

Annex A: DRAFT Licence Agreement

Dated _____{●}

(1) THE SECRETARY OF STATE FOR JUSTICE

- and -

(2) INTERSERVE INVESTMENTS LIMITED

LICENCE

for

Premises at HMP Berwyn

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PARTICULARS

Date of Licence:

Parties to this Licence:

Authority:

THE SECRETARY OF STATE FOR JUSTICE c/o
Estate Directorate, Ministry of Justice, 102 Petty France,
London SW1H 9AJ

Provider:

INTERSERVE INVESTMENTS LIMITED whose
registered office is at Interserve House, Ruscombe Park,
Twyford, Reading, Berkshire, RG10 9JU (Company
Registration Number 74643.)

Licenced Premises:

Means the location at the Estate where the Services are
delivered or provided (as may be varied from time to
time on notice from Authority to Provider), initially being
those premises within the Estate known as [Units 4, 4m,
5, 5m, 10 and 11] shown edged red on the annexed
plan(s) and more particularly described in schedule 1.

(referred to elsewhere in this Licence as the “**Premises**”)

Licence Period:

The Contract Period as defined in the Contract unless
terminated earlier pursuant to clause 9.

**Licence Period
Commencement Date:**

the first day of the Licence Period

Estate:

the land and buildings known as HMP Berwyn

Licence Fee:

██

Contract:

agreement dated ██████████ made between the Authority (1) and the Provider (2) for the provision of employment positions for prisoners and to which the agreed form of this Licence is annexed.

Services:

The services (including, where applicable, any ancillary goods provided as part of the services) to be provided by the Provider to the Authority under the Contract

THIS LICENCE is made on the date and between the parties specified in the Particulars.

WHEREAS the Authority and the Provider have entered into the Contract and this Licence is granted to facilitate the provision of the Services.

1. INTERPRETATION

1.1 Particulars

In this Licence the words and expressions contained in the Particulars have the meanings specified in the Particulars but as further defined (if applicable) in this clause 1, elsewhere in this Licence and (where not defined in this Licence) as defined in the Contract.

1.2 Definitions

In this Licence (unless the context otherwise requires) the following words and expressions have the following meanings:

"Business Day" any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a bank, statutory, public or common law holiday;

"Conduits" sewers, drains, gutters, ducts, pipes, wires, cables, watercourses and other conducting media and also manholes, inspection chambers, tanks and apparatus used in conjunction with them;

"Contract Period" is as defined in the Contract;

"Provider's Personnel" is as defined in the Contract;

"CRC Scheme" the trading scheme established by the CRC Energy Efficiency Scheme Order 2010 or similar scheme operated by or on behalf of the Government of the United Kingdom;

"EPC" an energy performance certificate as defined in the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (including any associated reports and recommendations);

"Estate" as initially defined in the Particulars but as varied from time to time by the Authority, and any reference to the Estate includes any part of it;

"Estate Common Parts" those parts of the Estate intended or available for common use and so designated by the Authority from time to time including (where applicable) any car parks or access ways, roads or pavements for common use and any landscaped areas, and other areas or

	amenities on the Estate serving or otherwise benefiting the Estate as a whole;
"Fees"	solicitors', counsels', surveyors' and other consultants' and professionals' fees and costs, bailiffs' fees and management and in-house charges, including in each case all disbursements;
"Law"	Act of Parliament, statutory instrument, regulation, bye-law, requirement of a competent authority, statutory body, utility company or authority, common law or regulation, directive or mandatory requirement of the European Union;
"this Licence"	this Licence as varied from time to time together with any document which is supplemental to or collateral with or entered into pursuant to it;
"Liability"	all actions, proceedings, costs (including Fees), claims, demands, losses, expenses and liabilities;
"Neighbouring Property"	Other Property and any land or buildings adjoining or near to the Estate;
"Operator"	shall have the meaning given in Schedule A of the Contract;
"Other Property"	the Estate (except for the Premises) and any land or buildings which the Authority has an interest from time to time;
"Outgoings"	all present and future rates, taxes, duties, levies, charges, assessments, impositions and outgoings (whether or not of a capital or non-recurring nature and including any of a novel nature); "Permitted Use" the services provided by the Provider and its operations permitted under the Contract;
"Sign"	sign, notice, placard, board, poster, display or advertisement;
"Provider's Act"	an act or omission of the Provider;
"Provider's Default"	a breach of a Provider's Obligation;
"Provider's Obligation"	a covenant, warranty or obligation of the Provider in this Licence or in the Contract;

