/or from youth to young adult custody. The Y2A portal will be rolled out, which, when available, ensures smooth transition of information for an offender turning 18 transferring to the adult estate. The NPS and the YOT together will decide locally whether the young person will transition to the adult system taking into a variety of key factors.

- C5 In addition to increasing the number educational hours within YOIs, the Government's proposals also require more effective plans to be put in place for young people leaving custody to support their resettlement in the community and entry into education, training or employment.

A pathfinder Secure College will open in the East Midlands in 2017. Secure Colleges will be a new generation of secure educational establishments which will put education at the heart of youth custody. If successful, the pathfinder will provide a blueprint for a network of Secure Colleges across England and Wales which would replace most existing youth custodial provision.

Transforming Youth Custody also aims to ensure all young people will be returning to suitable accommodation, with more going into education, training or employment and fewer going on to reoffend. Work is underway to review how sentence planning and casework within YOIs can promote a clear focus on resettlement from day one. There is clear scope for closer links to be forged with the young person's home area, and to make effective use of release on temporary licence where appropriate.

- C6 Further information can be found at:  
<https://consult.justice.gov.uk/digital-communications/transforming-youth-custody>  
<http://www.justice.gov.uk/about/yjb>
- C7 Under international law, people under 18 are classified as ‘children’ and required to be treated differently to adults. UK legislation and statute reflects international law by placing responsibilities to safeguard and protect children on all agencies and professionals working with children.
- C8 Comprehensive information regarding youth justice statistics published in January 2014 can be found at [www.gov.uk/government/publications/youth-justice-statistics](http://www.gov.uk/government/publications/youth-justice-statistics).

## **Appendix D –Women**

- D1 The Ministry of Justice published the Women’s Custodial Estate Review on October 25<sup>th</sup> 2013 which will see all women’s prisons become ‘resettlement prisons’ in line with the Transforming Rehabilitation reforms. The review makes recommendations to ensure that regimes in the women’s estate are designed more specifically for women. It also makes recommendations for increasing the number of sites where Restricted Status women can be held.
- D2 Underpinned by a move to strategic hubs for accommodating women in prison, the review makes a number of recommendations relating to interventions and resettlement support appropriate to women –including community employment regimes, providing family days and maintaining contact between visits, improving the quality and consistency of interventions for women survivors of domestic violence, sex workers, life skills training (peer led), developing links to the DCLG Troubled Families programme and the importance of supporting relationships when tackling drug misuse.
- D3 A number of changes will take place within the female estate within the next year including the opening of additional places in areas of the country where a lack of accommodation means that women are transferred away from their homes and families. 25 new places at HMP Styal in Cheshire will be in a unit outside the boundary of the prison, where women from the North West who are suitable for open conditions will be able to participate in a community employment regime and be better prepared for finding employment and community links in their local area on release.
- D4 The Ministry of Justice also undertook a review of provision for women offenders in the community in October 2013. The report demonstrated improvements in gender specific services for offenders and that many Trusts have developed innovative delivery plans for services in the community. Examples include the use of children’s centres, women’s centres and community centres for women’s service delivery. In addition, the review noted the need for the expansion of mentoring services, women’s centres and women only hubs and a focus on core services, mentoring and life management support. An overarching conclusion emerging from the review is the diversity of the delivery landscape reflecting local need and as such the enormous scope that exists for innovation in provision of offender services, particularly through the involvement of organisations from the voluntary and community sector.



- D5 Work to develop a specific NOMS Commissioning Strategy for women is currently being developed with the aim of publishing this later in the year bringing together current what works/evidence base with a focus on particular points of vulnerability for women offenders serving custodial and community sentences such as pregnancy, child and family care, abusive and exploitative relationships, race/faith groupings, young adult women in transition and care leavers.
- D6 Further information can be found at:  
<https://www.gov.uk/government/publications/a-new-approach-to-managing-female-offenders>

## **Appendix E: Accommodation Services**

- E1 Lack of secure accommodation is recognised to be a significantly destabilising factor for offenders, which impacts upon their ability to engage with mainstream support, sustain employment and ultimately contributes to them re-offending. A published Ministry of Justice report – <https://www.gov.uk/government/publications/transforming-rehabilitation-a-summary-of-evidence-on-reducing-reoffending> provides an overview of key evidence relating to reducing the reoffending of adult offenders. The report highlights amongst other key criminogenic factors, the need for suitable accommodation and specifically that offenders with accommodation problems have been found more likely to re-offend. Access to stable accommodation is important in enabling ex-offenders to access employment and training opportunities, which may in turn support their rehabilitation. Accommodation needs can also impact on family relationships and the chances of successful reintegration into the community on release from prison, both of which are important factors in the reduction of reoffending. Accommodation problems have been found to be linked to other offender needs: a survey of prisoners identified greater accommodation-related needs, including homelessness, among prisoners with alcohol or drug problems.
- E2 Homelessness or unstable accommodation exacerbates offenders' problems, particularly those being released from prison and can act as a barrier to accessing public services, particularly welfare benefits and employment services. Competing for and securing employment is made particularly difficult for offenders who are not in appropriate or stable accommodation and for many offenders access to skills and employment services is perceived as unrealistic. In addition to actually securing accommodation, many offenders may require ongoing support with maintaining tenancies, assistance with independent living skills and money management for example, particularly following a long sentence.
- E3 Accommodation advice services in prisons help support offenders in accessing a range of housing options and whilst many will secure temporary accommodation they become caught in a 'catch 22' situation. They are unable to move on to more secure accommodation due to a lack of economic power. However, many feel unable to look for employment and consider education and training because of their accommodation situation and status as an offender. The accommodation which appears secure in prison can rapidly breakdown upon release so ongoing support in the community is essential.

- E4 The importance of suitable and sustainable accommodation for younger offenders, women and those deemed hard to reach such as offenders with mental health problems is particularly significant. There are also support issues around culturally sensitive accommodation where individuals may be estranged from their family network. In addition to securing accommodation, there is a need to increase the supply of suitable accommodation, for example working with housing providers and support organisations as part of their supply chain.
- E5 Providers should be aware that accommodation is an “assurance measure” within CRC contracts meaning it is a formal performance measure with targets and contract remedies for poor performance. CRCs will thus in a relevant month have to place a percentage of allocated persons on release from custody into settled accommodation. As such the CFO offer pertaining to accommodation advice and support should focus on enhancing existing accommodation work, particularly that provided by the CRCs and filling gaps as appropriate. This may be particularly relevant for the hard to reach groups.

#### **Appendix F: Supporting Families**

- F1 The important role of the family in reducing reoffending is noted in the MoJ report <https://www.gov.uk/government/publications/transforming-rehabilitation-a-summary-of-evidence-on-reducing-reoffending>. The report notes that strong and supportive family and intimate relationships are widely considered important factors in the desistance from crime. Prisoners receiving family visits have been found to be less likely to reoffend and more likely to have employment or training and accommodation arranged for their release than prisoners who receive no family visits.
- F2 Supporting offenders’ families is a key commissioning intention for NOMS and MoJ going forward, recognising that supporting and maintaining links between offenders and their families can help reduce reoffending. Commissioning Intentions outlines that support for families can contribute to tackling inter-generational offending by addressing the poor outcomes faced by children of offenders and establishments are expected to work in close partnership with their local authorities to share data where appropriate and develop effective interventions. NOMS Commissioning Intentions and Evidence and Segmentation model can be found at NOMS Commissioning pages [www.justice.gov.uk/about/noms/commissioning.htm](http://www.justice.gov.uk/about/noms/commissioning.htm)
- F3 There is a range of research available about working with the families of prisoners. This tends to focus on the needs of families with regard to practical support while a family member is in prison and includes advice and support over visits, finance and small legal matters as well as support for children visiting parents plus any child safeguarding issues. In addition, work has taken place at a number of visitor centres, where families have been able to access resources at the centre. Furthermore, research indicates that family involvement with a prisoner can help with a positive serving of the sentence and a reduction in re-offending on release.
- F4 A variety of organisations have been involved with families and visitor centres ranging from voluntary to statutory and a number of potential support models could be developed ranging from specific sessions to meet with the family to promote referrals to provision to family days in the prison, enhanced facilities at the visitor centre or the use of release on temporary licence (RoTL) to deliver support sessions with the offender and their family in the community.

- F5 Current provision of Visitor Centre services in prisons is a combination of in house and contracted provision. A review of Visitor Centre services across the prison estate is currently underway to inform preparation for possible re-tendering. There are a number of Family Support/Engagement workers across the estate, primarily under contracts with Visitor Centre services and it is anticipated that their services may be included in any future competition.

