



Ministry
of Justice

DATE : 11/02/2022

Agreement
relating to
Community Accommodation Service 2 (“**CAS-2**”)

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PARTIES

- (1) **THE SECRETARY OF STATE FOR JUSTICE**, acting on behalf of the Crown, of 102 Petty France, London, SW1H 9AJ (the **Authority**); and
- (2) **Nacro**, whose registered company number is 00203583 and whose registered office is Walkden House, 16-17 Devonshire Square, London, England, EC2M 4SQ (the **Supplier**).

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract the following words have the following meanings unless otherwise provided or the context otherwise requires:

"Acceptance Criteria"	the criteria as agreed between the Parties and set out in the Transition Plan.
"Accessible Bed Space"	Bed Spaces suitable for residents with a disability in accordance with G4a of Schedule 1.
"Accommodation"	the accommodation provided to CAS-2 Residents by the Supplier in accordance with this Contract.
"Accommodation Agreement"	means the agreement between the CAS-2 Residents and the Supplier for the provision of Accommodation by way periodic licences excluded from the protection of the Housing Acts 1985 and 1988 and the Protection from Eviction Act 1977, as they grant occupancy rights over accommodation which is not let as a dwelling or a residence but is simply a temporary expedient to the occupier's bail, prisoner, offender or criminal justice licensee status.
"Accounting Reference Date"	means the date each year which the Supplier prepares its annual audited financial statements.
"Actual Bad Debts"	all income payable by CAS-2 Residents for Available Bed Spaces which has not been recovered by the Supplier and which the Supplier has classified as bad debt according to the same system or basis of classification as used by the Supplier to denote Projected Bad Debt.
"Actual Performance"	shall have the meaning set out in Paragraph 6.3 of Schedule 4.
"Affected Party"	the Party seeking to claim relief in respect of a Force Majeure Event.
"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.
"Alternative to Custodial Recall (ATCR)"	as an individual subject to licence conditions who is assessed by Probation as being at risk of a Recall to Custody due to the genuine loss of accommodation that has been utilised in the community after release and not for someone who is released from prison as Homeless

"Applicable Supplier Personnel"	<p>any Supplier Personnel who:</p> <p>(a) at the date of termination of this Contract:</p> <ul style="list-style-type: none"> (i) are employees of the Supplier; (ii) are Dedicated Supplier Personnel; (iii) have not transferred (and are not in scope to transfer at a later date) to the Replacement Supplier by virtue of the Employment Regulations; and <p>(b) are dismissed or given notice of dismissal by the Supplier within:</p> <ul style="list-style-type: none"> (i) 40 Working Days of the date of termination of this Contract; or (ii) such longer period required by Law, their employment contract (as at the date of termination of this Contract) or an applicable collective agreement; and <p>(c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and</p> <p>(d) the Supplier can demonstrate to the satisfaction of the Authority:</p> <ul style="list-style-type: none"> (i) are surplus to the Supplier's requirements after the date of termination of this Contract notwithstanding its obligation to provide services to its other customers; (ii) are genuinely being dismissed for reasons of redundancy; and <p>(e) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees.</p>
"Application programming interface (API)"	means a set of clearly defined methods of communication among various components.
"Approval", "Approve" and "Approved"	the prior written consent of the Authority.
"Approved Premises"	has the meaning given to it in section 13(1) of the Offender Management Act (OMA);
"Arbitration Notice"	shall have the meaning set out in Clause 63.7.2.
"Asset Register"	shall have the meaning set out in Clause 7.4.
"Assignee"	shall have the meaning set out in Clause 54.2.

"Assurance"	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
"Auditors"	<ul style="list-style-type: none"> (a) the Authority's internal and external auditors; (b) the Authority's statutory or regulatory auditors; (c) the National Audit Office; (d) the Audit Commission; (e) HM Treasury (f) the Cabinet Office; (g) any party formally appointed by the Authority to carry out audit or similar review functions; and (h) any successors or assigns of any of the above.
"Authority Background IPR"	<ul style="list-style-type: none"> (a) Intellectual Property Rights owned or licensed by the Authority before the Commencement Date; and/or (b) Intellectual Property Rights created, acquired or licensed by the Authority independently of this Contract.
"Authority Data"	<ul style="list-style-type: none"> (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any written, electronic, magnetic, optical or tangible media, and which: <ul style="list-style-type: none"> (i) are supplied to the Supplier by or on behalf of the Authority; and/or (ii) the Supplier is required to process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Authority is the Data Controller and the Supplier processes in the performance of its obligations under this Contract.
"Authority Materials"	<ul style="list-style-type: none"> (a) the Authority Data; (b) any other assets, rights, materials, documentation, information, programs, codes, hardware, software, telecoms devices and equipment which the Authority owns or has the right to use; and (c) any Intellectual Property Rights vesting in any of the items set out in sub-paragraphs (a) and/or (b) above, <p>but excluding Supplier Assets and Supplier Background IPR.</p>

"Available Bed Space"	a Bed Space which is either: (a) actually available within the Accommodation for use by a CAS-2 Resident; or (b) not available for use by a CAS-2 Resident and either: (i) which has been so for less than twenty-four (24) hours; or (ii) which is subject to a repair plan that has been approved by the Authority in accordance with Paragraph G8 of Schedule 1.
"Average Available Bed Spaces"	the average number of Available Bed Spaces per day in each Month calculated by the Supplier as the sum of the total number of Available Bed Spaces on every day in that Month divided by the number of days in that Month.
"Average CAS-2 Residents"	the average number of CAS-2 Residents in any Month calculated by the Supplier as the sum of the total number of CAS-2 Residents on every day in that Month divided by the number of days in that Month.
"Bad Debt Surplus"	has the meaning given in Paragraph 6.4 of Schedule 5.
"Bail Order"	an order from a Court that details the bail conditions for a defendant granted bail.
"Bailee"	shall have the meaning set out in Paragraph A1 of Schedule 1 (Service Specification).
"Baseline Assumption Number"	80% of the Available Bed Space
"Baseline Personnel Security Standard"	shall have the meaning set out in 7.1 of Schedule 12
"CAS-2 Service Levels"	the service levels which shall apply to the provision of the Services as set out in Schedule 4 (and CSL shall be construed accordingly).
"CAS-2 Service Level Threshold"	in respect of each CAS-2 Service Level, the required level of performance stated in the "Service Level Threshold" column of the table set out in Annex 1 of Schedule 4.
"BCDR Plan"	shall have the meaning set out in Paragraph 2.1 of Schedule 17.
"Bed Spaces"	the bed spaces which the Supplier is obliged to provide to the CAS-2 Residents within the Accommodation in accordance with the terms of this Contract including the Specification.

"Breach of Security"	<p>the occurrence of:</p> <p>(a) any unauthorised access to or use of the Services, Supplier Premises, Supplier systems, the systems used by the Authority, and/or any other premises or assets used in connection with this Contract;</p> <p>(b) the loss, corruption and/or unauthorised disclosure and/or use of any information or data (including Confidential Information, Authority Materials and/or Deliverables), including any copies of such information or data used in connection with this Contract; and/or</p> <p>(c) any other incident as may be set out in Schedule 12 or the Baseline Control Set.</p>
"Breakage Payment"	shall have the meaning given in Clause 48.2.2.
"Business Continuity Plan"	shall have the meaning set out in Paragraph 2.2.2 of Schedule 17.
"Business Continuity Services"	shall have the meaning set out in Paragraph 4.2.2 of Schedule 17.
"CAS-2 Resident"	an individual who is provided with Accommodation (or a part thereof) and/or a recipient of the Services by the Supplier in response to a referral from a Referrer. "Incoming CAS-2 Resident" shall be construed as an individual who has been referred to receive the aforementioned Accommodation and/or Services but has not yet arrived.
"Caseload Management System"	the system used by the Supplier to manage and record key activities relating to the delivery of the Services in accordance with the requirements of this Contract.
"Change Authorisation Note"	a form setting out an agreed Contract Change which shall be substantially in the form set out in Annex 2 of Schedule 9.
"Change Control Procedure"	the procedure for changing this Contract as set out in Schedule 9.
"Change Control Procedure Group"	the body described in Paragraph 5 of Schedule 6.
"Change Request"	a written request for a Contract Change which shall be substantially in the form of Annex 1 to Schedule 9.
"CHECK Scheme"	the scheme operated by the Communications Electronic Security Group for penetration testing data processing systems.
"Commencement Date"	is the date of this Contract.
"Community Probation Practitioner"	the individual responsible for managing an offender under statutory supervision in the community including a Responsible Officer as defined in section 197 of the Criminal Justice Act 2003.
"Comptroller and Auditor General"	the comptroller and auditor general of the National Audit Office.