"Sub-licence"	has the meaning given in clause 2.5
"Third Party Operator"	has the meaning given in Schedule A of the Contract;
"Utilities"	foul and surface water drainage, air, water, gas, steam, electricity, communication and other similar services and supplies;
"VAT"	value added tax and any tax or duty of a similar nature substituted for it or in addition to it.

1.3 **Miscellaneous**

In this Licence:

- 1.3.1 a reference to an Act of Parliament includes all derivative instruments, orders, regulations and other matters and in each case any re-enactment, amendment consolidation or modification from time to time of that Act and any derivative instruments, orders, regulations or other matters;
- 1.3.2 where the Provider comprises more than one person, a reference to the Provider includes a reference to each such person;
- 1.3.3 an obligation by the Provider not to do something includes an obligation not to permit or allow it to be done;
- 1.3.4 a reference to the Premises includes any part of them except where the word is used in clause 2.5;
- 1.3.5 a reference to the end of the Licence Period is to the end of the Licence Period however it ends;
- 1.3.6 any consent provided by the Authority pursuant to this Licence are at the Authority's sole discretion and not subject to a test of reasonableness;
- 1.3.7 an approval of the Authority shall not be valid unless it is in writing;
- 1.3.8 any notice given to the Authority shall not be valid unless it is in writing and shall (unless the Authority or this Licence otherwise specifies) be given before the event or action to which it relates;
- 1.3.9 the ability of the Authority or anyone else to have access to or entry upon the Premises extends to anyone authorised by the Authority including with workmen, equipment and materials;
- 1.3.10 save where otherwise expressly stated, a reference to a clause or to a schedule is a reference to a clause of or schedule to this Licence and a reference to a paragraph is a reference to a paragraph of the relevant schedule to this Licence;
- 1.3.11 the table of contents and headings to clauses, paragraphs and schedules do not affect the interpretation of this Licence;

- 1.3.12 a consent of the Authority shall not be valid unless it is given in advance of the requested action, in writing, and signed;
- 1.3.13 any works (whether of repair, decoration, alteration or otherwise) that the Provider is permitted or obliged to carry out in accordance with this Licence shall be carried out with good quality materials, in a good and workmanlike manner and in accordance with good modern practice;
- 1.3.14 any termination of this Licence is without prejudice to any then accrued claims of any party against any other;
- 1.3.15 a provision or part of a provision of this Licence which is invalid, illegal or unenforceable shall be severed from all other provisions of this Licence to the extent necessary to make the remainder valid, legal and enforceable;
- 1.3.16 "**decorate**" includes paint, paper and otherwise treat in a proper manner and in accordance with the manufacturer's recommendations and applies to all areas usually or previously painted, papered or treated and "**decoration**" is interpreted in a similar manner;
- 1.3.17 "**include**" "**includes**" and "**including**" are deemed to be followed by the words "without limitation";
- 1.3.18 unless the context otherwise requires, "**or**" has both a conjunctive and a disjunctive meaning except where it is used in an expression involving the word "either" in which case it shall have only its disjunctive meaning;
- 1.3.19 general words introduced by "**other**" do not have a restrictive meaning.