### Appendix G: Offender Learning and Skills in England

- G1 The Government recognises the important role that skills and employment can have in reducing reoffending and is committed to creating a more effective system for helping prisoners to develop the skills required for sustainable employment. Learning and skills for over 18s in custody in England is funded by the Department for Business, Innovation and Skills (BIS) and co-commissioned between the National Offender Management Service (NOMS) and the Skills Funding Agency. Provision is delivered via the Offenders' Learning and Skills Service (OLASS) arrangements and is the equivalent of that found in the community.
- G2 In 2011, NOMS published jointly with BIS "***Making Prisons Work: Skills for Rehabilitation: A Review of Offender Learning***". The review set out a programme of reform for a radical change in the delivery of offender learning in England. New OLASS prison education contracts for adult offenders in prisons in England were introduced in 2012 which give a clear focus on addressing maths and English early in prisoners' sentences, with a requirement to assess learning needs and, where a literacy or numeracy need is identified, to address it. During the last year in custody, concentration shifts towards preparation for employment through vocational training that will meet needs in the areas into which prisoners will settle.
- G3 Prison governors work closely with the OLASS providers in determining the local curriculum in order to best prepare prisoners for employment on release. Within OLASS arrangements, new mandatory assessments for all newly received prisoners were implemented in August 2014 by the OLASS providers which will include a Hidden Disabilities Test to identify learning difficulties and disabilities (LDD). Assessing for additional need aims to identify the potential scale of need in this area and better address the issues acknowledged and associated with LDD- impact on speech, language and social communication skills. This will ensure that all offenders receive a learning assessment (focused around English and maths) rather than those that just go onto learning. NOMS and its partners are also working towards implementing better data sharing arrangements between prisons and service providers so that more is known about previous assessment, progress and achievement as well as current needs.
- G4 Deputy Directors of Custody, Governors, Heads of Learning, Skills and Employment (HoLSE) are all working closely within NOMS to improve regime planning, recruitment onto courses and classroom attendance. Quality improvement is also being driven forward as well as the development of a new Performance Management Framework process and continued work with Ofsted regarding the leadership and management of learning.
- G5 The budget for learning and skills in prisons is over £140 million per annum. There has been more than a threefold increase in the offender learning budget since 2001. Since the introduction of the Offenders Learning and Skills Service in

2006 the proportion of offenders in prison taking part in learning has risen from 30% to over 42%. Provisional data for the full 2013/14 academic year show there were 95,000 offenders aged 18 or over in the prison system participating in learning. These offenders were funded via the Offenders' Learning and Skills Service (OLASS) budget.

- G6 A new National Careers Service has been procured by the Skills Funding Agency and contracts commenced October 1<sup>st</sup> 2014 including an in-custody element. NCS provision has a key funding focus on outcomes such as securing employment (sustainability target of 13 weeks) and undertaking learning and career management. Disadvantaged groups including offenders will still be flagged as a priority with delivery in both custody and the community underpinned by a Skills Action Plan and a Customer Data Service IT system which is to be put in place in 2015.
- G7 For a number of reasons it is difficult to be clear on who has learning disabilities and difficulties (LDD) in the Criminal Justice System. The Prison Reform Trust estimate of 20-30% who will struggle to cope with day to day life is based on an inclusive interpretation of LDD including those with intellectual impairment who are likely to be the most disadvantaged. Many, though not all of these offenders will also have autism. Better research studies have concluded that around 7% of offenders in prison met the technical criteria for learning disabilities with a further 25% considered borderline (Mottram 2007). The Prison Reform Trust report "No-One Knows" (2009), stated that prisoners with possible low average IQ were the least likely to have a job in prison. They were also the most likely to spend time alone and have fewer things to do. Prisoners with possible learning disabilities were the least likely to say there was somebody to help them make plans for when they left prison. Prisoners were generally uncertain about where they would go for particular help as they prepared to leave prison, especially those with possible learning disabilities and had high expectations of the kinds and extent of help they might expect from probation/criminal justice social work, to the point that many had expectations that were unrealistic.

## **Appendix H – Offender Health**

### **HEALTH & SUBSTANCE MISUSE**

H1 Offenders are more likely to smoke, misuse drugs or alcohol or both, suffer mental health problems, report having a disability, self-harm, attempt suicide and die prematurely compared to the general population.

H2 Health and justice services are interdependent and must work together to deliver a system which is safe, legal and decent that promotes health and re-offending outcomes for the prisoner/patient.

H3 The links between poor health and offending have long been understood. For example, evidence suggests:

- drug users are estimated to be responsible for between a third and half of acquisitive crime<sup>11</sup>
- treatment can cut the levels of crime by about half<sup>12</sup>

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<sup>11</sup> MacDonald, Z. Tinsley, L, Collingwood, J., Jamieson, P and Pudney S (2005). Measuring the harm from illegal drugs using the Drug Harm Index. Home Office Online Report 24/05

<sup>12</sup> National Treatment Agency (2012). Estimating the crime reduction benefits of drug treatment and recovery. [www.nta.nhs.uk/uploads/vfm2012.pdf](http://www.nta.nhs.uk/uploads/vfm2012.pdf)

- alcohol is a factor in an estimated 47% of violent crime<sup>13</sup>

H4 The clear links between wider determinants of health and factors affecting reoffending such as sustaining stable housing or employment exist. Offenders with addiction or mental health problems are more likely to need support with housing, education or employment to change their lives and research shows this group of people experience difficulties accessing mainstream provision.

H5 Health services in prison replicate that available to the general public in the community and include:

- Primary care (including GP, pharmacy, optician and dentistry services)
- Secondary care (including elective surgery, outpatient, diagnostic and inpatient services)
- Community care services (including mental health provision)
- Public health (including health promotion, immunisation and infection control and clinical & non-clinical substance misuse provision)

H6 Given the nature of imprisonment, healthcare services need to be specially commissioned and delivered in the prison setting. Responsibility around healthcare for offenders rests with the Department of Health for England.

H7 Following the introduction of the Health and Social Care Act in 2012 commissioning arrangements for health service delivery in prisons changed. Strategic Health Authorities and Primary Care Trusts were abolished; an independent NHS Commissioning Board – NHS England - was created with responsibility for commissioning services for people in prisons in England through 10 area Health and Justice Teams. This completed the transfer of responsibility for prison healthcare to the NHS.

H8 NHS England is responsible for commissioning all health services (including primary, secondary, community and public health services) in both public and private prisons in England. NHS England operates through four regions (North, Midlands, East London and South) and 27 Area Teams. Prison healthcare services are commissioned via dedicated teams in 10 of the 27 Area Teams. Services are delivered by a wide range of providers to address identified needs. All prisoners have a healthcare screen on reception.

H9 The Mandate between Department of Health and NHS England, published in November 2012, expects a continuity of care to be offered beyond custody and into the community (through the gate) as part of release planning and resettlement activity.

H10 NHS England's operating model for commissioning health services in prisons is set out in Securing Excellence in Offender Health<sup>14</sup>.

H11 NOMS Health, Wellbeing and Substance Misuse Co-Commissioning team within the NOMS Directorate of Commissioning support co-commissioning arrangements with NHS England. To support this work, NOMS has jointly developed a National Partnership Agreement with NHS England and Public Health England for the co-commissioning and delivery of healthcare services in prisons in England (2013)<sup>15</sup>.

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<sup>13</sup> Crime Survey for England and Wales: nature of Crime tables 2011/12. <http://ons.gov.uk/ons.rel/crime-stats/crime-statistics/nature-of-crime-tables-2011-12/index.html>

<sup>14</sup> [www.england.nhs.uk/wp-content/uploads/2013/03/offender-commissioning.pdf](http://www.england.nhs.uk/wp-content/uploads/2013/03/offender-commissioning.pdf)

<sup>15</sup> [www.justice.gov.uk/about/noms.working-with-partners/health-and-justice/partnership-agreement](http://www.justice.gov.uk/about/noms.working-with-partners/health-and-justice/partnership-agreement)

H12 The National Partnership Agreement is overseen by the National Prison Healthcare Board (England) which is co-chaired by NOMS and NHS England.

H13 NOMS Co-commissioned Offender Health Services and their Commissioners:

Health & Substance Misuse (England)

- Primary Care – NHS England (Custody & Community)
- Secondary Care – NHS England (Custody), Clinical Commissioning Groups (Community)
- Mental Health – NHS England (Custody), Clinical Commissioning Groups (Community)
- Community Care - NHS England (Custody), Clinical Commissioning Groups (Community)
- Out of Hours Services – Clinical Commissioning Groups (Custody & Community)
- Drug and Alcohol – NHS England (Custody) and Local Authorities (Community)

H14 The Care Act 2014 reforms social care provision in England from April 2015. Social care for adults (aged over 18) in prisons and Approved Premises is clarified as a Local Authority responsibility on the basis of equivalence with what is available in the community. The Social Services and Wellbeing (Wales) Act makes parallel provisions in Wales from 2016. The Department of Health has published final statutory guidance under the Care Act and regulations. Further information, including links to research publications and the development of a new Knowledge Hub Forum can be found in the NOMS CFO Data Room. NOMS is reviewing its service specifications and instructions. New requirements as a consequence of the Care Act will be set out in new Commissioning Intentions instructions in 2015.