"Commercially Sensitive Information"	the information listed in Schedule 19 comprising the information of a commercially sensitive nature which the Parties have agreed that, if disclosed by the Authority would cause the Supplier significant commercial disadvantage or material financial loss.
"Community Order"	has the meaning given to it in section 177 of the Criminal Justice Act 2003.
"Confidential Information"	<p>all Personal Data, Commercially Sensitive Information and any information, however it is conveyed, that relates to the business affairs, public functions, developments, trade secrets, Know-How, Personnel, and suppliers of either Party, including all Intellectual Property Rights therein, together with all information derived from any of the above, and any other information clearly designated as being confidential and:</p> <p>(a) in relation to information provided by the Authority, any other information which the Authority reasonably considers confidential (whether or not it is marked "confidential"); and</p> <p>(b) in relation to information provided by the Supplier, any information which the Supplier reasonably considers to be confidential (whether or not it is marked "confidential") and, in respect of which, the Supplier has obtained the Authority's Approval is confidential.</p>
"Consumer Price Index"	the index with this name published by the Office for National Statistics or any successor ministry or department.
"Continuous Improvement Report"	shall have the meaning set out in Clause 8.5.
"Contract"	this written agreement between the Authority and the Supplier consisting of these terms and conditions and the Schedules and their Annexes.
"Contract Change"	a change to this Contract.
"Contract Manager"	a member of the Authority's Personnel with the responsibility of managing the Contract on behalf of the Authority.
"Contract Period"	the period of time this Contract is in force, as more particularly defined in Clause 42.

"Contract Price"	<p>"Contract Price" the amount (exclusive of any applicable VAT), payable to the Supplier by the Authority under this Contract, as set out below and subject to further adjustment under Schedule 4 (Performance) and Schedule 5 (Pricing and Payment Mechanism):</p> <p>REDACTED</p>
"Contract Year"	<p>a period of twelve (12) Months commencing on the Service Commencement Date and, thereafter, each anniversary of the Services Commencement Date, provided that the final Contract Year shall end on the expiry or termination of the Contract Period.</p>
"Control"	<p>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.</p>

"Corporate Change Event"	<p>means:</p> <p>a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;</p> <p>(b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;</p> <p>(c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services;</p> <p>(d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;</p> <p>(e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;</p> <p>(f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12-month period;</p> <p>(g) an order is made, or an effective resolution is passed for the winding up of any member of the Supplier Group;</p> <p>(h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;</p> <p>(i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or</p> <p>(j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;</p>
"Corporate Resolution Planning Information"	<p>means, together, the:</p> <p>(a) Group Structure Information and Resolution Commentary; and</p> <p>(b) UK Public Sector and CNI Contract Information;</p>
"Conviction"	<p>a finding of guilt in a Court other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order.</p>

"Court"	the establishments falling under the jurisdiction of Her Majesty's Courts Service (HMCS) being an executive agency of the Ministry of Justice including Magistrates' Courts, the Crown Court, County Courts, the High Court and Court of Appeal in England and Wales.
"Crown"	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 government ministers, government departments, government and particular bodies and government agencies.
"Critical National Infrastructure"	<p>means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:</p> <p>(a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or</p> <p>(b) significant impact on the national security, national defence, or the functioning of the UK;</p>
"CRP Information"	means the Corporate Resolution Planning Information as explained in Section 2 of Schedule 17
"CRTPA"	shall have the meaning set out in Clause 62.1.
"Cyber Essentials"	a level of assurance as further detailed in the Cyber Essentials Scheme.
"Data Controller"	means as it is defined in the UK GDPR.
"Data Destruction"	means the process of erasing or otherwise destroying data or information whether in physical form (such as printed paper) or stored on virtual/electronic or physical mediums such as, but not limited to, tapes and hard disks; the purpose is to render data completely irretrievable and inaccessible, and therefore void.
"Data Loss Event"	means any event which results, or may result, in unauthorised access to Personal Data held by the Supplier under the Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of the Contract, including any Personal Data.
"Data Processor"	means as it is defined in the UK GDPR.

"Data Protection Legislation"	<p>(a) the UK GDPR, the LED 2016/680 and applicable implementing Laws (where these are still applicable)</p> <p>(b) the DPA 2018 to the extent that it relates to the processing of Personal Data and privacy;</p> <p>(c) the Privacy and Electronic Communications (EC Directive) Regulations 2003; and</p> <p>(d) all applicable Laws in force from time to time relating to the processing of Personal Data and privacy and guidance and codes of practice issues from time to time by the Information Commissioner (or its successor organisation(s)).</p>
"Data Subject"	means as it is defined in the UK GDPR.
"Dedicated Supplier Personnel"	all Supplier Personnel then wholly or mainly assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services.
"Default"	any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term and shall also include in respect of the Supplier, a Service Failure) 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 this Contract and in respect of which such Party is liable to the other.
"Deliverable"	any materials, item or feature to be delivered by the Supplier or its Personnel during this Contract Period, including those set out in the Service Specification, Transition Plan and any Exit Plan including all Intellectual Property Rights therein but shall not include Supplier Assets and Supplier Background IPR.
"Detailed Transition Plan"	the plan developed and revised from time to time in accordance with Paragraph 5 of Schedule 3 (Transition).
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period of four (4) hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period.
"Disaster Recovery Plan"	shall have the meaning set out in Paragraph 2.2.3 of Schedule 17.
"Disaster Recovery Services"	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster.
"Disaster Recovery System"	the system identified by the Supplier in the Disaster Recovery Plan which shall be used for the purpose of delivering the Disaster Recovery Services.

"Disclosure and Barring Service Check"	checks performed by the executive non-departmental public body, sponsored by the Home Office that carries out the statutory functions previously undertaken by the Criminal Records Bureau and the Independent Safeguarding Authority (and "DBS" shall be construed accordingly).
"Dispute Resolution Procedure"	is the procedure more particularly set out in Clause 63.
"Disputed Invoice"	shall have the meaning set out in Paragraph 4 of Schedule 5.
"Domestic Abuse"	<p>any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality including:</p> <ul style="list-style-type: none"> (a) psychological; (b) physical; (c) sexual; (d) financial; and/or (e) emotional.
"DOTAS"	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.
"DPA"	means the Data Protection Act 2018.
"Electronic Monitoring"	a service provided to tag individuals for electronic monitoring purposes for Home Detention Curfew and those on bail that are also subjected to curfew with electronic monitoring.
"Electronic Monitoring Supplier"	a third-party supplier of Electronic Monitoring.
"Employee Liabilities"	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

	<p>(b) unfair, wrongful or constructive dismissal compensation;</p> <p>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</p> <p>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</p> <p>(e) outgoing employment debts and unlawful deduction of wages including PAYE and national insurance contributions;</p> <p>(f) employment claims whether in tort, contract or statute or otherwise; and</p> <p>(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation.</p>
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive.
"Encumbrance"	a mortgage, charge, pledge, lien or any other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
"Environmental Information Regulations"	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.
"Equalities Provisions"	shall have the meaning set out in Clause 24.1.
"Exit Milestone"	an event or task set out in an Exit Plan.
"Exit Milestone Date"	the date set out against the relevant Exit Milestone by which the Exit Milestone must be achieved.
"Exit Period"	<p>either:</p> <p>(a) the period of twelve (12) Months prior to the date on which this Contract is due to expire;</p> <p>(b) if this Contract is terminated early, the longer of the period from the date of notification of termination to:</p> <p style="padding-left: 40px;">(i) the effective date of termination; or</p> <p style="padding-left: 40px;">(ii) twelve (12) Months following the date of notification of termination, or</p> <p>(c) such other period of time agreed between the Parties in the Exit Plan.</p>

"Exit Plan"	the plan produced and updated by the Supplier during this Contract Period in accordance with Schedule 11.
"Exit Project Board"	the body described in Paragraph 4.3 of Schedule 11.
"Exit Services"	the services and activities to be provided by the Supplier in accordance with the Exit Plan.
"Exit Team"	the team to be appointed by the Supplier in accordance with Paragraph 2 of Schedule 11.
"Exit Working Group"	the body described in Paragraph 4.4 of Schedule 11.
"Expiry Date"	the date on which the Contract comes to an end.
"Fast-track Change"	any Contract Change which the Parties agree to expedite in accordance with Paragraph 7 of Schedule 9.
"FDE Group"	means the Supplier and any of its key sub-contractors.
"Financial Model"	any or all of the financial models prepared by the Supplier in accordance with Schedule 8 and updated pursuant to Schedule 8 (Financial Model) including, the financial model set out in Annex 1 of Schedule 8

"Financial Distress Event"	<p>The following shall be Financial Distress Events;</p> <ul style="list-style-type: none"> (a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold; (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects; (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity; (d) an FDE Group entity committing a material breach of covenant to its lenders; (e) a key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute; (f) any of the following: <ul style="list-style-type: none"> (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m; (ii) non-payment by an FDE Group entity of any financial indebtedness; (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default; (iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or (v) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity; <p>in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement.</p>
"Flexible Contracted Bed Space Provision"	shall have the meaning set out in 2.3 of Schedule 5.
"FCBSP Mobilisation Cost"	REDACTED
"FCBSP Decrease Cost"	REDACTED
"FOIA"	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 Event"	<p>any of the following: fire; flood; violent storm; pestilence; explosion; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, to the extent that such event has affected the ability of the Affected Party from performing its obligations in accordance with the terms of this Contract and where such event is not attributable to any act or failure to take preventative action by the Affected Party, but excluding:</p> <p>(a) any industrial action occurring within the Supplier's or any Sub-contractor's organisation; and</p> <p>(b) the failure by any Sub-contractor of the Supplier to perform its obligations under any Sub-contract.</p>
"Former Supplier"	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor).
"Fraud"	any offence under the Law creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.
"General Anti-Abuse Rule"	the legislation in Part 5 of the Finance Act 2013 and any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
"Good Industry Practice"	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.
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others.
"HMG IA Standards"	information assurance standards published by the UK Government from time to time and, as at the Commencement Date, are published at: https://www.ncsc.gov.uk/guidance .
"Home Detention Curfew"	a scheme to facilitate the early release of prisoners from prison which allows the prisoner to complete their prison term outside of the prison on Licence, which may include Electronic Monitoring (and "HDC" shall be construed accordingly).