2. GRANT OF LICENCE TO USE

- 2.1 The Authority grants a licence to use the Premises to the Provider for the Licence Period subject to the provisions contained in the remainder of this Licence or contained/ referred to in the documents (if any) specified in Schedule 3.
- 2.2 The Provider shall use the Premises as a licensee and the parties agree that there is no intention on the part of the Authority to create a relationship of Landlord and Tenant between the Authority and the Provider or its Personnel by this Licence;
- 2.3 The parties agree that notwithstanding any rights granted to the Provider as set out in Schedule 2, the Authority retains control, possession and management of the Premises and the Authority may use the Premises in any manner as the Authority sees fit. The Provider has no right to exclude the Authority from the Premises at any time.
- 2.4 The licence to use granted by this licence is personal to the Provider and the rights granted in this licence may only be exercised by the Provider.
- 2.5 Where the Authority gives written consent the Provider may grant a licence to its Operators and its Operators may grant a licence to any Third Party Operators to share use of the Premises or parts of the Premises ("Sub-licence"). Any Sub-licence shall be on similar terms to this Licence and any fee charged shall not exceed in total the Licence Fee in this Licence. Where a Sub-licence is granted the Provider's Obligations under this Licence shall be unaffected and the Provider shall be liable for acts and omissions of the persons sharing occupancy with the Provider.

3. OBLIGATIONS OF THE PROVIDER

The Provider covenants with the Authority as follows:

3.1 Licence Fee

To pay the Licence Fee on the first day of the Licence Period and then on each anniversary.

3.2 Outgoings and Utilities

3.2.1 To comply with the requirements and regulations of any company or authority supplying Utilities to the Premises.

3.3 Repair

The Provider shall be liable for the costs of the Authority in replacing or renewing any of the Authority's fixtures and fittings in or forming part of the Premises which are or become missing, broken, damaged, or destroyed arising from the activities of the Provider with new ones of equivalent quality and value to the reasonable satisfaction of the Authority.

3.4 Upkeep

3.4.1 To keep the Premises tidy in relation to its chattels;

3.4.2 To remove waste daily using the Authority's waste disposal arrangements;

3.4.3 To make good any damage to the Premises or to any objects contained on the Premises (other than fair wear and tear) which is caused by the Provider or any Provider's Personnel.

3.5 Yield Up

3.5.1 By the end of the Licence Period:

3.5.1.1 unless otherwise agreed with the Authority to remove from the Premises all Signs (other than those installed by or on behalf of the Authority) and all Provider's fittings, furniture, equipment and effects and to make good to the Authority's satisfaction all damage caused by the removal;

3.5.1.2 to deliver to the Authority any:

3.5.1.2.1 health and safety files;

3.5.1.2.2 risk assessments and written plans and arrangements relating to asbestos and fire safety;

3.5.1.2.3 maintenance records;

3.5.1.2.4 reports of inspections of plant and equipment relating to the Premises which are produced by the Provider;

- 3.5.2 At the end of the Licence Period to leave the Premises to the Authority fully vacant and in compliance with all of the Provider's Obligations;

3.6 Ensure Repair

- 3.6.1 To give immediate written notice to the Authority of any defects in the Premises which may give rise to a liability or duty on the Authority under any Law and to allow the Authority to display any Sign on the Premises it may reasonably require in relation to those defects;

3.7 Alterations

- 3.7.1 Not to make any alteration or addition to the Premises save as permitted pursuant to the following provisions of this clause 3.7
- 3.7.2 Not to commit any act of waste;
- 3.7.3 Not to make any external or structural alteration or addition to the Premises;
- 3.7.4 Not to make any alteration or addition to the Premises if it:
 - 3.7.4.1 hinders access to a Conduit;
 - 3.7.4.2 adversely affects the energy efficiency of the Premises or the Estate;
- 3.7.5 Not to make any changes to the external appearance of the Premises (including the erection of any flagpole or hoarding);
- 3.7.6 Not without the Authority's prior written consent to make any internal non-structural alteration to the Premises;
- 3.7.7 To supply to the Authority all plans and specifications the Authority may require to identify any proposed works and to carry out all works only in accordance with such approved plans and specifications;
- 3.7.8 Unless otherwise required by the Authority, after commencing any works at the Premises to complete them by the earliest of:
 - 3.7.8.1 a date which is a reasonable period after they have been commenced;
 - 3.7.8.2 the end of the Licence Period;
- 3.7.9 Any consent for alterations or additions may be on such conditions and on such terms as the Authority may require (including as to reinstatement at the end of the Licence Period);
- 3.7.10 Not to alter any electrical wiring in the Premises without the written consent of the Authority;