## Appendix I – Financial Allocation and Throughput:

### Demographics

| European Social Fund Contract Area                    | Economically Inactive | 24 and under  | Disabled/ health conditions | 55+          | Ethnic Minorities | Female       |
|---|-----------------------|---------------|-----------------------------|--------------|-------------------|--------------|
| <b>East of England</b><br><b>£11,225,168</b>          | <b>4,640</b>          | <b>663</b>    | <b>1,458</b>                | <b>331</b>   | <b>1,326</b>      | <b>795</b>   |
| <b>East Midlands</b><br><b>£13,444,587</b>            | <b>5,558</b>          | <b>1,588</b>  | <b>1,747</b>                | <b>397</b>   | <b>1,826</b>      | <b>794</b>   |
| Lincolnshire (exc NE & N)                             | 704                   | 201           | 221                         | 50           | 231               | 91           |
| <b>London</b><br><b>£11,656,581</b>                   | <b>4,819</b>          | <b>688</b>    | <b>1,514</b>                | <b>275</b>   | <b>4,337</b>      | <b>688</b>   |
| 16-18 y.o. (Feltham & Cookham Wood)                   | 500                   | 500           | 110                         | 0            | 250               | 0            |
| <b>North East</b><br><b>£8,535,577</b>                | <b>3,529</b>          | <b>813</b>    | <b>1,109</b>                | <b>253</b>   | <b>426</b>        | <b>605</b>   |
| Durham and Teeside                                    | 2,163                 | 618           | 680                         | 155          | 309               | 525          |
| <b>North West</b><br><b>£18,358,652</b>               | <b>7,589</b>          | <b>2,259</b>  | <b>2,385</b>                | <b>518</b>   | <b>1,580</b>      | <b>1,301</b> |
| 16-18 y.o. (North West)                               | 0                     | 500           | 110                         | 0            | 70                | 0            |
| Cumbria   | 429                   | 123           | 135                         | 31           | 104               | 55           |
| Lancashire  | 2,165                 | 309           | 680                         | 155          | 526               | 278          |
| Merseyside  | 1,730                 | 494           | 544                         | 124          | 297               | 321          |
| <b>South East</b><br><b>£16,267,309</b>               | <b>6,725</b>          | <b>1,921</b>  | <b>2,114</b>                | <b>480</b>   | <b>1,921</b>      | <b>1,153</b> |
| <b>South West</b><br><b>£8,478,280</b>                | <b>3,505</b>          | <b>820</b>    | <b>1,102</b>                | <b>251</b>   | <b>751</b>        | <b>601</b>   |
| Devon   | 1,268                 | 181           | 399                         | 91           | 272               | 163          |
| <b>West Midlands</b><br><b>£13,591,200</b>            | <b>5,619</b>          | <b>1,766</b>  | <b>1,766</b>                | <b>224</b>   | <b>2,241</b>      | <b>883</b>   |
| Staffordshire and Shropshire                          | 3,593                 | 1,027         | 1,129                       | 128          | 1,540             | 667          |
| 16-18 y.o. (Werrington)                               | 500                   | 500           | 110                         | 0            | 150               | 0            |
| <b>Yorkshire and Humberside</b><br><b>£13,722,646</b> | <b>5,673</b>          | <b>1,407</b>  | <b>1,783</b>                | <b>332</b>   | <b>1,452</b>      | <b>1,054</b> |
| East Riding, Hull, NE & N Lincolnshire                | 1,493                 | 213           | 469                         | 107          | 405               | 192          |
| S Yorkshire   | 2,132                 | 609           | 670                         | 152          | 579               | 274          |
| <b>Total</b>  | <b>47,657</b>         | <b>11,925</b> | <b>14,978</b>               | <b>3,061</b> | <b>15,860</b>     | <b>7,874</b> |

### Pathway Targets:

| European Social Fund Contract Area             | Enrolments    | Supportive Measures | Short Courses | Vocational/<br>Educational/<br>Training | Gaining a qualification | Secured Employment |
|--|---------------|---------------------|---------------|---|-------------------------|--------------------|
| <b>East of England</b><br>£11,225,168          | <b>6,629</b>  | <b>3,008</b>        | <b>1,326</b>  | <b>994</b>                              | <b>331</b>              | <b>530</b>         |
| <b>East Midlands</b><br>£13,444,587            | <b>7,940</b>  | <b>3,602</b>        | <b>1,588</b>  | <b>1,191</b>                            | <b>447</b>              | <b>635</b>         |
| Lincolnshire (exc NE & N)                      | 1,006         | 456                 | 201           | 151                                     | 50                      | 80                 |
| <b>London</b><br>£11,656,581                   | <b>6,884</b>  | <b>3,247</b>        | <b>1,577</b>  | <b>1,257</b>                            | <b>519</b>              | <b>551</b>         |
| 16-18 y.o. (Feltham & Cookham Wood)            | 500           | 350                 | 300           | 300                                     | 100                     | 0                  |
| <b>North East</b><br>£8,535,577                | <b>5,041</b>  | <b>2,287</b>        | <b>1,008</b>  | <b>757</b>                              | <b>407</b>              | <b>403</b>         |
| Durham and Teeside                             | 3,090         | 1,402               | 618           | 464                                     | 155                     | 247                |
| <b>North West</b><br>£18,358,652               | <b>10,842</b> | <b>5,042</b>        | <b>2,369</b>  | <b>1,851</b>                            | <b>1,027</b>            | <b>867</b>         |
| 16-18 y.o. (North West)                        | 500           | 350                 | 300           | 300                                     | 100                     | 0                  |
| Cumbria  | 613           | 278                 | 123           | 92                                      | 31                      | 49                 |
| Lancashire                                     | 3,093         | 1,403               | 619           | 464                                     | 155                     | 247                |
| Merseyside                                     | 2,471         | 1,121               | 494           | 371                                     | 124                     | 198                |
| <b>South East</b><br>£16,267,309               | <b>9,607</b>  | <b>4,360</b>        | <b>1,921</b>  | <b>1,441</b>                            | <b>480</b>              | <b>769</b>         |
| <b>South West</b><br>£8,478,280                | <b>5,007</b>  | <b>2,272</b>        | <b>1,001</b>  | <b>751</b>                              | <b>250</b>              | <b>401</b>         |
| Devon  | 1,812         | 822                 | 362           | 272                                     | 91                      | 145                |
| <b>West Midlands</b><br>£13,591,200            | <b>8,027</b>  | <b>3,765</b>        | <b>1,805</b>  | <b>1,429</b>                            | <b>476</b>              | <b>642</b>         |
| Staffordshire and Shropshire                   | 5,133         | 2,329               | 1,026         | 770                                     | 257                     | 450                |
| 16-18 y.o. (Werrington)                        | 500           | 350                 | 300           | 300                                     | 100                     | 0                  |
| <b>Yorkshire and Humberside</b><br>£13,722,646 | <b>8,104</b>  | <b>3,678</b>        | <b>1,621</b>  | <b>1,216</b>                            | <b>405</b>              | <b>648</b>         |
| East Riding, Hull, NE & N Lincolnshire         | 2,133         | 968                 | 427           | 320                                     | 107                     | 171                |
| S Yorkshire                                    | 3,045         | 1,382               | 609           | 457                                     | 152                     | 244                |
| <b>Total</b>                                   | <b>68,081</b> | <b>31,261</b>       | <b>14,216</b> | <b>10,887</b>                           | <b>4,342</b>            | <b>5,446</b>       |



The financial allocation and associated targets for each ECA are detailed above. ECAs which encompass transition regions have ring-fenced targets (detailed below the ECA level target. Transition region targets are not in addition to the main ECA level targets (in bold). To illustrate – 5041 enrolments are required for the North East ECA, 3090 of which must be drawn from Durham and Teeside.

The financial allocation is split into the amounts as shown in the table below. 3% being for the DAF and 8.7% for the Development Fund with the remaining 88.3% split into the Payment by results element (44.15%) and the Core Costs (44.15%).

| European Social Fund Contract Area | Total               | Core Costs         | PbR                | DAF               | Development Fund   |
|------------------------------------|---------------------|--------------------|--------------------|-------------------|--------------------|
| East of England                    | £11,225,168         | £4,959,422         | £4,955,260         | £336,755          | £973,731           |
| East Midlands                      | £13,444,587         | £5,939,494         | £5,935,500         | £403,338          | £1,166,255         |
| London                             | £11,656,581         | £5,148,995         | £5,146,735         | £349,697          | £1,011,154         |
| North East                         | £8,535,577          | £3,770,338         | £3,768,750         | £256,067          | £740,421           |
| North West                         | £18,358,652         | £8,110,370         | £8,104,995         | £550,760          | £1,592,527         |
| South East                         | £16,267,309         | £7,185,192         | £7,182,985         | £488,019          | £1,411,113         |
| South West                         | £8,478,280          | £3,744,715         | £3,743,765         | £254,348          | £735,451           |
| West Midlands                      | £13,591,200         | £6,004,026         | £6,000,465         | £407,736          | £1,178,973         |
| Yorkshire and Humberside           | £13,722,646         | £6,061,816         | £6,058,775         | £411,679          | £1,190,375         |
| <b>TOTAL</b>                       | <b>£115,280,000</b> | <b>£50,924,370</b> | <b>£50,897,230</b> | <b>£3,458,400</b> | <b>£10,000,000</b> |

Each achievements has a unit value attributed to it as detailed in the table below. The unit value for Supportive Measures, Short Courses and Vocational/ Educational/Training achievements are different for the 16-18 year old subgroups in London, North West and West Midlands.

|                                | Enrolments | Supportive Measures | Short Courses | Vocational/ Educational/ Training | Feedback Report | Secured Employment |
|--------------------------------|------------|---------------------|---------------|-----------------------------------|-----------------|--------------------|
| Unit value                     | £200.00    | £270.00             | £615.00       | £840.00                           | £50.00          | £1,670.00          |
| Unit value 16-18 Y.O. subgroup | £200.00    | £89.40              | £205.00       | £310.00                           | £50.00          | £1,670.00          |

## Appendix J – CATS specification

J1 CATS was originally developed by the Business Services Directorate of the Prison Service Plus project run by HM Prison Service. The system was developed to respond to the need for an effective case management tool which focused on removing the barriers to employment whilst offering effective performance management of providers (as part of an ESF project). Since then there have been numerous updates to the system, and it is planned that a new version of CATS will be made available to support the delivery of CFO Round 3.