Homeless	<p>A person is legally defined as homeless if:[1]</p> <ul style="list-style-type: none"> • they have no accommodation available in the UK or abroad • they have no legal right to occupy the accommodation • they have a split household and accommodation is not available for whole household • it is unreasonable to continue to occupy their accommodation • they are at risk of violence from any person • they are unable to secure entry to their accommodation • they live in a moveable structure but have no place to put it
"Homeless at Conditional Release Date"	an individual who is or will be legally defined as Homeless at their Conditional Release Date (CRD) from prison. ("HCRD" shall be construed accordingly)
"ICT"	information communication technology.
"ICT Policy Set"	the Authority's suite of policies in respect of information security, as further detailed in Annex A of Schedule 12 and such other policies the Authority may notify the Supplier in writing from time to time, each of which as may be amended from time to time.
"Impact Assessment"	a written assessment of a Contract Request which shall be substantially in the form of Annex 3 to Schedule 9.
"Improvement Plan"	<p>the plan to address the impact of, and prevent:</p> <ul style="list-style-type: none"> (a) the reoccurrence of a Default by the Supplier and/or (b) the provision of the Services falling below any Improvement Plan Threshold.
"Improvement Plan Process"	the process as more particularly set out in Paragraph 3 of Schedule 4.
"Improvement Plan Threshold"	in respect of each CAS-2 Service Level, the required level of performance stated in the "Improvement Plan Threshold" column of the table set out in Annex 1 of Schedule 4.

"Incident Report"	A formal document outlining a series of events and/or statements in relation to a Security Incident. The document includes, but is not limited to, coverage of the timeline of the incident, commencing with initial awareness, and concluding at the later of remediation or incident closure; contact details for all actors, stakeholders, and interested parties (including police and police reference numbers, etc.); any geographic details (location of affected devices, etc.); a list of all losses or exposures (data files lost or compromised, etc.); a detailed account of all remedial activity taken; a detailed account of planned remedial activity, with an associated timeline; an assessment of the root cause or causes; an assessment of incident severity; an assessment of consequences; and any other supporting documentation and technical evidence not already addressed.
"Indemnified Person"	each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Intellectual Property Rights used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier's obligations under this Contract, including the Supplier Assets, Supplier Background IPR and Deliverables.
"Independent Safeguarding Authority"	a non-departmental public body sponsored by the Home Office set up under the provisions of the Safeguarding Vulnerable Groups Act 2006 and which is responsible for the decision making and maintenance of two lists covering the children's and vulnerable adults' sectors.
"Indexation Base Month"	the Month in which the Services Commencement Date occurs.
"Indexation Review Date"	in each Contract Year, the anniversary of the Services Commencement Date.
"Information"	shall have the meaning given under section 84 of FOIA.
"Information Security Management Plan"	the plan as more particularly described in Paragraph 2.3 of Schedule 12 and which has been approved by the Authority in accordance with that Paragraph.
"Initial Contract Period"	a period from and including the Commencement Date and expiring on the fifth anniversary of the Services Commencement Date.
"Insolvency Event"	<p>(a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts within the meaning of section 123 Insolvency Act 1986;</p> <p>(b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent</p>

	<p>amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party;</p> <p>(c) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party;</p> <p>(d) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within fourteen (14) days;</p> <p>(e) the other Party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(f) where the other Party is a company, a LLP or a partnership:</p> <p>(i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party other than for the solvent reconstruction of that other Party;</p> <p>(ii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over the other Party,</p> <p>(g) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;</p> <p>(h) (being a partnership) the holder of an agricultural floating charge over the assets of that other Party has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(i) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above.</p>
"Insurances"	shall have the meaning set out in Paragraph 1.1 of Schedule 10.

"Intellectual Property Rights or IPRs"	patents, inventions, trademarks, 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, know-how 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.
"Intensive Community Order"	an order which provides community based intervention and support for individuals sentenced with a condition of residence and may include an IAC (and "ICO" shall be construed accordingly).
"ISMS"	a set of policies, procedures, processes and systems that manage information risks.
"IT Health Check"	the tests managed by the CHECK Scheme to ensure that an organisation's systems are protected from unauthorised access or change.
"Key Personnel"	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 13 against each Key Role as at the Commencement Date or as amended in accordance with Clause 17.
"Key Roles"	a role described as a Key Role in Schedule 13 and any additional roles added from time to time in accordance with Clause 17.
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of the know-how relating to the Services or any part thereof but excluding know-how already in the Supplier's or the Authority's possession before the Commencement Date.
"Law"	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, and including policies / working practices of the Authority with which the Supplier is required to comply pursuant to any provision of this Contract.
"Law Enforcement Purposes"	means as it is defined in Data Protection Act 2018.
"LED"	means the Law Enforcement Directive (Directive (EU) 2016/680).
"Licence"	the terms upon which an individual is released from Prison and also referred to as "Standard Licence" for the purpose of this Contract.
"Local Authority"	the person or department in local government with whom this Contract or must carry out its responsibilities for the activity or issue from time to time required under this Contract.

"Losses"	losses, liabilities, damages, costs and expenses (including professional fees) and disbursements and costs of investigation, litigation, settlement, judgement, interest and penalties (including fines) whether arising in contract, tort (including negligence) breach of statutory duty or otherwise (and "Loss" shall be construed accordingly).
"Major Incident"	an incident of a serious nature which involves or is in respect of a CAS-2 Resident or Accommodation, including those events set out in Paragraph F6 of Schedule 1.
"Management Information"	the information specified in Annex 1 to Schedule 7, as amended from time to time in accordance with Paragraph 2.2 of Schedule 7.
"Mediator"	shall have the meaning set out in Clause 63.5.1.
"MoJ Generic Security Aspects Letter"	a letter provided by the Authority to the Supplier which sets out information handling responsibilities to be performed and adhered to by the Supplier during the provision of the Services, as may be updated from time to time.
"Month"	a calendar month.
"Monthly Adjustment"	the sum of the Unavailable Bed Space Deduction, the Occupancy Adjustment and the Service Credits for each Month calculated in accordance with Paragraph 1.3 of Schedule 5.
"Monthly Contract Price"	"Monthly Contract Price" subject to the terms of this Contract, the amount set out below, which is the relevant Contract Price divided by twelve (12).
"National Police Chiefs Council"	the independent body acting in the public interest and, in equal and active partnership with Government and the Association of Police Authorities (and NPCC shall be interpreted accordingly).
"NCSC"	the National Cyber Security Centre is the UK's authority on cyber security forming part of GCHQ.
"NCSC Cyber Essentials"	the scheme developed by the UK Government setting out Good Industry Practice in respect of information security.
"New Fair Deal"	the revised fair deal position set out in the HM Treasury guidance: <i>"Fair Deal for staff pensions: staff transfer from central government"</i> issued in October 2013.
"Notifiable Default"	shall have the meaning set out in Paragraph 4.1 of Schedule 4.

"Occasion of Tax Non-Compliance"	<p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of the:</p> <ul style="list-style-type: none"> (a) Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (b) failure of an avoidance scheme which the Supplier was involve in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (c) Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.
"Open Book Accounts"	<p>complete and accurate financial and non-financial information relating to the Services which is sufficient to enable the Authority to verify the payments already paid or payable and payments forecast to be paid under this Contract during the remainder of the Contract Period, including details and all assumptions relating to:</p> <ul style="list-style-type: none"> (a) the Supplier's costs broken down against each Service including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Supplier Assets; (b) operating expenditure relating to the provision of the Services including an analysis showing: <ul style="list-style-type: none"> (i) the unit costs and quantity of consumables and bought-in services; (ii) manpower resources broken down into the number and grade/role of the Supplier's Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's profit margin; and (iv) expenses reimbursable under this Contract; (c) overheads; (d) all interest, expenses and any other third-party financing costs incurred in relation to the provision of the Services; (e) the Supplier's profit achieved over the Contract Period and on an annual basis; (f) confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more

	<p>onerous than such methods applied generally by the Supplier;</p> <p>(g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and</p> <p>(h) the information set out in Schedule 8 detailing in particular all income received by the Supplier including Housing Benefit, rental and housing services charges.</p>
"Other Reportable Incident"	an incident of which involves or is in respect of a CAS-2 Resident or the Accommodation including those events set out in Paragraph F6 of Schedule 1.
"Other Supplier"	any supplier to the Authority, other than the Supplier.
"Outline Transition Plan"	the outline plan set out at Annex 1 of Schedule 3 (Transition).
"Over-Stayer"	CAS-2 Resident that has exceeded their agreed residency period at CAS-2 accommodation.
"Partial Termination"	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 45.3.
"Party"	the Supplier and the Authority each being a "Party" and together the "Parties" .
"PCR"	the Public Contracts Regulations 2015.
"Personal Data"	shall have the meaning set out in the Data Protection Legislation and for the purposes of this Contract, includes Sensitive Personal Data.
"Personnel"	<p>all directors, officers, employees, agents, consultants and contractors of either Party including:</p> <p>(a) the sub-contractors of the Authority; and</p> <p>(b) the Sub-contractors of the Supplier and their respective directors, officers, employees, agents, consultants or contractors (as the context requires).</p>
"Pre-Available Bed Space"	A Bed Space delivered under the Flexible Contracted Bed Space Provision which is an Available Bed Space ahead of the new contracted amount of Bed Spaces coming into effect. The cost of a Pre-Available Bed Space shall be calculated at the cost of the Price per Bed Space per Month for the current amount of contracted Bed Spaces.
"Price per Bed Space per Month"	the Monthly Contract Price divided by the contracted number of Bed Spaces.
"Prison and Probation Policy Frameworks"	the instructions which can be found at https://www.gov.uk/government/collections/prison-probation-policy-frameworks