3.8 Signs

- 3.8.1 Not to exhibit or erect any Sign which is visible from outside the Premises without the Authority's consent;

- 3.8.2 To display at the Premises such Signs as the Authority or the Provider may be required by Law to display and any other Signs that the Authority deems prudent for the health or safety of anyone at the Premises or the Estate;

3.9 Use

- 3.9.1 Not to use the Premises other than for the Permitted Use;
- 3.9.2 To limit access to the Estate or Premises to such Provider's Personnel as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Personnel co-operate) with such other persons working concurrently on such Premises as the Authority may reasonably request;
- 3.9.3 Not to do anything which causes a nuisance, annoyance, disturbance, inconvenience, loss or damage to the Authority or any other person;
- 3.9.4 Not to allow any encroachment or new easement to be made on or against the Premises;
- 3.9.5 Not to give any acknowledgement that an easement or right benefiting the Premises is enjoyed by consent or otherwise;
- 3.9.6 Not to stop-up, darken or obstruct any window light or way belonging to the Premises;
- 3.9.7 To the extent that the Provider knows or ought reasonably to know of:
- 3.9.7.1 an encroachment on or circumstance which might result in the acquisition of an easement or other right over the Premises; or
- 3.9.7.2 the obstruction of a right of which the Premises has the benefit
- the Provider shall give immediate notice to the Authority of the these events and at the Authority's cost to take or join in such proceedings or take such other steps as the Authority may reasonably require in connection with the same;

3.10 Notices

Within five (5) Business Days of receipt (or sooner if necessary) to produce to the Authority a certified copy of any notice, order, permission or proposal affecting the Premises or their use that the Provider knows or ought to know about and at the request and cost of the Authority to make or join with the Authority in making such objections or representations in respect of it as the Authority may reasonably require.

3.11 Laws

- 3.11.1 Not to breach any Law that applies to the Premises or to the Estate Common Parts;
- 3.11.2 To comply with all Laws which at any time affect the use of the Premises or the employment of people by the Provider in them;

3.12 Environmental

- 3.12.1 Not to bring onto the Premises or allow to be on the Premises or to be discharged from them any substance which may cause harm to the health of living organisms or interference with the ecological systems of which they form part (including in the case of man, harm to his property) or which may cause harm to the quality of the water environment other than such items as are consistent with the Permitted Use and only then in accordance with all applicable Laws relating to such substances.

3.13 Authority's costs

- 3.13.1 To pay to the Authority within ten (10) Business Days of written demand basis all reasonable and proper costs (including Fees) properly incurred, charged or payable by the Authority in connection with any consent or approval applied for under this Licence, whether or not granted;
- 3.13.2 To pay to the Authority within ten (10) Business Days of written demand all reasonable and proper costs (including Fees and the cost of compliance with any pre-action protocols under the Civil Procedure Rules or otherwise from time to time in force or required to be complied with) properly incurred, charged or payable by the Authority in connection with any of the following:
- 3.13.2.1 a Provider's Act or a Provider's Default;
 - 3.13.2.2 supervising any works carried out by or on behalf of the Provider or to remedy a Provider's Default;

3.14 Indemnity

To indemnify the Authority against Liability arising directly or indirectly from any of the following:

- 3.14.1 the use or occupation of the Premises by the Provider and its Operators and any Third Party Operators;
- 3.14.2 a Provider's Default;
- 3.14.3 a Provider's Act;