The main requirements for the system were:

- Accurate assessment of barriers to employment;
- Measurement of achievements made with a participant;
- Action planning – Ability to effectively plan actions and referrals;
- End to End case management – One case record from custody to community
- Ease of use across disciplines;
- Connectivity to existing HMPS IT systems;
- Accessibility - accessible in prisons and probation areas;
- ESF Project Management – providing all the necessary information to satisfy an ESF final claim and audit;
- Performance Management – To assist in contract management of providers;

J2 CATS also links with other existing IT systems within the Ministry of Justice such as P-NOMIS (Prison National Offender Management Information System). This allows the Authority to utilise prisoner information such as names, addresses and release dates held on the central HMPS database system, thereby contributing to the maintenance of data integrity within the system. It is planned that a similar link with the equivalent Probation System (called N-Delius) will also be integrated with CATS at some point during the CFO Round 3 programme.

J3 Data from linked systems is synchronised daily with CATS, updating core information (such as name, date of birth) within CATS to ensure it is always accurate and up to date. The data is also utilised to manage transfers of cases, and notify case managers of potential release from prison.

J4 Although the automatic detection of transfers is not possible in the community at the time of writing, the automatic alerts to Case Managers still function after the transfer has been manually entered.

J5 The system is fully password protected and utilises role and location based access with prescriptive functions. Users will need aligning by the provider, to the existing roles, responsibilities, groups and functions within the system, such as “Case Manager”, “Regional Manager”, “Administration Staff”, and these roles and functions can be clarified at the next ITT.

J6 The system is designed to let the user search for potentially eligible participants within the location they are working in. Searching can be done by utilising standard search parameters (forename, surname, ID), and the user can select a potential participant, and check for eligibility criteria.

J7 If eligible, the enrolment process can begin, including obtaining signed consent. The assessment is carried out to identify delivery needs. The assessment must be entered on CATS, which will assist in managing and maintaining individual case records. The results of the assessment creates a scoring which will influence a RAG (Red, Amber Green) status bar on the system, to highlight potential areas of need for the participant and highlight suitability.

Red = substantial issues

Amber = some identifiable issues

Green = no identifiable issues

At this point, the enrolment form (complete with signatures) will need uploading and attaching to the participants record on the system.

J8 Once areas for improvement are identified, an Action Plan can be created within the system. The Action Plan correlates with the appropriate assessment section, and allows the Case Manager to effectively manage the progress of a participant, with visual indicators on the RAG status bar identifying where any outstanding actions may still be required.

J9 As achievements are made by the participant, these can be recorded by the user on the system along with any associated detail, and any supporting evidence will require scanning and uploading to the appropriate CATS record. This allows the system to record and report on a provider performance.

J10 As different stages of the participant pathway are approved by NOMS CFO, this will trigger any payments due to the provider, therefore all information needs inputting onto CATS in a timely manner.

J11 The system also gives providers information which will assist in the effective management of sub providers.

## **J12 IT Specifications:**

### **Connectivity**

The CATS application will be available from a variety of systems, including the Quantum (Prison Network) and OMNI (Probation Network). Access will also be available through the ARC Gateway, that is owned and operated by NOMS CFO and is a secure web gateway directly into CATS; making CATS accessible from private computer systems.

The ARC Gateway allows secure connectivity from almost any platform through to CATS. The ARC Gateway uses the Microsoft Unified Access Gateway (UAG) 2010, and an EndPoint Session Cleanup component which requires the installation of an ActiveX control for Internet Explorer. UAG will attempt to install this component when the site is first accessed.

Client compatibility is driven by the components utilised within the ARC Gateway, and the following browsers and operating system combinations are known to be, and are assured as being compatible with the system:

- Internet Explorer 8 (Windows 7)
- Internet Explorer 9 (Windows 7)
- Internet Explorer 10 (Windows 8)

NOMS CFO will add new assured operating systems and browsers throughout the course of the programme delivery.

Quantum (Prisons Network) - To access CATS on the Quantum network, a Quantum User ID is required, along with access to a Quantum terminal. Quantum terminals, printers and scanners will be available for providers to use in all prisons where delivery will take place.

Providers Own IT – Providers can use non-GSi (Government Secure Intranet) web-based IT to access CATS, though it must meet the ARC requirements. You will also be required to provide and utilise a printer and a scanning system that creates legible Adobe PDF files to fulfil the contractual requirement.

All Provider IT used in relation to participant data must be configured in accordance with all the applicable sections of the Contract, including but not limited to; G11 Data Management and Schedule N – European Social Fund; (specifically Clause 9 of Appendix 4, in Schedule N).

It is a pre-requisite that before any staff can be issued with a login to CATS, they are trained on how to use the system, and pass the appropriate security checks as outlined in Schedule N.

The names, locations and access privileges of any required users will need to be supplied as soon as any contracts are let to enable users to be set up. Setting up of users may take a number of weeks and a cost may be associated with this.

### **J13 CATS / CFO Helpdesk Availability:**

Please note, the ARC Gateway and CATS support is provided by the CFO Helpdesk.

We will endeavour to ensure that the ARC Gateway, CATS and the CFO Helpdesk is available at the following times (not including public holidays):

- Monday – Thursday, 8.30am – 5pm
- Friday, 8.30am – 4:30pm

Where possible, advanced notice will be given for any exceptions to the above hours.

Support will be limited outside of these hours.

### **Appendix K – Payment Model:**

Providers will be paid a combination of operating costs and payment by results.

This can be broken down into the following:

Core Delivery Costs (44.2%),

Development Fund (8.7%)

DAF (3%),

Programme starts (11.8%),

Participant feedback (2.5%)

Secured employment (7.9%)

Supportive measures, short courses and Vocational/Educational/Training (21.9%)

### **K1 Participant Pathway Stages**

The participant pathway consists of a number of stages, designated as either *payment* or *gateway*. Payment stages attract a payment, Gateway stages do not. However, payment stages cannot be triggered unless the earlier gateway stages have been completed. All stages with the exception of 'Participant Feedback' are strictly sequential and no payments will be made unless all previous payment and gateway stages are completed. Contractors are able to revisit earlier stages in the sequence as the participant moves through the pathway as delivery at each stage may continue concurrently with other stages. Revisiting stages cannot trigger further payments. The 'Participant Feedback' stage is triggered if all activity up to and including 'Core Activity' have been completed. The Contractor may only undertake activity permitted by the Authority in respect of each stage of the participant pathway. A full list of Permitted Activity is available to the Contractor via the CATS system which may be updated by the

Authority for time to time. The Contractor acknowledges that it will only seek payment for activities that are Permitted Activities and that the onus is on the Contractor to ensure any service provided to a participant is eligible for payment prior to the work commencing. Where the Contractor has any doubt whether a service is a Permitted Activity it must seek confirmation from the Authority prior to the work commencing.

## **K2 Enrolment ([Payment Stage](#))**

Payment will be made for enrolling a participant on the NOMS CFO programme. Participant data must be entered onto CATS, consent forms and eligibility confirmation must be signed by the participant and Case Manager. The Authority will reject any claim by the contractor unless a CATS record exists and consent and eligibility forms have been correctly completed and verified by the Authority. A participant can only be enrolled once.

Actions that must be performed before payment can be made:

- Participant data entered onto CATS
- Consent and Eligibility forms completed and accepted by the Authority
- Assessment gateway stage completed

## **K3 Assessment ([Gateway Stage](#))**

The participant must have been assessed using the NOMS CFO assessment tool with the results entered onto CATS. In addition to the General Eligibility Criteria, to qualify for support from NOMS CFO Programme, a participant must be identified as having significant support needs within appropriate ETE and associated sections. The assessment must be completed in line with the assessment guidance document (which will be available at Final ITT stage). There is no payment for completing an assessment, although no enrolment payment can be made without a completed assessment.

## **K4 Action Plan ([Gateway Stage](#))**

A relevant action plan, in line with the action plan guidance document, should be made for the participant and entered onto CATS. There is no payment for creating and conducting an action plan. The action plan is to be revisited throughout the provision for the participant, in conjunction with other stages.

## **K5 Data Integrity Checks ([Gateway Stage](#))**

The Contractor will be required to gather specific data and information about the participant and enter it onto CATS. A full mandatory data set will be specified at the initial ITT stage. There is no payment for ensuring Data Integrity checks are made.

## **K6 Core Activity ([Gateway Stage](#))**

The Contractor is required to document activity undertaken with the participant onto CATS. The activities must relate to the needs identified from the assessment in conjunction with the action plan. There is no payment attached to any of these activities.