"Prison Service Instructions"	the instructions which can be found at https://www.justice.gov.uk/offenders/psis , as may be amended from time to time.
"Prison Service Orders"	the orders which can be found at https://www.justice.gov.uk/offenders/psos , as may be amended from time to time.
"Probation Instructions"	the instructions which can be found at https://www.justice.gov.uk/offenders/probation-instructions , as may be amended from time to time.
"Probation Service"	the statutory criminal justice service that supervises high-risk offenders released into the community which is part of the Authority.
"Processing/Process"	means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
"Prohibited Act"	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</p> <p>(c) an offence:</p> <p>(i) under the Bribery Act 2010;</p> <p>(ii) under legislation or common law concerning fraudulent acts;</p> <p>(iii) defrauding, attempting to defraud or conspiring to defraud the Authority;</p> <p>(iv) under the Criminal Finances Act 2017; and/or</p> <p>(v) any activity, practice or conduct which would constitute one of the offences listed under (c)(i) to (c)(iv) above if such activity, practice or conduct has been carried out in the UK.</p>
"Projected Bad Debts"	the amount projected and allocated by the Supplier in the Financial Model to unrecovered amounts of anticipated income payable by CAS-2 Residents for Available Bed Spaces.

"Public Sector Dependent Supplier"	means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
"Publishable Performance Information"	means any of information reported in line with Schedule 4 as it relates to a CAS-2 Service Level where it is expressed as publishable in the table in Annex 1 of Schedule 4 which shall not constitute Commercially Sensitive Information;
"Quality Assurance Arrangements"	the arrangements which are agreed between the Parties in accordance with Paragraph 8 of Schedule 3.
"Quality Standards"	the 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 Supplier would reasonably and ordinarily be expected to comply with together with any quality standards further detailed in the Service Specification.
"Quarter"	the first three Months next following the Month in which the Services Commencement Date occurs and each subsequent period of three Months (or reduced period immediately prior to the end of the Contract Period).
"Recall"	an offender is taken back into Prison following release on Licence or Home Detention Curfew.
"Receipt"	the physical or electronic arrival of an invoice at the address of the Authority for which the invoice is intended, as confirmed to the Supplier in accordance with Schedule 5.

"Rectification Plan Failure"	<p>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Paragraphs 4.3.1 or 4.3.4 of Schedule 4;</p> <p>(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Paragraph 4.3.6 of Schedule 4;</p> <p>(c) the Supplier failing to rectify a Notifiable Default within the later of:</p> <p style="padding-left: 40px;">(i) thirty (30) Working Days from and including a notification submitted by the Supplier pursuant to Paragraph 4.1 of Schedule 4 or by the Authority pursuant to Paragraph 4.2 of Schedule 4; and</p> <p style="padding-left: 40px;">(ii) where the Parties have agreed a Rectification Plan in respect of that Notifiable Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the Notifiable Default; and/or</p> <p>(d) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) Months from and including the date when the Notifiable Default was notified for the same (or substantially the same) root cause as that of the original Notifiable Default.</p>
"Rectification Plan"	the plan to address the impact of, and to prevent the reoccurrence of, a Notifiable Default.
"Rectification Plan Process"	is the process as more particularly set out in Paragraph 4 of Schedule 4.
"Redundancy Costs"	has the meaning given in Paragraph 8 of Schedule 14.

"Redundancy Payment"	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount to be apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration so that the Supplier is liable for the proportion of the total Service duration that has elapsed and the Authority is responsible for the proportion of the total Service duration that is outstanding when the contract terminates pursuant to Clause 45.1.1:</p> <p>(a) any statutory redundancy payment; and</p> <p>(b) in respect of an employee who was a Transferring Former Supplier Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations.</p>
"Referrer"	<p>(a) in respect of Bail referrals, either NPS court staff or prison staff</p> <p>(b) in respect of HDC referrals, providers of prison and probation services and prison HDC clerks;</p> <p>(c) in respect of ALC referrals, providers of probation services;</p>
"Regulatory Bodies"	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 this Contract or any other affairs of the Authority (and "Regulatory Body" shall be construed accordingly).
"Relationship Management Group"	the body described in Paragraph 3 of Schedule 6.
"Relevant Requirements"	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
"Relevant Tax Authority"	HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established.
"Relevant Transfer"	a transfer of employment to which the Employment Regulations apply.
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place.
"Replacement Services"	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution of any of the Services following the expiry or termination of this Contract or Partial Termination as applicable, whether those services are provided by the Authority internally and/or by any third party.

"Replacement Supplier"	any third party service provider appointed by the Authority to supply the Replacement Services (or where the Authority is providing Replacement Services for its own account, the Authority).
"Request for Estimate"	a written request by the Authority for the Supplier to provide an accurate estimate of the Termination Payment that would be payable by the Authority in the event that the Authority exercises its right under Clause 45.1.1 to terminate this Contract on a specified termination date.
"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).
"Responsible Authority"	the employer of the Responsible Officer.
"Responsible Officer"	shall have the meaning given to it in section 197 of the Criminal Justice Act, or in his absence, a nominated deputy within the relevant Responsible Authority.
"Retention Period"	the period of time the Supplier is required to retain the data, documents and information of the Authority, as set out in Annex 4 to Schedule 7 or as otherwise amended by the Authority from time to time.
"Review Report"	shall have the meaning set out in Paragraph 6.2 of Schedule 17.
"Section 9 Witness Statement"	a witness statement which meets the requirements of Section 9 of the Criminal Justice Act 1967.
"Security Classification"	the classification which UK Government applies to the sensitivity of information, as may be amended from time to time (and which as at the Commencement Date is as more particularly defined at: https://www.gov.uk/government/publications/government-security-classifications).
"Security Incident"	A deliberate, accidental or inadvertent breach of a system's security policy, resulting in an effect on its integrity or availability; or an unauthorised access or attempted access to a system.
"Security Manager"	is a member of the Supplier's Personnel as appointed by the Supplier from time to time to perform the role set out in Schedule 12.
"Security Working Group"	shall have the meaning set out in Paragraph 2.2 of Schedule 12 (and "SWG" shall be construed accordingly).
"Senior Business Owner"	a member of the Authority's Personnel who acts as a key leadership figure on behalf of the Authority in respect of this Contract.
"Senior Contract Manager"	the individual appointed by the Authority from time to time as having senior responsibility for this Contract.
"Sensitive Personal Data"	Personal Data that reveals such categories of data as are listed in Article 9(1) of the UK GDPR.

"Serious Harm"	at any given time, as reasonably determined by the Authority, a life-threatening and/or traumatic event occurring in respect of an individual from which recovery, whether physical or psychological, can be expected to be difficult or impossible which includes death or personal injury, together with specific violent offences and/or physical or psychological injury, all as defined by Section 224(3) of the Criminal Justice Act 2003.
"Service Credits"	any service credits payable by the Supplier for failure to meet its obligations under this Contract, as set out and calculated in accordance with Schedule 4 (Performance Measures and Service Credits) and payable in accordance with Schedule 5 (Pricing and Payment Mechanism).
"Service Divisions"	the areas within which the Probation Service are regionally divided into, as more particularly defined by the area map released by the Probation Service from time to time.
"Service Failure"	in respect of a CAS-2 Service Level, where the level of service performance is below the CAS-2 Service Level Threshold in a Month.
"Service Management Group"	the body described in Paragraph 4 of Schedule 6.
"Service Property"	the Accommodation and any other property which will be used by the Supplier or its Personnel to operate the Services.
"Service Solution"	the document set out in Schedule 2 describing the way in which the Supplier intends to provide the Services.
"Service Specification"	the description of the Services to be supplied under this Contract as set out in Schedule 1.
"Service Transfer"	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a sub-contractor of a Replacement Supplier.
"Service Transfer Date"	the date of a Service Transfer.
"Occupancy Adjustment"	has the meaning given to it in Paragraph 1.3.4 of Schedule 5.
"Services"	the services to be supplied by the Supplier to CAS-2 Residents on behalf of the Authority, subject to the terms of this Contract, as detailed in the Service Specification, together with the Transition Services and Exit Services.
"Service Commencement Date"	1 ST October 2022
"Settled Accommodation"	is the accommodation which a CAS-2 Resident may move to following their use of the Accommodation, as more particularly defined in Paragraph D10 of Schedule 1.