3.15 Regulations

- 3.15.1 Not to deposit any rubbish in the Premises other than in proper receptacles and to ensure that they are regularly emptied;
- 3.15.2 Not to overload the Premises or damage, overload or obstruct any Conduits, plant, machinery or equipment in or serving them;
- 3.15.3 Not to use the Premises for any noisy, offensive, dangerous, illegal or immoral purpose nor allow anyone to reside or sleep at the Premises or to gamble or bet in them;
- 3.15.4 To use the rights in schedule 2 strictly in accordance with the provisions of that schedule and not to cause a nuisance or damage to the Estate Common Parts or to the other tenants and occupiers of the Estate;
- 3.15.5 Not to allow in the Premises without the Authority's written consent any machinery or equipment which is not appropriate for the Permitted Use or

which causes noise or vibration which can be heard or felt outside the Premises;

3.15.6 Not to play any music, recordings or broadcasts in the Premises without the consent of the Authority;

3.15.7 Not to allow any animals to be in the Premises;

3.15.8 To comply with such instructions as the Authority may from time to time prescribe for:

3.15.8.1 the conduct, management or use of the Premises and the Estate and any areas and matters which the Provider has the right to use in schedule 2;

3.15.8.2 the health or safety of anyone at the Premises and the Estate or on any such areas or so as not to discriminate against them.

3.15.9 To provide the Authority with:

3.15.9.1 any information required by the Authority in connection with the preparation of an EPC;

3.15.9.2 a copy of any EPC obtained by the Provider for the benefit of the Premises within one (1) month of its issue;

3.15.10 Not to do or omit to do anything which invalidates any EPC for the Premises or adversely affects its EPC rating;

3.15.11 Not to cause any damage to the Estate Common Areas and indemnify the Authority against the cost of putting right in the event as damage so caused;

3.15.12 To comply at the Authority's cost with the Authority's requirements from time to time (consistent with the Provider's reasonable use of the Premises) regarding energy consumption within the Premises;

3.15.13 Promptly to provide the Authority with all information in relation to energy consumption at the Premises properly requested from time to time by the Authority for the purposes of the CRC Scheme;

3.15.14 Not to park, load or unload vehicles except in positions (if any) designated from time to time by the Authority;

3.15.15 Not to allow any vehicles to be driven in the car parks or on the access roads of the Premises other than at walking pace and then only in accordance with all relevant Signs.

3.16 **Encumbrances**

To comply with all covenants and other matters affecting the Premises including those set out in the documents (if any) in Schedule 3 save those for which notices are publicly available;

3.17 **Contract**

To observe and comply with its obligations contained in the Contract insofar as they relate to the Premises.

4. INSURANCE

- 4.1 The Provider shall comply with the applicable terms in relation to insurance contained in the Contract.

5. OBLIGATIONS OF THE AUTHORITY

The Authority agrees that while the Provider complies with the terms of this Licence:

- 5.1 to allow the Provider to use the Premises solely for the purpose of performing its obligations under the Contract;
- 5.2 to be responsible for maintenance of the Premises due to wear and tear caused by daily running of the Services pursuant to the Contract;
- 5.3 to be responsible for utility services provided to the Premises and shall procure their continued provision subject to their availability.

6. PROVISOS

6.1 Access to Estate and/or Premises and Security

- 6.1.1 Where the Provider'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. Provider'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/the Estate if already there.
- 6.1.2 The Provider shall promptly return any pass if at any time the Authority's personnel so requires or if the person to whom the pass was issued ceases to be involved in the performance of the Contract. The Provider shall promptly return all passes on completion or earlier termination of the Contract.

6.2 Security

- 6.2.1 Whilst on the Estate and/or Premises the Provider'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 Provider on request.
- 6.2.2 The Authority's personnel shall have the right to carry out any search of Provider Personnel or of vehicles used by the Provider at the Premises.
- 6.2.3 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.

6.3 Compensation

Any right of the Provider to claim compensation from the Authority (whether on vacating the Premises or otherwise) is excluded to the extent permitted by Law.