Specific activities are detailed in the Participant Achievement Guidance (contained within Schedule H Pricing & Payment). Only Permitted Activities, as shown within CATS and the Core Activity guidance, may be claimed by the Contractor. During the lifespan of the programme, NOMS CFO may see fit to amend, add or delete items on this list. This will be done via consultation with the Contractor and guidance published as appropriate.

#### **K7 Supportive Measures ([Payment Stage](#))**

The Contractor will offer assistance in the following areas:

- Specialist support referrals (including drugs, alcohol, housing, health, finance, benefits and employment)
- Work taster/trial
- Mentoring

Specific activities are detailed in the Participant Achievement Guidance (see Schedule H). Payment will be made for the first supportive measures activity logged on CATS, subject to quality assurance approval from the Authority. Subsequent activities should be logged on CATS but will not result in any payment. Payment will only be made if a payment has been made for enrolling the participant, an assessment has been conducted and is on CATS, an appropriate action plan has been entered onto CATS, DI checks have been completed and at least two Core Activity items have been completed and documented on CATS. Only Permitted Activities, as shown within CATS and the Supportive Measures guidance, may be claimed by the Contractor

Actions that must be performed before payment can be made:

- Enrolment must be completed
- Assessment must be completed
- Action Plan must be started
- Data Integrity checks must be completed
- Two Core Activity items must be completed

#### **K8 Short Courses ([Payment Stage](#))**

The Contractor is to offer assistance by enrolling the participant in a variety of short training courses (duration being more than 10 guided learning hours (GLH) but less than a week).

Specific Short Courses are detailed in the Participant Achievement Guidance. Payment will be made for the first Short Courses activity logged on CATS, subject to quality assurance approval from the Authority. Subsequent activities should be logged on CATS but will not result in any payment. Payment will only be made if a payment has been made for Supportive Measures. Only Permitted Activities, as shown within CATS and the Short Courses guidance, may be claimed by the Contractor

Actions that must be performed before payment can be made:

- Enrolment must be completed
- Assessment must be completed
- Action Plan must be started
- Data Integrity checks must be completed
- Two Core Activity items must be completed

- A payment for Supportive Measures has been made

#### **K9 Vocational/Educational/Training ([Payment Stage](#))**

The Contractor is to offer assistance by enrolling the participant in a variety of longer educational courses (duration being more than a week) or non-OLASS vocational courses which are linked to the participant's documented career aspiration or personal and social development.

The courses must be accredited by an external body (for example, City and Guilds) and agreed by NOMS prior to delivery/claiming.

Entry into Voluntary Employment is also included within this section. Placements must be with a voluntary or charitable organisation for a duration of no less than 30 hours in total.

Specific Achievements are detailed in the Participant Achievement Guidance. Payment will be made for the first Achievements activity logged on CATS, subject to quality assurance approval from the Authority. Subsequent activities should be logged on CATS but will not result in any payment. Payment will only be made if a payment has been made for Supportive Measures. Only Permitted Activities, as shown within CATS and the Vocational/Educational./Training guidance, may be claimed by the Contractor

Actions that must be performed before payment can be made:

- Enrolment must be completed
- Assessment must be completed
- Action Plan must be started
- Data Integrity checks must be completed
- Two Core Activity items must be completed
- A payment for Supportive Measures has been made

#### **K10 Participant Feedback. ([Payment Stage](#))**

The Contractor is to conduct a feedback interview. The structure and questions of the feedback interview will be provided by NOMS CFO.

Payment will be made for the first participant feedback interview logged, subject to quality assurance approval from the Authority. Subsequent interviews should be logged but will not result in any payment. Payment will only be made if the following criteria have been met; a payment has been made for enrolling the participant, an assessment has been conducted and is on CATS, an appropriate action plan has been entered onto CATS, DI checks have been completed and at least two Core Activity items have been completed and documented on CATS

Actions that must be performed before payment can be made:

- Enrolment must be completed
- Assessment must be completed
- Action Plan must be started
- Data Integrity checks must be completed
- Two Core Activity items must be completed

#### **K11 Review. ([Gateway Stage](#))**

The Contractor must regularly review the participant cases, ensuring that the action plan is up to date. Templates of what should be discussed in the reviews will be provided by NOMS CFO. The reviews will be logged on CATS and are not limited to one review per participant. There is no payment attached to the reviews.

**K12 Interview. ([Gateway Stage](#))**

The Contractor must log any employment interviews onto CATS as well as detailing whether the interview was successful – i.e. resulted in a job. There is no payment for adding interview information onto CATS.

**K13 Secured Employment. ([Payment Stage](#))**

The Contractor must record on CATS any employment gained as a direct result of the Contractor's intervention. Evidence of employment must be submitted to the Authority for quality assurance approval in accordance with the DI Participant Achievement Guidance document. Payment will only be made once the evidence of employment has been approved and verified by the Authority. Payment for Secured Employment will only be made if payment for Short Courses *or* Vocational/Educational/Training as well as for Participant Feedback has been paid with the corresponding interview entered on CATS.

Detail of what constitutes Secured Employment and the evidence required for a claim for a Secured Employment outcome is in the Participant Achievement Guidance. Payment will be made for the first employment logged on CATS, subject to quality assurance approval from the Authority. Subsequent employment should be logged on CATS but will not result in any payment.

**K14 Sustained Employment – 13 weeks. ([Gateway Stage](#))**

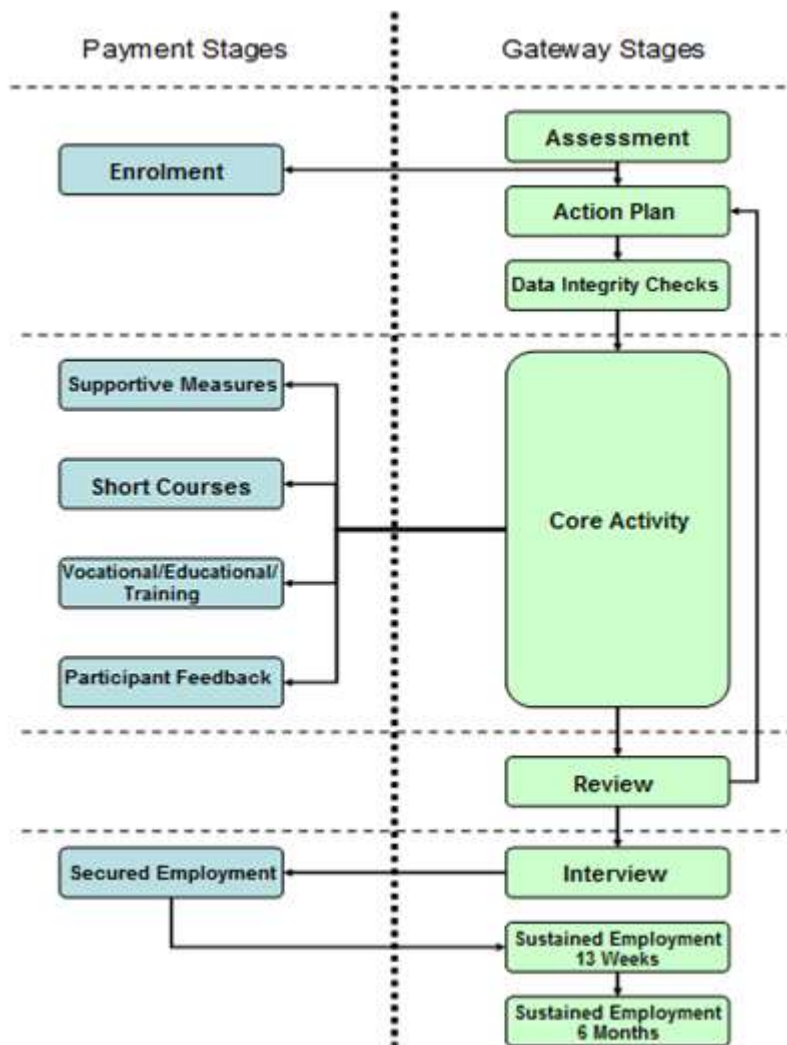
The Contractor should record on CATS whether the participant is still in employment 13 weeks after the start date of a Secured Employment achievement.

**K15 Sustained Employment – 6 months. ([Gateway Stage](#))**

The Contractor should record on CATS whether the participant is still in employment 6 months after the start date of a Secured Employment achievement.

Payment at milestones cannot be made unless previous milestones have been completed. The payment can only be made once per milestone per participant. This is illustrated in the figure below:





# SCHEDULE GA: YORKSHIRE ESF CONTRACT AREA (ECA) – REGIONAL ANNEX



To be read in conjunction with Schedule G

## **GA Yorkshire ESF Contract Area (ECA) – Regional Annex**

### **1. Overview and Background**

- GA1.1 A key deliverable of the European Social Fund (ESF) is to add value, either by increasing existing services, or by offering new services that cannot be provided via mainstream funding. A major focus is to improve opportunities and services targeting disadvantaged groups.
- GA1.2 The National Offender Management Service (NOMS) Co-financing Organisation (CFO) allocation will be made against the Social Inclusion Thematic Objective for the 2014-20 ESF Operational Programme. This is in recognition of NOMS CFO programme objective of targeting those offenders furthest away from mainstream activity, and as such allows providers to tackle a wider range of identified barriers.
- GA1.3 Offenders often experience multiple difficulties and barriers in accessing employment, training and education with many requiring additional support to engage with and access mainstream services. For this reason NOMS CFO programme aims to complement existing opportunities offered by mainstream funding by bridging service gaps experienced by offenders.
- GA1.4 The landscape of offender resettlement is changing significantly under Transforming Rehabilitation (TR) and NOMS CFO will adopt a partnership approach to ensure that activity does not duplicate and that it adds value to existing provision, working closely with a range of partners and providers. Despite the changes within offender resettlement, those working with offenders in both custodial and community settings have identified the on-going importance of individualised case-managed employment support for those furthest from the labour market. As such, NOMS CFO delivery can make a clear contribution to progress offenders into sustainable employment.