"SME"	<p>an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission's Recommendation of 6 May 2003 available at:</p> <p>http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:124:0036:0041:en:PDF</p>
"Schedule"	a schedule attached to, and forming part of, this Contract.
"Staffing Information"	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of Data Protection Legislation), but including in an anonymised format:</p> <ul style="list-style-type: none"> (a) their ages, dates of commencement of employment or engagement and gender; (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments; (e) their wages, salaries and profit-sharing arrangements as applicable; (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them; (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long-term absence; (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations.
"Sub-contract"	a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

"Sub-contractor"	<p>a third party with whom:</p> <p>(a) the Supplier enters into a Sub-contract; or</p> <p>(b) a third party under (a) above enters into a Sub-contract,</p> <p>and all directors, officers, employees, agents and consultants of that third party.</p>
"Subject Access Request"	means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
"Supplier Assets"	all assets and rights used by the Supplier to provide the Services (including those provided by any Sub-contractor) including the Supplier Equipment and all other hardware, software, telecoms devices and equipment together with all Intellectual Property Rights vesting in such assets and rights but excluding Authority Materials, the Deliverables and the Accommodation.
"Supplier Background IPR"	<p>(a) Intellectual Property Rights owned or licensed by the Supplier before the date of this Contract; and/or</p> <p>(b) Intellectual Property Rights created or acquired by the Supplier independently of this Contract.</p>
"Supplier Equipment"	all items provided by the Supplier in the Accommodation for use by the CAS-2 Residents, including all fixtures, fittings, and soft and hard furnishings.
"Supplier Information Security Policy Set"	the Supplier's suite of policies in respect of information security.
"Supplier Personnel"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Contract.
"Supplier Premises"	any real property of the Supplier, whether owned, licensed or leased.
"Supplier Referral Team"	the Suppliers Personnel who co-ordinate the referrals on a daily basis in accordance with section B of Schedule 1.
"Supplier Termination Event"	<p>(a) from and including the Services Commencement Date until and including the day before the first anniversary of such date, the total number of Available Bed Spaces is fewer than 400 (four hundred);</p> <p>(b) on the first anniversary of the Services Commencement Date (or such later date as set out in the Rectification Plan prepared pursuant to Paragraph 4.3 of Schedule 4), the total number of Available Bed Spaces is fewer than 550 (five hundred and fifty);</p> <p>(c) the Supplier committing a material Default which, in the opinion of the Authority, is incapable of remedy;</p> <p>(d) an audit reveals Fraud or suspected Fraud;</p>

	<p>(e) a Rectification Plan Failure;</p> <p>(f) where a right of termination is expressly reserved by the Authority in this Contract;</p> <p>(g) any of the representations and warranties given by the Supplier pursuant to Clauses 38.1.7, 38.1.21 and/or 38.1.22 being materially untrue or misleading;</p> <p>(h) the Supplier committing a Default under any of the following:</p> <ul style="list-style-type: none"> (i) Clause 21; (ii) Clause 24; (iii) Clause 30; (iv) Clause 31; (v) Clause 32; (vi) Clause 33; (vii) Clause 34; and/or (viii) Clause 36. <p>(i) an Insolvency Event occurring in respect of the Supplier;</p> <p>(j) a change of Control of the Supplier unless:</p> <ul style="list-style-type: none"> (i) the Authority has given its Approval to the particular change of Control, which subsequently takes place as proposed; or (ii) the Authority has not served its notice of objection within six (6) Months of the later of the date on which the change of Control took place or the date on which the Authority was given notice of the change of Control; or <p>(k) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the PCR from the procurement procedure leading to the award of this Contract.</p>
"Supplier's Final Supplier Personnel List"	a list provided by the Supplier of all the Supplier's Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date.
"Supplier's Provisional Supplier Personnel List"	a list prepared and updated by the Supplier of all the Supplier's Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier.

"Supplier's Risk Profile Proposals"	shall have the meaning set out in Paragraph 6.2.3 of Schedule 17.
"Support Officer"	a member of the Supplier's Personnel who is responsible for providing support to CAS-2 Residents, as more particularly described in Schedule 1 (and such other support which may be required from time to time).
"Support Plan"	shall have the meaning set out in Paragraph E1 of Schedule 1.
"Support Services"	Services to be provided by the Supplier as specified in C4 of Schedule 1 (Services Specification) and Services available to CAS-2 Residents within a community that a CAS-2 Resident can access.
"Technical Notes"	the notes issued by the Authority from time to time and agreed with the Supplier with respect to the calculation of any Service Credits.
"Tender Process"	shall have the meaning set out in Paragraph 11.2 of Schedule 11.
"Termination Estimate"	shall have the meaning set out in Clause 48.11.
"Termination Payment"	shall have the meaning set out in Clause 48.2.
"Third Party Beneficiary"	shall have the meaning set out in Clause 62.2.
"Third Party Claim"	any claim which is made or threatened by any third party against the Authority, and for which it appears that the Authority or is, or may become, a defendant.
"Transferee"	shall have the meaning set out in Clause 54.4.
"Transferring Contracts"	shall have the meaning set out in Paragraph 8.7.5 of Schedule 11.
"Transferring Former Supplier Employees"	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.
"Transferring Supplier Employees"	those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.
"Transferring Supplier Equipment"	shall have the meaning set out in Paragraph 8.7.5 of Schedule 11.
"Transition"	shall have the meaning set out in Paragraph 1.1 of Schedule 3.
"Transition Manager"	shall be the person named as such in the Transition Plan, who shall fulfil the role set out in Paragraph 2.1.1 of Schedule 3 and as more particularly described in the Transition Plan.
"Transition Milestones"	the event or tasks relating to Transition, as set out in the Transition Plan.
"Transition Period"	the period between the Commencement Date and the Services Commencement Date.

"Transition Plan"	the Outline Transition Plan or (if and when approved by the Authority pursuant to Paragraph 5 of Schedule 3 (Transition)) the Detailed Transition Plan as updated in accordance with Paragraph 4 of Schedule 3, as may be amended from time to time by agreement between the Parties in accordance with Schedule 3.
"Transition Project Board"	the body described in Paragraph 4.3 of Schedule 3.
"Transition Services"	the services and activities to be provided by the Supplier in accordance with the Transition Plan.
"Transition Team"	shall be the persons named as such in the Transition Plan, who shall fulfil the role set out in Paragraph 2.1.2 of Schedule 3 and as more particularly described in the Transition Plan.
"Transition Working Group"	the working group described at Paragraph 4.4 of Schedule 3.
"UK GDPR"	means EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as incorporated into domestic United Kingdom law by the European Union (Withdrawal Agreement) Act 2020 and amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020.
"Undisputed Invoice"	shall have the meaning set out in Paragraph 3.1.2 of Schedule 5.
"Unavailable Bed Space Deduction"	has the meaning given to it in Paragraph 1.3.2 of Schedule 5.
"Updated Financial Model"	the Financial Model as updated pursuant to Paragraph 5.6 of Schedule 8.
"Vacant"	an Available Bed Space which is: (a) not occupied by a CAS-2 Resident; (b) not allocated for future use by a specific CAS-2 Resident on a known date; and/or (c) not undergoing or awaiting repairs in accordance with Paragraph G8 of Schedule 1.
"Valid Invoice"	means an invoice submitted in accordance with section 3 of Schedule 5.
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994.
"Void"	where a Bed Space is available for occupancy but is unused as there is an insufficient number of potential CAS-2 Residents being referred to the Services by the Referrers, as projected and allocated by the Supplier in the Financial Model.
"Welsh Language Scheme"	the Authority's Welsh language scheme described at: http://www.justice.gov.uk/publications/corporate-reports/moj/2010/welsh-language-scheme , as may be updated from time to time.

"Working Day"	days (other than a Saturday or Sunday) on which banks are open for general business in the city of London.
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- 1.2 The interpretation and construction of this Contract shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter and vice versa;
 - 1.2.3 references in this Contract to any Clause, sub-Clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause of, or schedule to, this Contract so numbered and reference to Paragraphs, Part and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the part of the Schedule in which the reference appears;
 - 1.2.4 reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
 - 1.2.5 references to this Contract are references to this Contract as amended from time to time;
 - 1.2.6 reference to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced from time to time by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of this Contract);
 - 1.2.7 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted;
 - 1.2.8 the words **"include"**, **"includes"**, **"including"**, **"exclude"**, **"excluding"**, **"in particular"**, **"for example"** and other similar words shall not limit the generality of the preceding words and are to be construed as if they were immediately followed by the words "without limitation"; and
 - 1.2.9 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.3 In the event of, and only to the extent of, any conflict between the Clauses of this Contract, the Schedules and/or any document referred to, the conflict shall be resolved, unless the Parties have agreed in writing to the contrary, in accordance with the following order of precedence:
- 1.3.1 the Clauses;
 - 1.3.2 the Service Specification;
 - 1.3.3 the Schedules, save for the Service Specification and the Service Solution;
 - 1.3.4 the Service Solution; and
 - 1.3.5 any other document referred to in this Contract.

2. DUE DILIGENCE

2.1 The Supplier acknowledges that it has:

- 2.1.1 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;
- 2.1.2 raised all relevant due diligence questions with the Authority before the Commencement Date;
- 2.1.3 satisfied itself that it has sufficient information to ensure that it can provide the Services; and
- 2.1.4 entered into this Contract in reliance on its own due diligence alone.

2.2 The Supplier acknowledges that the Authority has made no warranties or representations in respect of any of the information supplied by or on its behalf to the Supplier.