6.4 Other Property and Neighbouring Property

- 6.4.1 In this clause 0 a "**Permitted Person**" is the Authority and anyone authorised by either of them.
- 6.4.2 A Permitted Person may at any time carry out any works to Neighbouring Property or may use Neighbouring Property as the Authority thinks fit.
- 6.4.3 A Permitted Person may or may authorise anyone to develop, alter or re-build any Neighbouring Property whether or not this obstructs or interferes with light or air to the Premises Provided That the Provider's use and enjoyment of the Premises is not materially adversely affected.
- 6.4.4 The Provider does not have and shall not acquire any easement, right or privilege over Other Property.
- 6.4.5 Any enjoyment of light or air to the Premises is by consent.

6.5 Understanding and Representations

6.5.1 The agreed form of this Licence is annexed to the Contract.

6.5.2 The Provider acknowledges that it has not entered into this Licence relying wholly or partly on any statement or representation made by or on behalf of the Authority unless the statement:

6.5.2.1 was not capable of verification by search or enquiry; and

6.5.2.2 was made in this Licence or in writing by the Authority's solicitors to the Provider's solicitors before its grant.

6.5.3 Nothing in clause 0 shall however operate to limit or exclude any liability for fraud or deliberate misrepresentation.

6.6 Exclusion of Liability

So far as allowed by Law, the Authority is not responsible to the Provider for any of the following:

6.6.1 save where due to the Authority's negligence, damage to the Premises or persons or property due to any act or omission of any occupier of, visitor to or person working in the Premises or any statutory authority or the state or condition of the Premises or the Estate;

6.6.2 loss or damage (including economic loss) arising from the defective working, stoppage or breakdown of any Conduits, Utilities, appliances, apparatus, lifts or other machinery in the Premises or the Estate or serving them;

6.6.3 failure to perform any obligation of the Authority in this Licence unless the Authority has been given notice by the Provider of the failure and has not remedied it within a reasonable period after the service of the notice and then the Provider is only entitled to make a claim against the Authority in respect of anything which occurs after the reasonable period has elapsed.

6.7 Suspension of Services

The Authority is entitled to suspend any services or Utilities to the Premises or to stop or divert any Conduits while it carries out inspections or repairs and is not under any Liability to the Provider for any suspension, stopping-up or diversion Provided That any such suspension or interruption is for as short a period as reasonably practicable.

6.8 Sale of Goods

6.8.1 The Provider irrevocably appoints the Authority as its agent to store or dispose of any items left by the Provider or any other person at the Premises which are there more than five (5) Business Days after the end of the Licence Period.

6.8.2 The Authority after that time may store or dispose of those items as it thinks fit without liability to the Provider but shall account to the Provider for the proceeds of sale after deducting storage and sale costs.

6.8.3 The Provider indemnifies the Authority against all Liability if the Authority disposes of any such items after the end of the Licence Period which do not belong to the Provider.

7. APPLICATION OF CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

7.1 It is not intended that any person will be entitled to enforce any provisions of this Licence who would not have been so entitled but for the enactment of the Contracts (Rights of Third Parties) Act 1999.

8. GOVERNING LAW AND JURISDICTION

8.1 This Licence and the rights and obligations of the parties under it will be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English and Welsh courts.

9. TERMINATION OF THE CONTRACT

This Licence shall automatically terminate with no requirement for either party to serve notice on the other on the happening of any of the following events:

the expiry or termination of the Contract for any reason.

SCHEDULE 1

Premises

1. The premises from time to time allocated on notice from Authority to Provider to provide the Services at the Estate [] including:
2. all fixtures and fittings from time to time;
3. all improvements, alterations and additions;
4. conduits which are within such premises

but excluding any air-space above the buildings forming part of such premises.

SCHEDULE 2

Rights Granted: None

SCHEDULE 3

Rights Accepted or Reserved

All matters and covenants referred to on or contained within documents referred to on title number CYM623853

SIGNED ON BEHALF OF THE SECRETARY OF)
STATE FOR JUSTICE)

.....

Title

)
SIGNED ON BEHALF OF INTERSERVE)
INVESTMENTS LIMITED)

.....

Title