### **2. Complementarity**

- GA2.1 Co-operation, not competition will be the best way of supporting ESF participants and will help achieve the priorities of the ESF Operational Programme as part of the European Growth Programme. NOMS CFO will work in partnership with ESIF (European Structural Investment Fund) Opt-in Organisations and Local Enterprise Partnerships (LEPs) to ensure that activity will not duplicate and that

value is added to existing provision. NOMS will continue to work at a national level with, the Department for Work & Pensions (DWP) and the Skills Funding Agency, through the current professional and well-developed working relationships and structures. Additionally, NOMS CFO will work to develop a similar relationship with the Big Lottery, which will operate as an Opt-in organisation in the next ESF Operational Programme.

GA2.2 NOMS is committed to working closely with LEPs and delivery partners throughout the implementation and delivery of our co-financing plan under the 2014-2020 European Social Fund (ESF) Programme. Joint working with our partners means that ESF activity will be used to fill gaps, either through new initiatives, or enhancing what is already available.

GA2.3 An underlying principle of the NOMS Programme will be to engage those participants furthest away from mainstream activity and sufficiently prepare them for entry into mainstream activities in custody and the community. Providers will undertake delivery to prepare offenders for Transforming Rehabilitation (TR) and DWP Work Programme provision as appropriate.

GA2.4 National protocols are in place between NOMS, DWP and the ESF Managing Authority regarding CFO participant access to the DWP Work Programme. The expectation is that this will continue into the next funding period. As discussions progress between Opt-in organisations and the ESF Managing Authority, national protocols will be developed to ensure continued collaborative working throughout the next ESF Operational Programme. There is an expectation that the successful Provider will adhere to these and any regionally/locally agreed protocols.

### **3. Wider Regional Considerations**

GA3.1 Geographically, Yorkshire is fairly typical, being of average size and population density compared to other regions. From a socio-economic perspective, Yorkshire & Humberside can be split into three sub-regions: North Yorkshire is largely rural, and produces almost half of the region's agricultural output; Humberside, consisting of Eastern Yorkshire and Northern Lincolnshire, is dominated by its large port towns and has a significant manufacturing sector; West and South Yorkshire are largely urbanised and contain the majority of the region's population.

GA3.2 Deprivation in Yorkshire & Humberside is relatively high, being similar to the levels of deprivation found in the West Midlands but not as prevalent as in the North West and North East. There are also many areas of low deprivation, but areas of high deprivation out-number them two to one. Deprivation is concentrated in the region's larger settlements, and particularly in Kingston upon Hull. Household crime rates and personal crime rates are among the highest in the country. However, there is significant variation throughout the region, with crime rates in North Yorkshire being generally much lower than in the rest of the region. Yorkshire & Humber has the second highest unemployment rate of the

English regions, behind the North East, and a high percentage of the population have no qualifications.

GA3.3 As well as Yorkshire & Humberside having quite distinct socio-economic characteristics as a region, participants worked with on the current NOMS CFO programme in Yorkshire & Humberside are observed to have fairly distinct characteristics themselves. Yorkshire & Humberside participants on the current NOMS CFO programme generally have an array of issues relating to family and the home. Participants are much more likely to have housing issues, including problems with tenancy, housing benefits and rent arrears, while being less likely to have support from family and/or friends compared to participants in the other English regions. Those participants worked with in the community in Yorkshire & Humberside are also more likely to have domestic issues, are more likely to have previously spent time under Local Authority care, more likely to be a carer for a friend or relative, and/or more likely to have dependent children. Yorkshire & Humberside participants on the current NOMS CFO programme were also less likely to have computer skills, less likely to have a valid driving licence, and more likely to require help with basic education needs than participants in the other English regions.

GA3.4 The Yorkshire and Humberside CFO ECA encompasses several Local Enterprise Partnerships (LEPs)– Humber; York, North Yorkshire and East Riding; Leeds City Region; Sheffield City Region; Greater Lincolnshire who are responsible for setting the strategic direction and priorities of their respective European Structural and Investment Funds (ESIF) to support economic development and growth. The 39 LEPs submitted their initial 2014-2020 ESIF strategies to Government for approval in January. Following government feedback, LEPs are now finalising their ESIF plans in preparation for approval as part of the UK Operational Programme. Information pertaining to each LEP with links to their respective ESIF strategies can be found via the European Funding Network.<sup>1</sup>

#### **4. Yorkshire ECA delivery**

GA4.1 As highlighted in Appendix B of Schedule G, information is provided below regarding shortlisted prison delivery sites. Each site has been designated as either required or optional and additional information regarding specific delivery elements is also included within this document as appropriate. The custodial delivery sites have been nominated by the relevant Deputy Director of Custody, including the representatives for High Security and the contracted estate. All prisons on the shortlist take ESF and regional priorities into account. Bidders should consider where resources would be best placed, with the required delivery sites as a starting point. Full regional coverage is not a requirement and will not necessarily constitute a stronger offer, particularly where there is a reliance on in-reach delivery only.

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<sup>1</sup> <http://www.europeanfundingnetwork.eu>

The prisons in scope for this ECA are as follows and the tables below provide additional detail to assist bidders to develop custody based delivery proposals:

| Prison        | Daily Population Estimate | ESF Eligible % Estimate | Prison Details                                |
|---------------|---------------------------|-------------------------|---|
| Askham Grange | 104                       | 95                      | Female (although potentially due for Closure) |
| Doncaster     | 1,136                     | 90                      | Cat B Local                                   |
| Full Sutton   | 600                       | 75                      | High Security dispersal                       |
| Humber        | 1035                      | 95                      | Cat C Resettlement                            |
| Lindholme     | 990                       | 95                      | Cat C Trainer                                 |
| Moorland      | 996                       | 85                      | Cat C + YOI Trainer                           |
| Hatfield      | 264                       | 95                      | Cat D + YOI Trainer                           |
| New Hall      | 409                       | 95                      | Female  |
| Wealstun      | 805                       | 95                      | Cat C Trainer + Open                          |

| Prison        | Required  | Optional |
|---------------|---|----------|
| Askham Grange | ESF priority (female)/ sub group delivery                 | No       |
| Doncaster     | Transition region/ sub group delivery                     | No       |
| Full Sutton   | Transition region/ ECA target groups                      | No       |
| Humber        | Transition region   | No       |
| Lindholme     | (Transition region)                                       | Optional |
| Moorland      | Transition region/ sub group/NEETS                        | No       |
| Hatfield      | ESF priority (NEETS)/Transition region/sub group delivery | No       |
| New Hall      | ESF priority (female)/ECA target group/sub group delivery | No       |
| Wealstun      |   | Optional |

GA4.2 CFO delivery should match the resettlement prison model - local prisons will retain those prisoners serving less than 12 months resettling back into their locality, and Cat C trainer resettlement prisons will receive prisoners with 3 months left to serve who are resettling back into their locality.

GA4.3 The Female prisons are all in scope, although it should be noted that Askham Grange is potentially subject to closure. Potential providers will be informed of any decisions affecting this site during the procurement process.

GA4.4 Delivery should also consider CRC areas and Work Programme Provider areas.

GA4.5 Community delivery - In considering community delivery sites, Providers should take into account the priority target groups at ECA level. In some instances (i.e. for women offenders), the numbers eligible for CFO participation in establishments may be limited and thus Providers will need to take this into account when selecting community delivery sites. Providers should also take into account the nominated hard to reach sub groups which could apply equally to offenders in the community.

GA4.6 Providers will be required to develop effective referral routes and partnership protocols with CRCs and National Probation Service Local Delivery Unit (LDU) clusters in the community.

## **5. Stakeholder Priorities and Partnership Arrangements**

GA5.1 The following information should be considered by providers as it offers additional detail to assist bidders to develop delivery proposals for the Yorkshire region.

GA5.2 Cascade Foundation addresses the needs of prisoners who have learning difficulties and who are not willing to engage with guided education and mainstream education. The Cascade Foundation has been operating in Doncaster prison on a partnership basis with The Manchester College and Serco. This was started in September 2013.