2.3 Without prejudice to Clause 2.1, the Supplier shall:

- 2.3.1 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
- 2.3.2 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.

3. TRANSITION

3.1 The Parties shall comply with the provisions of Schedule 3 in relation to transition of the Services to the Supplier.

4. PROVISION OF SERVICES

4.1 During the Contract Period the Supplier shall provide the Services to the Authority in accordance with the terms of this Contract.

4.2 Although as at the Commencement Date the Authority intends to procure all its requirement for services similar to the Services from the Supplier and not from any other supplier, that intention may change and the Supplier agrees and acknowledges that it has not been given any rights of exclusivity or any volume guarantees in relation to the volume of the Services provided under this Contract.

5. QUALITY ASSURANCE AND PERFORMANCE INDICATORS

5.1 In performing the Services, the Supplier shall, and shall procure its Personnel shall, meet or exceed the:

- 5.1.1 CAS-2 Service Levels;
- 5.1.2 Quality Standards;
- 5.1.3 Good Industry Practice;
- 5.1.4 Service Specification;
- 5.1.5 Service Solution; and
- 5.1.6 Law.

- 5.2 Where there is a conflict between the standards set out in Clause 5.1, such conflict shall be immediately referred by the Supplier to the Authority together with a proposal as to how the conflict should be resolved and the Authority shall, subject to Clause 1.3, direct how the conflict will be resolved.
- 5.3 The Supplier shall maintain accreditation with any relevant Quality Standards authorisation body, including such accreditation as set out in Schedule 1.
- 5.4 The Supplier shall co-operate, and shall procure that its Personnel shall co-operate, with all reasonable procedures and processes which may be undertaken by the Authority in respect of ensuring the quality and the standard of the Services provided by and on behalf of the Supplier.
- 5.5 In co-operating with the procedures and processes which may be undertaken in accordance with Clause 5.4, the Supplier shall:
- 5.5.1 promptly, and in any event within two (2) Working Days, provide such information and reports which may be reasonably required by the Authority; and
 - 5.5.2 provide the Authority reasonable access to:
 - (a) any Supplier Premises (or such premises which may be used by Sub-contractors to perform in the provision of the Services) and the Accommodation;
 - (b) the Supplier Assets;
 - (c) any other equipment which may be used in the provision of the Services including that belonging to its Sub-contractors; and
 - (d) the Supplier's Personnel.
- 5.6 The Supplier shall monitor and ensure that its Personnel are performing the Services on behalf of the Supplier to the standard set out in this Contract and shall notify the Authority immediately if it suspects or becomes aware the performance or the qualifications of itself and/or its Personnel fall below the standards set out in this Contract.

6. SUPPLIER OBLIGATIONS

- 6.1 The Supplier shall:
- 6.1.1 at all times allocate sufficient resources to supply the Services in accordance with this Contract;
 - 6.1.2 provide and fulfil any ancillary or incidental service, function or responsibility not specified in the Service Specification where such service, function or responsibility is necessary for the proper performance of the relevant Services;
 - 6.1.3 obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary for the provision of the Services or performance of any other obligation under this Contract;
 - 6.1.4 ensure the Supplier Assets and the Accommodation used in the performance of the Services will be free of all Encumbrances (except as agreed in writing with the Authority);
 - 6.1.5 ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Authority or any Other Supplier;
 - 6.1.6 ensure that any documentation, information and training provided to the Authority under this Contract is comprehensive, accurate and prepared in accordance with Good Industry Practice;

- 6.1.7 co-operate with the Other Supplier(s) to enable such Other Supplier(s) to provide services to the Authority and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier in accordance with Schedule 11 and the Exit Plan, including:
- (a) providing reasonable information (including any documentation), advice and assistance in connection with the Services to the Other Supplier(s); and
 - (b) entering into such agreements and collaborative arrangements which may be reasonably required by the Authority from time to time;
- 6.1.8 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties and indemnities are held on trust, at its cost enforce such warranties and indemnities in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 6.1.9 unless it can demonstrate to the Authority, acting reasonably, that it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 6.1.8;
- 6.1.10 provide the Authority with such advice and assistance as the Authority may reasonably require during the Contract Period in respect of the supply of the Services;
- 6.1.11 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
- 6.1.12 as soon as the Supplier becomes aware, immediately notify the Authority of any circumstances suggesting that a change of Control of the Supplier is planned or in contemplation;
- 6.1.13 notify the Authority in writing of any material detrimental change in the financial standing and/or any change in the credit rating of the Supplier where such change has a material adverse effect on the Supplier's ability to deliver the Services and/or perform its obligations under this Contract;
- 6.1.14 subject to Clause 30.6, notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
- 6.1.15 ensure that neither it, nor any of its Affiliates or Personnel, bring the Supplier into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract;
- 6.1.16 perform its obligations under this 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;
- 6.1.17 comply with the Prison and Probation Policy Frameworks, Prison Service Instructions, Probation Instructions and the prison procedures prescribed by the Prison Service Orders (including any replacement policy frameworks or mandatory minimum requirements which may be introduced by the Authority from time to time);
- 6.1.18 implement and demonstrate compliance with the Quality Assurance Arrangements;

- 6.1.19 use its reasonable endeavours to minimise the amount of Actual Bad Debts and shall provide to the Authority such information as the Authority may reasonably require in relation to the Actual Bad Debts suffered by the Supplier in each Quarter. To the extent that the Actual Bad Debts are less than the Projected Bad Debts, the Parties shall administer the difference in accordance with the mechanism set out in Paragraph 6 of Schedule 5; and
- 6.1.20 in respect of the Authority's Welsh language requirements:
- (a) at all times comply with the Welsh Language Act 1993 and the Authority's Welsh Language Scheme (as amended from time to time) as if it were the Authority to the extent that the same relate to the provision of the Services; and
 - (b) be responsible for promoting the delivery of the Services in Welsh or English to the CAS-2 Residents and shall use reasonable endeavours to achieve this.

7. SUPPLIER ASSETS

- 7.1 Subject to Clause 53 and any express provision of the BCDR Plan to the contrary, the loss or destruction for any reason of the Supplier Assets and/or Accommodation, if any, shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract.
- 7.2 Except as set out in Paragraph 10.6 of Schedule 11, the Supplier Assets and the Accommodation shall remain at the sole risk and responsibility of the Supplier.
- 7.3 In respect of the Supplier Equipment the Supplier shall:
- 7.3.1 install such equipment at the Accommodation in accordance with all relevant manufacturer's installation instructions, Good Industry Practice and Law; and
 - 7.3.2 maintain such equipment so that, save for fair wear and tear, it remains in safe, serviceable and clean condition and such maintenance shall be in accordance with:
 - (a) the standards set out in this Contract;
 - (b) Good Industry Practice;
 - (c) Law; and
 - (d) the relevant manufacturer's instructions.
- 7.4 The Supplier shall maintain an up to date and accurate register of Supplier Equipment used or made available during the provision of the Services, including details of the initial value, depreciation and residual value of each item (**Asset Register**) and shall provide a copy of the Asset Register to the Authority promptly upon request together with such other information as the Authority may reasonably require in respect of such Supplier Equipment.
- 7.5 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Accommodation, including its off-loading, installation, removal of all packaging and all other associated costs.
- 7.6 Save to the extent that risk and ownership in the relevant Supplier Equipment has transferred to the Authority, a Replacement Supplier and/or Other Supplier in accordance with Schedule 11, the Supplier shall on demand indemnify the Authority and keep it indemnified and hold it harmless from and against all Losses which the Authority may suffer or incur as a result of:
- 7.6.1 a failure by the Supplier to maintain the Supplier Equipment in accordance with the provisions of Clause 7.3;
 - 7.6.2 the removal of any Supplier Equipment from the Accommodation following the expiry or termination of this Contract (whether in whole or in part); and/or

- 7.6.3 the use or misuse, as the case may be, of the Supplier Equipment, including where any such Losses arise as a result of any claims brought against the Authority by any third party, including CAS-2 Residents.

8. SERVICE IMPROVEMENTS

- 8.1 The Supplier shall continuously consider and identify opportunities to improve the Services including by:
- 8.1.1 identifying cost savings which can be generated through investment or changes to the Services, how the Supplier shall reinvest those savings in the provision of the Services and improvements in the provision of the Services;
 - 8.1.2 considering the emergence of new and evolving relevant technologies which could improve the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;
 - 8.1.3 considering new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - 8.1.4 considering new or potential improvements to the interfaces or integration of the Services with other services provided by third parties which might result in efficiency or productivity gains or in reduction of operational risk; and
 - 8.1.5 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority.
- 8.2 Where the Supplier identifies an opportunity to improve the Services pursuant to Clause 8.1, or the Authority identifies an opportunity to improve the Services (which it may do so in its discretion) the relevant Party shall provide a written summary to the other providing (in the case of improvements identified by the Supplier) sufficient information for the Authority to decide whether any improvement should be implemented (and such further information which the Authority may request) and, if the Authority confirms, in principle, that it wishes to proceed to implement the opportunity it shall be processed in accordance with the Change Control Procedure.
- 8.3 Any improvement of the kind referred to in Clause 8.1 which is incorporated in or used in relation to the Services during the Contract Period shall:
- 8.3.1 if, and to the extent that, it comprises an improvement to Intellectual Property Rights belonging to the Authority, the Intellectual Property Rights in such improvement shall vest absolutely in the Authority and shall be licensed to the Supplier as a Authority Material as set out in Clause 28;
 - 8.3.2 if, and to the extent that, it comprises an improvement to Intellectual Property Rights belonging to the Supplier, the Intellectual Property Rights in such improvement shall vest absolutely in the Supplier and shall be licensed to the Authority as a Supplier Asset as set out in Clause 27; or
 - 8.3.3 if, and to the extent that, it comprises an improvement to neither the Intellectual Property Rights of the Authority or Supplier, the Intellectual Property Rights in such an improvement shall vest absolutely in the Party which proposed the improvement and shall be licensed to the other in accordance with Clause 27 or Clause 28 (as appropriate).
- 8.4 The Parties hereby assign (including by way of present assignment of future rights) to each other the Intellectual Property Rights in improvements in accordance with Clause 8.3 and agree to execute such documents and do such acts as may be reasonably required in order to vest the Intellectual Property Rights in accordance with Clause 8.3 and give effect to that Clause.