GA5.3 Existing regional partnerships include:

- Integrated Offender Management – partnership with Police
- RSA Transitions (HMP Humber)
- Step 22 (Doncaster)
- ARC & Together Women, Max Spielman (New Hall & Askham)
- West Yorkshire Probation (Support to OM function and assisted with delivery of Thinking Skills Programme)
- Local Authorities for the provision of Library services and Parenting Courses
- Job Centre Plus (Main guidance for employment and education/training on release and Day 1 Mandation to work programme).
- West Yorkshire Community Chapel (Offers through the gate support for hard to reach prisoners who are released in the Leeds/Bradford areas)
- Elly Phillips (Debt support and advise for prisoners)
- Leeds Community Health
- Lifeline (Drug and alcohol services to prisoners)
- Shannon Trust (providing a prisoner led mentoring reading service to prisoners)
- Samaritans (Trains prisoners as Listeners to support prisoners at risk of suicide or self harm)
- Mosaic (Community mentors for Muslim prisoners)
- The Manchester College (Delivery of educational service and vocational training to prisoners) – two sub contracts N-ERGY & East Riding College.

- Sycamore Tree (supplies victim awareness training to prisoners)
- SESC (joint project with Leeds and New Hall to increase ETE and employment KPTs and increase income generation)
- One 3 One Solutions (assists to generate contract service places with the establishment)
- National Careers Service (give career information and guidance to prisoners)
- Range of businesses and employers that work with offenders on ROTL, after release or use industrial space in establishments to manufacture goods.

## 6. **Alignment**

GA6.1 In custody, the Basic Custody Screening Tool (BCST) will provide the first point for the offender during the first 72 hours of their sentence to discuss their own needs (and those identified by the Offender Supervisor) before a Resettlement Plan specific to the offender's needs is drawn up by the responsible CRC within 5 working days. The resettlement plan will feed into the offender's sentence plan and sequencing will ensure that interventions are delivered at the appropriate point during the sentence. At this stage, access points can be defined and appropriate referrals made. Access points and CFO criteria for both resettlement and non-resettlement prisons across the Yorkshire ECA will be developed and published locally as a guide. Access points should include induction, iTES (universal literacy, numeracy and skills assessment), pre discharge boards and access to the Learner Record System NOMIS, BCST & OASYS.

GA6.2 The main referral route into the CFO in resettlement prisons should come from working in partnership with CRC providers and be reflected in the Resettlement Plan. Other referrals could also be made by the Offender Supervisor who would also feed these into the Sentence Plan as well as referrals from OLASS learning and skills assessments, substance misuse and mental health services and wing staff. The expectation is that any referral will be routed via the OMU to ensure effective co-ordination. There should also be the opportunity for offenders to take a self referral route. Referrals for PPO's should come from IOM/6<sup>th</sup> Hub Police staff. Referral route will only come from good partnership working between all providers both internally and externally to CRC providers.

GA6.3 For all offenders serving over 12 months, OASys will be the default sentence planning tool and risk management system. Following assessment, Offender Supervisors will identify those individuals within the CFO target groups and refer to the Provider case managers allocated to each site where delivery is taking place. Any offender transfers to access CFO delivery should align with the principles of TR and Through the Gate provision.

GA6.4 As CRC resettlement services will be focussing on those at the very beginning of their sentence in order to produce the Resettlement Plan and for those in their final 3 months of their sentence prior to release, it is anticipated that the CFO providers would access prisoners during the middle section of their sentence and for those serving longer than 4 years within 3 years of their release date.

GA6.5 All aspects of the CFO programme should run alongside a prisoners' sentence plan and primarily be focused on the benefits of reducing risks of reoffending and reducing risk of harm. CFO staff based in the establishment will need to remain in close contact with the Offender Management Unit (OMU) and where possible, be able to attend sentence planning reviews. Incorporating resettlement skills (where required in the ECA) prior to transferring to a resettlement prison will enable prisoners to start focusing on resettlement and gain skills earlier, in order for them to integrate into a resettlement prison more effectively.

GA6.6 NOMS CFO providers will need to ensure complementarity with the following:

- BCST (Basic Custody Screening Tool)
- OLASS Maths/English assessment is mandatory in Y&H called iTES (Introduction to Training, Employment Services).
- NCS (Careers Advice)
- CRC Resettlement Plan
- Healthcare & Substance Misuse assessments
- National Learner Record System (LRS)
- OLASS provision including accredited mentoring
- HMP ETE provision
- Work Programme Providers
- And by sharing the contents of CATS assessments

GA6.7 Information routes and sharing will be primarily through NOMIS and iTES forming the prisoners Pathway to Education, Employment & Training. Further access will be required to Individual Learner Plans and P-Nomis with regards to Case Manager's notes.

GA6.8 All prisoners identified as High Risk to the Public will be managed by the Probation Service.

GA6.9 Additionally, CFO providers will need to consider the following:

- Potential links with the Mental Health In-Reach Team to identify offenders with mental health needs
- The development of information sharing protocols with Health care, Mental Health in reach, Work Programme providers, CRC's, OLASS provider and NCS at all levels
- Gaining access to the Learner Record System
- Utilising the Resettlement Plan
- PPO - Integrated Offender Management (IOM) work with Police
- Family & Parenting
- PIPE unit, mental health in reach, other healthcare provision looking at health and clinical support needs.
- Accommodation and limited debt advice
- iTES & NCS



- GA6.10 Links to CRC and IOM/6<sup>th</sup> Hub would be facilitated by Heads of Reducing Re-offending, links to OLASS & NCS provider will be facilitated by CHoLS. Prison Health Care leads will facilitate contact with healthcare and mental in-reach teams.
- GA6.11 Within HMP Full Sutton, integration with the Offender Management model is essential. There will need to be development of process, policy and procedure to support the following case management domains: risk management/information sharing, targeting, sequencing/planning, offender engagement and motivation and case conferencing. Possible referral routes will be via the Offender Supervisor drawing upon information from the learning and skills assessment, substance misuse services, mental health services and wing staff. The expectation is that any referral will be routed via the Offender Management Unit (OMU) to ensure effective coordination.
- GA6.12 Potential “triggers” for access to CFO activity will be provided via required outputs within a number of specifications. For example, the Manage the Custodial and Post release Periods specification contains a number of output features which have the potential to prompt referrals to CFO activity, such as requirements for a “resettlement plan”, (i.e. “the plan will enable the effective case management of the offender for the duration of their sentence. It describes an over-arching record which will enable Offender/Case Managers to coordinate effectively any other plans or interventions compiled by providers working on specific aspects of the offender’s case,” MCPRP). Other specification outputs include a requirement for an “enhanced assessment” with contributions from “specialist providers” when offenders present with “complex needs”.
- GA6.13 Overall, in supporting the aims of TR, CFO activity will be supported as part of an integrated, systemic approach to the rehabilitative, (including resettlement), and case management processes. In local resettlement prisons, where contracted TR services will support the bulk of short sentence prisoners, it is likely that CFO and contracted TR provision will dovetail within a limited custodial window. In the Core Local / Resettlement prisons, it is anticipated that CFO will engage in advance of TR services leading to a “warm handover” to the contracted provider, (and continuity of CFO support where required), at an appropriate point prior to discharge.

## **7. Target Groups – Entire Cohort**

- GA7.1 The general cohort for the NOMS CFO Programme is described within the ‘Target Groups – Entire Cohort’ section of the national specification (Schedule G). This section within the national specification (Schedule G) also sets out the priority groups that will be targeted across all ECAs. NOMS CFO will have a specific focus on young people and women in the 2014-20 programme. These

are both ESF priority groups and there is an expectation that specialist delivery will be available as part of provider services for these cohorts.

## **8. Target Groups – ECA Level Focus**

GA8.1 At the ECA level, there is a requirement to target additional groups to those described at national level. These have been agreed with regional stakeholders during the consultation process and are described below (note that any potential issues with achieving demographic targets is highlighted. Community only delivery may be required in some areas.

GA8.2 The following will be considered a priority across Yorkshire -

- Offenders with mental health needs including personality disordered offenders
- Dual diagnosis offenders (drugs misuse and mental health issues)
- Ex-Armed Forces
- Long sentenced prisoners
- Vulnerable prisoners (Rule 45 i.e. segregated for own safety), including sex offenders

## **9. Target Groups – Hard-to-help sub-projects**

GA9.1 There is a requirement to set up 5 sub-projects targeted at identified extremely hard-to-help sub-sets of the offender cohort within each ECA. Typically the throughput is 50-100 for the entire programme period (i.e. July 2015 – Dec 2020). In all instances the requirement is to set these sub projects up and begin throughput of the same in 2015. The most appropriate groups for each ECA have been selected in conjunction with stakeholders as part of the consultation process.

GA9.2 NOMS recognises that the complex needs of these groups are such that outcomes may be more difficult to achieve. There is an expectation that specialist provision may be required for specific sub-groups and a focus on supportive measures and other activity. The intention is to move participants in these groups towards the labour market, via ESF and mainstream provision. Therefore, the Provider is allowed to offset low numbers of employment achievements claimed by these groups against higher numbers for the general cohort.