- 8.5 Without prejudice to Clauses 8.1 and 8.2, the Supplier shall produce a report (**Continuous Improvement Report**) to the Service Management Group once every twelve (12) Months on or before each anniversary of the Services Commencement Date which shall identify all activities undertaken by the Supplier to improve the effectiveness of the Services in the previous twelve (12) Months and all further opportunities for improvement of this Contract in the following twelve (12) Months through prospective changes in the Services and/or behaviour or usage changes by either Party which shall include as a minimum:
- 8.5.1 a summary of all proposals made pursuant to Clause 8.2 and progress made against such proposals;
 - 8.5.2 a trend analysis of performance against performance standards including the requirements of Schedule 4 in the previous twelve (12) Months to the date of the Continuous Improvement Report to identify areas of performance that can be improved, steps taken by the Supplier to address performance issues and, where the performance trend analysis identifies a deteriorating trend in performance, repeat failures, or significant failures that impact the Authority, an action plan to identify how these failures are to be rectified; and
 - 8.5.3 trends and an action plan to address any areas of Authority dissatisfaction.
9. **CONFLICTS OF INTEREST**
- 9.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of the Supplier's Personnel are placed in a position where, in the reasonable opinion of the Authority:
- 9.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Supplier and/or its Personnel and the duties owed to the Authority under the provisions of this Contract; or
 - 9.1.2 the behaviour of the Supplier and/or the Supplier's Personnel is not in the best interest of and/or might adversely affect the reputation of the Authority.
- 9.2 The Supplier shall as soon as reasonably practicable disclose to the Authority full particulars of any behaviour which might give rise to the acts complained of in Clauses 9.1.1 or 9.1.2.
- 9.3 Within three (3) Working Days of the date of disclosure pursuant to Clause 9.2 the Supplier shall consult with the Authority to discuss a way to remedy any conflict or behaviour that, in the Authority's reasonable opinion, falls within Clauses 9.1.1 or 9.1.2.
- 9.4 If, within five (5) Working Days of the consultation under Clause 9.3, the Supplier fails, in the Authority's reasonable opinion, to remedy the breach then the Authority reserves the right to terminate this Contract by serving on the Supplier notice in writing with effect from the date specified in that notice and/or to take such other steps it deems necessary.
- 9.5 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.
10. **CONTRACT PRICE**
- 10.1 In consideration of the proper performance by the Supplier of the Supplier's obligations under this Contract the Contract Price shall be paid to the Supplier in accordance with Schedule 5.
- 10.2 Subject to the provisions of Schedule 5, the Contract Price shall be fixed during the Contract Period.
- 10.3 The Supplier shall on demand indemnify the Authority and keep it indemnified and hold it harmless from and against all Losses which the Authority may suffer or incur as a result of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 10.3 shall be paid by the Supplier 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.

- 10.4 Except where otherwise provided, the Parties shall each bear their own costs and expenses incurred in respect of compliance with their obligations under this Contract.

11. RECOVERY OF SUMS DUE

- 11.1 Subject to Clause 11.2, whenever under this Contract any sum of money is recoverable from or payable by the Supplier to the Authority (including any sum which the Supplier 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 Supplier from the Authority under this Contract or under any other agreement or contract with the Authority or the Crown.
- 11.2 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.
- 11.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

12. GOVERNANCE

- 12.1 The Parties agree to manage this Contract through the governance structure detailed in Schedule 6.

13. CHANGE CONTROL

- 13.1 Subject to the Flexible Contracted Bed Space Provision, as set out in paragraph 2.3 in Schedule 5, unless otherwise expressly set out in this Contract, all proposed Contract Changes shall be processed by the Parties in accordance with Schedule 9.

14. RECORDS AND REPORTING

- 14.1 The Supplier shall comply with the provisions of Schedule 7 in relation to:
- 14.1.1 the production and supply of Management Information and other reports; and
 - 14.1.2 the maintenance and retention of records and data.
- 14.2 Without prejudice to Clause 14.1, the Supplier shall comply with the provisions of Schedule 8 in relation to the Financial Model.
- 14.3 The Supplier agrees that, notwithstanding any other term in this Contract, the Authority may provide:
- 14.3.1 Cabinet Office;
 - 14.3.2 the National Audit Office; and
 - 14.3.3 Parliament and Parliamentary Committees,
- with the Management Information, reports and records made available to the Authority under this Contract.
- 14.4 Upon receipt of the information provided by the Supplier to the Authority pursuant to Clause 14.1 or receipt of information provided by the Authority to the bodies named in Clause 14.3, the Supplier consents (without prejudice to the Authority's other rights and obligations under this Contract (including Clause 33 and at Law)) that the Authority and those bodies named in Clause 14.3 may:
- 14.4.1 store and analyse the information, reports and records and produce statistics; and

- 14.4.2 share the information, reports and records and/or any statistics produced using them with any of those bodies named in Clause 14.3 to the extent each has not already received such information.

15. **AUDIT**

- 15.1 Without prejudice to Clause 34.5 and subject to Clause 15.3, the Supplier shall promptly, and in any event within two (2) Working Days of request (unless otherwise agreed by the Authority in writing), provide, and shall procure its Sub-contractors promptly provide within the same timescale, the Authority and each of the Auditors access to that which may be required by the Authority and/or Auditors from time to time including to the Accommodation and to any of the Supplier Premises from which any activities relating to the provision of the Services are performed, in order for the Authority and/or Auditors to assess compliance by the Supplier and its Sub-contractors of their obligations under this Contract, including for the following purposes:

- 15.1.1 to verify the accuracy of Contract Price (and proposed or actual variations to them in accordance with this Contract) and any other payment made under this Contract;
- 15.1.2 to identify or investigate actual or suspected Fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- 15.1.3 to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and the Auditor General;
- 15.1.4 to review the integrity, confidentiality and security of Personal Data of which the Authority is Data Controller;
- 15.1.5 to review the Supplier's compliance with the Data Protection Legislation in accordance with this Contract and any other Laws;
- 15.1.6 to review the Supplier's compliance with its security obligations under this Contract;
- 15.1.7 to review any books of accounts and the internal contract management accounts kept by the Supplier in connection with the provision of the Services;
- 15.1.8 to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- 15.1.9 to enable the National Audit Office to carry out an 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;
- 15.1.10 to verify the accuracy or completeness of any Management Information required to be provided by the Supplier under this Contract;
- 15.1.11 to review any records and supporting or ancillary documentation relating to the Supplier's performance of the Services, including records held on the Supplier's Caseload Management System;
- 15.1.12 to ensure that the Supplier is complying with its obligations under this Contract;
- 15.1.13 to ensure compliance with the Quality Assurance Arrangements;
- 15.1.14 to ensure that the Supplier has administered any Bad Debt Surplus in accordance with paragraph 6.4 of Schedule 5; and
- 15.1.15 for any other purpose set out in this Contract.

- 15.2 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and Auditor General and/or its representatives from carrying out an audit, examination or investigation of the Supplier and/or any Sub-contractors for the purposes of and pursuant to applicable Law.
- 15.3 The Authority may at its discretion inspect the Accommodation, either on an unannounced basis or at short notice. The Supplier shall cooperate (and shall ensure that any Sub-contractor or relevant third party shall cooperate) with such inspections, including by:
- 15.3.1 facilitating access to the Accommodation promptly (and, at a minimum, by 6pm on the same day);
 - 15.3.2 cooperating with any surveys or inspections of the condition of the Accommodation;
 - 15.3.3 making available any of its Personnel who are responsible for servicing the Accommodation; and
 - 15.3.4 providing evidence of all relevant documentation relating to the Accommodation including insurance certificates, records of house visits, house rules, maintenance records and records of compliance with statutory requirements such as PAT testing.
- 15.4 The Supplier shall, and shall procure its Sub-contractors shall, on demand provide the Authority and any Auditors with all reasonable co-operation and assistance in relation to each audit, including by providing:
- 15.4.1 all information within the scope of the audit requested by the Authority and/or Auditors;
 - 15.4.2 reasonable access to:
 - (a) any Supplier Premises (and in the event the records and accounts are held by a Sub-contractor or some other third party the Supplier shall procure reasonable access to such party's premises);
 - (b) the Supplier Assets;
 - (c) any other equipment which may be used in the provision of the Services including that belonging to its Sub-contractors; and
 - (d) the Supplier's Personnel.
- 15.5 If an audit reveals:
- 15.5.1 a material Default; or
 - 15.5.2 Fraud or suspected Fraud,
- the Supplier shall reimburse the Authority and its Auditors' reasonable costs incurred in relation to the audit and the Authority be entitled to exercise its rights to terminate this Contract pursuant to Clause 45.
- 15.6 If an audit reveals:
- 15.6.1 the Authority has overpaid any charges, the Supplier shall pay to the Authority on demand:
 - (a) the amount overpaid;
 - (b) interest on the amount overpaid, accruing on a daily basis at a rate of 3 per cent per annum above the Bank of England's base rate from the date of overpayment by the Authority up to the date of repayment by the Supplier, whether before or after judgement; and