GA9.3 The selected groups for Yorkshire are:

1. Offenders that have been through the care system
2. Prolific & priority offenders
3. Offenders with limited family ties/support network
4. Vulnerable women (including suffering domestic abuse)
5. Prisoners who have learning difficulties and will not engage in guided education or mainstream education (Doncaster only)

## **10. Additional Delivery Information**

GA10.1 Areas of need that should be considered are:

Hull City - breaking the cycle of generational benefit claimants and unemployment

Bradford, Hull, Barnsley, Doncaster for:

Low literacy & numeracy levels

Homelessness – Family mediation

Homelessness - Pre tenancy advice

Domestic Violence

Becoming work ready – appearance, self esteem, confidence, as well as work experience

Those working with the new NPS - High Risk group

### **G10.2 Sex Offenders**

As part of the prison reconfiguration programme, work with sex offenders is being structured around a treatment and support hub model. NOMS Commissioning Strategy focuses on high risk sex offenders with specialist courses restricted to those in greatest need. The approach focuses on dealing with offending behaviour and offering programmes consistent with the best available evidence, targeted at those who pose the greatest threat aimed to reduce the risk of the most serious offenders.

GA10.3 The new approach targets those with the most prolific offending who are a much higher risk to the public and more likely to reoffend on release with lower risk offenders given more appropriate interventions to match their individual needs. Resources are being targeted where they are needed most, providing a smaller number of longer, more intensive programmes for the most serious offenders to reduce their risk to the public.

GA10.4 Personality Disordered Offenders - The World Health Organisation (WHO) define personality disorder as, 'deeply ingrained and enduring behaviour patterns, manifesting themselves as inflexible responses to a broad range of personal and social situations'. Personality Disorder (PD) is estimated to affect between 60% and 70% of people in prison and approximately half under probation supervision. Prisoners with a personality disorder are more likely to end up being recalled to prison, accumulate adjudications, drop out or fail to make progress in accredited programmes, make complaints against staff, self-harm, and be transferred to NHS settings.

GA10.5 PD services across the NOMS estate are provided via a co-commissioned model managed jointly by NOMS and NHS England co-commissioners. Services are structured within a PD pathway framework across both custody and community and include Therapeutic Communities, PD treatment, PIPES (Psychologically Informed Planned Environments) and Enabling Environments. There is a separate PD pathway for women. CFO activities must be aligned with the appropriate PD environment and developed in

agreement with the Head of Reducing-Reoffending in conjunction with the regional NOMS PD Co-Commissioning lead. Providers will need to be aware of the specific regimes operating at some establishments for PD offenders which may pose constraints on the types of delivery possible.

GA10.6 Psychological Informed Planned environments (PIPE) –PIPEs are specifically designed environments where staff members have additional training to develop an increased psychological understanding of their work. This understanding enables staff to further develop a safe and facilitating environment that can support offenders to retain the benefits gained from treatment, test offenders to see whether behavioural changes are retained and facilitate offenders to progress through the system in a planned and pathway based approach.

GA10.7 *HMP Full Sutton CSC (Close Supervision Centre)* – A pilot service co-commissioned by OPD Co-Commissioners, Health and Justice Commissioners and the NOMS High Security Commissioners. This pilot seeks to test a new psycho-social operational model as part of a new CSC development within the prison. If the evaluation is positive a new operating model may be proposed for the wider CSC system across the High Security Estate.

GA10.8 *HMP New Hall* - The Rivendell Personality Disorder treatment service is designed for female offenders with complex needs arising from pervasive psychological difficulties (which may meet the criteria for personality disorder), who have a high risk of reoffending, have at least two years remaining on their sentence and whose progression and safe release into the community is complicated by their personality difficulties. The service is jointly provided by HMPS and NHS Foundation and will be operational from October 2014.

GA10.9 The CARE offending behaviour intervention for women is also run from The Rivendell Service. This programme, which was developed by NOMS for adult women in custody who have a history of violence and evidence of complex need, aims to enable women to better understand their risk and needs and to support them in living a satisfying and pro-social life. CARE targets a number of key areas including motivation and engagement, attitudes and beliefs and social inclusion and resettlement, the latter focussing upon developing realistic and achievable plans for the future, including the development of support networks. The CARE Programme at Rivendell is co-commissioned by the NHS England/NOMS OPD Commissioners and the NOMS Custodial Commissioning Team.

GA10.10 A dedicated Mentoring and Advocacy service for women, provided by The Together Women Project, also runs from The Rivendell Service. This service is available to any woman from the North of England on the OPD Pathway (either in custody or the community) for up to two years.

GA10.11 A Category C male PD Treatment Service is also proposed for the Yorkshire and Humber prison estate. It is anticipated that this will be established

during 2016-17. The final site has yet to be established but preferred sites include HMP Wealstun and HMP Humber.

## **11. Financial Allocation and Throughput**

GA11.1 all figures are cumulative as of funding allocation end date. Monthly throughput profiles will be agreed with Providers at post-tender negotiation stage.

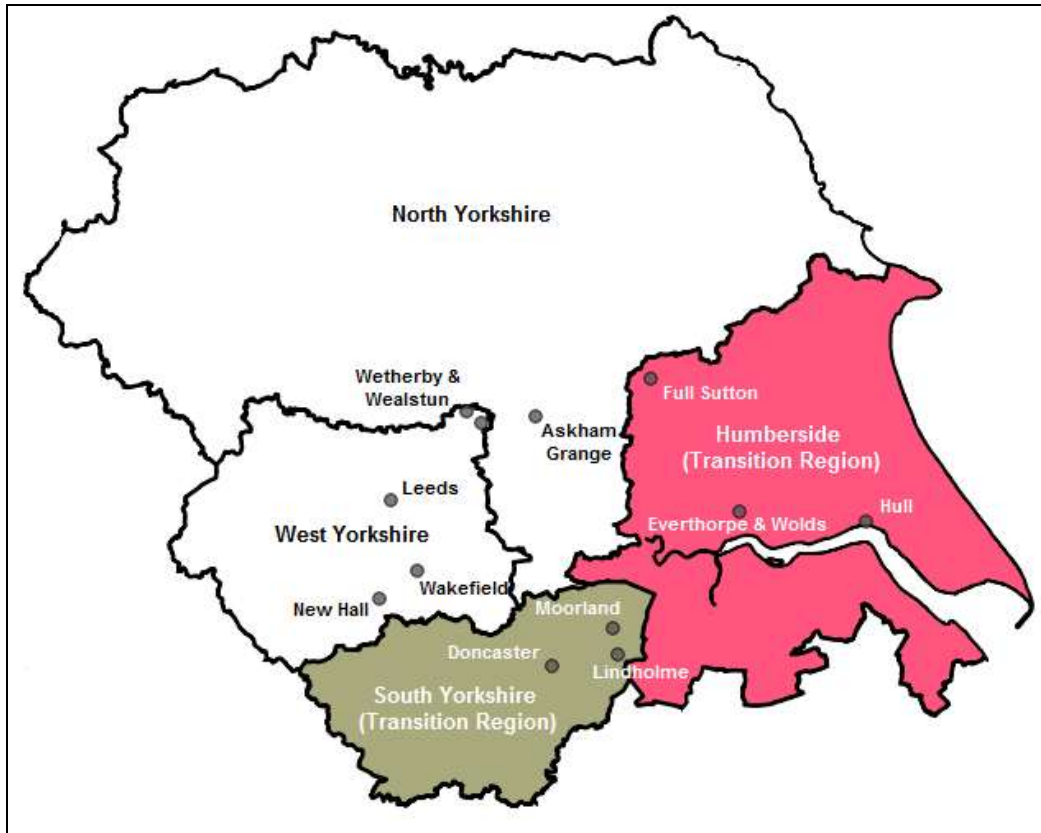
The financial allocation for Yorkshire and Humberside is £13,722,646

|   | Enrolments   | Supportive Measures | Short Courses | Vocational/<br>Educational/<br>Training | Gaining a qualification | Participant Feedback | Secured Employment |
|---|--------------|---------------------|---------------|---|-------------------------|----------------------|--------------------|
| <b>Yorkshire and Humberside<br/>£13,722,646</b> | <b>8,104</b> | <b>3,678</b>        | <b>1,621</b>  | <b>1,216</b>                            | <b>405</b>              | <b>6,888</b>         | <b>648</b>         |
| East Riding, Hull, NE & N Lincolnshire          | 2,133        | 968                 | 427           | 320                                     | 107                     | 1,813                | 171                |
| S Yorkshire                                     | 3,045        | 1,382               | 609           | 457                                     | 152                     | 2,588                | 244                |

|   | Economically Inactive | 24 and under | Disabled/<br>health conditions | 55+        | Ethnic Minorities | Female       |
|---|-----------------------|--------------|--------------------------------|------------|-------------------|--------------|
| <b>Yorkshire and Humberside<br/>£13,722,646</b> | <b>5,673</b>          | <b>1,407</b> | <b>1,783</b>                   | <b>332</b> | <b>1,452</b>      | <b>1,054</b> |
| East Riding, Hull, NE & N Lincolnshire          | 1,493                 | 213          | 469                            | 107        | 405               | 192          |
| S Yorkshire                                     | 2,132                 | 609          | 670                            | 152        | 579               | 274          |

ECAs which encompass transition regions have ring-fenced targets. Transition region targets are not in addition to the main ECA level targets. Therefore, 8,104 enrolments are required for the Yorkshire and Humberside ECA, of which 2,133 must be drawn from the transition region for the East Riding, Hull, North East Lincolnshire and North Lincolnshire and 3,045 to be drawn from the South Yorkshire transition region.

## 12. ESF Regions



Prison locations and County lines - transition regions highlighted