- (c) the reasonable costs incurred by the Authority and any Auditor undertaking the audit; or
- 15.6.2 the Authority has underpaid any charges, the Supplier shall not be entitled to increase the Contract Price paid or payable by the Authority but the Authority shall pay to the Supplier the difference between the actual Contract Price paid and the Contract Price which should have been due within such timescale and/or instalments as agreed between the Parties in writing.
- 15.7 The Supplier shall:
 - 15.7.1 submit to the Authority, as soon as they become available (and in any event within six (6) Months of the end of each of its financial periods), copies of its audited financial statements for that period which shall contain an income statement, balance sheet and a cash flow statement which shall be audited and certified without qualification by a firm of independent accountants;
 - 15.7.2 submit to the Authority, as soon as they become available (and in any event within three (3) Months of the end of each of its financial half-years and within three (3) Months of the end of each period to which the accounts relate) copies of its un-audited financial statements for that half-year or year (as the case may be) which shall contain an income statement, a balance sheet and a cash flow statement;
 - 15.7.3 ensure that it prepares its financial statements on a basis consistently applied in accordance with generally accepted accounting principles in England and Wales and those financial statements shall give a true and fair view of results of its operations for the period in question and the state of its affairs as at the date to which the financial statements are made up and shall disclose or reserve against all liabilities (actual or contingent) of the Supplier; and
 - 15.7.4 submit to the Authority, within three (3) Months of the end of each Contract Year, a financial statement for that period, including only the income and expenditure relating to this Contract.
- 15.8 The Supplier shall keep books of account in accordance with best accountancy practice with respect to the Contract showing in detail:
 - 15.8.1 expenditure on wages and salaries;
 - 15.8.2 administrative overheads;
 - 15.8.3 expenditure on consumable items;
 - 15.8.4 payments made to Sub-contractors / Contractors;
 - 15.8.5 capital and revenue expenditure;
 - 15.8.6 other expenditure incurred by the Supplier in the day-to-day performance of the Contract; and
 - 15.8.7 record of all services obtained at no charge from the Authority or any other government agency.
- 15.9 The Supplier shall have each of the items identified in Clause 15.8 above available for inspection by the Authority or its authorised representatives upon reasonable notice, and shall present a report of the same to the Authority as and when requested.
- 15.10 The Supplier shall provide full details of all income received for this Contract each Quarter including actual details of Housing Benefit or equivalent receipts.

16. SUPPLIER PERSONNEL

16.1 The Supplier shall:

- 16.1.1 employ or, subject to the terms of this Contract, engage at all times a sufficient number of Personnel to fulfil its obligations under this Contract;
- 16.1.2 ensure that its Personnel are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
- 16.1.3 promptly inform and keep the Authority informed in writing of any industrial relations, problems or other matters relating to its Personnel which may affect the performance of this Contract;
- 16.1.4 not employ or engage any person where the Supplier 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 or engagement with the Supplier;
- 16.1.5 not make, facilitate or participate in the procurement of any unlawful payments to any of its Personnel, whether in the nature of social security fraud, evasion of tax or otherwise;
- 16.1.6 at all times comply with all Law relating to income tax, national insurance contributions and any other related taxes;
- 16.1.7 ensure that any Personnel employed or engaged in the provision of the Services have undertaken a Disclosure and Barring Service Check (and are registered for the DBS update service) prior to their commencement of the provision of the Services and such other security clearance or vetting requirements as set out in this Contract, provided always that, in respect of Transferring Former Supplier Employees only, the Supplier shall not be in breach of this obligation as at the Services Commencement Date and for a period of up to 14 weeks thereafter if the Supplier has by the day following the Services Commencement Date submitted (or procured the submission of) properly completed applications for Disclosure and Barring Service Checks (and registrations for the DBS update service) in respect of such Transferring Former Supplier Employees;
- 16.1.8 within two (2) Working Days of the Authority's request, provide details of the qualifications and competence of any Personnel employed or engaged by the Supplier or any of its Sub-contractors (or proposed to be employed or engaged by the Supplier or any of its Sub-contractors) and provide a copy of any certification or qualification or competence that has been issued in respect of such person;
- 16.1.9 within two (2) Working Days of the Authority's request, provide details as required by the Authority of any Personnel employed or engaged by the Supplier or any of its Sub-contractors (or proposed to be employed or engaged by the Supplier or any of its Sub-contractors) to the contact nominated by the Authority for the purposes of checking such Personnel against the Ministry of Justice's 'Barred List'; and
- 16.1.10 where requested by the Authority acting reasonably (but without obligation to give details of the reason where it has grounds not to do so), remove from the provision of the Services any Personnel in the accordance with the period of time so directed by the Authority.

16.2 In the event of industrial action by the Supplier's Personnel, the Supplier shall seek the Authority's Approval of its proposals to perform its obligations under this Contract.

16.3 If the Supplier's proposals referred to in Clause 16.2 are considered insufficient or unacceptable by the Authority acting reasonably, then the Authority reserves the right to terminate this Contract by serving on the Supplier notice in writing with effect from the date specified in that notice and/or to take such other steps it deems necessary.

- 16.4 The Supplier shall at all times remain responsible for its Personnel and the acts and omissions of its Personnel. An obligation on the Supplier to do, or refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its Personnel also do, or refrain from doing, such act or thing.
- 16.5 The Supplier recognises that the Authority has a legitimate interest in ensuring that persons discharging the Authorities' duties, including personnel engaged under or via Authority contracts, such as the Supplier's Personnel are of suitable character and competence to do so lawfully and in accordance with all applicable contractual requirements. Accordingly, the Authority may request from the Supplier, and the Supplier shall where it is able to do so lawfully promptly provide, any information (which may include Personal Data and information obtained during the vetting of the relevant individual) relating to Supplier's Personnel which the Authority reasonably believes is relevant to determining the Supplier's compliance with this Clause 16 and/or evaluating any concerns which the Authority may have in relation to the suitability of any of the Supplier's Personnel to perform duties in relation to this Contract.
- 16.6 The Supplier warrants, represents and undertakes to the Authority that it shall obtain all necessary consents and permissions from the Supplier's Personnel to enable it to fulfil its obligations under this Clause 16, in particular those obligations relating to the provision of information to the Authority, in accordance with Data Protection Legislation and shall maintain full written records of such consents and permissions.
17. **KEY PERSONNEL**
- 17.1 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Contract Period. Schedule 13 lists the Key Roles and names of the persons whom the Supplier shall appoint to fill those Key Roles at the Commencement Date.
- 17.2 The Authority may identify any further roles as being Key Roles and, following agreement by the Supplier (such agreement not to be unreasonably withheld or delayed), the relevant persons selected to fill those Key Roles shall be included in the list of Key Personnel.
- 17.3 The identity of each member of Key Personnel shall be subject to the Approval of the Authority, such Approval not to be unreasonably withheld or delayed.
- 17.4 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under any Exit Plan) unless:
- 17.4.1 requested to do so by the Authority;
 - 17.4.2 the person concerned resigns, retires, dies or is on maternity or paternity leave or long-term sick leave;
 - 17.4.3 the person's employment or contractual arrangement with the Supplier or Sub-contractor is terminated for material breach of contract by the employee; or
 - 17.4.4 the Supplier obtains the Authority's Approval (such Approval not to be unreasonably withheld or delayed).
- 17.5 The Supplier shall:
- 17.5.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less), in which case the Supplier shall ensure appropriate temporary cover for that Key Role;
 - 17.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 17.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a

material breach of the Key Personnel's employment contract, this will mean at least one (1) Months' notice;

17.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and

17.5.5 ensure that any replacement for a Key Role:

(a) has a level of qualifications and experience appropriate to the relevant Key Role; and

(b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

18. **EMPLOYMENT LIABILITY**

18.1 The Supplier shall on demand indemnify the Authority and keep it indemnified and hold it harmless from and against all Losses which the Authority may suffer or incur as a result of:

18.1.1 all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any of its Personnel; and/or

18.1.2 any income tax, national insurance and social security contributions and any other liability deduction, contribution, assessment or claim arising from or made in connection with the employment or engagement by the Supplier of its Personnel in the provision of the Services.

19. **SUB-CONTRACTING**

19.1 Subject to this Clause 19, the Supplier shall not Sub-contract its rights or obligations under this Contract without the Approval of the Authority (such Approval not to be unreasonably withheld or delayed). For these purposes, the Authority may withhold its Approval to the appointment of a Sub-contractor for reasons including if the Authority reasonably considers that:

19.1.1 the appointment of the proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;

19.1.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

19.1.3 the proposed Sub-contractor should be excluded in accordance with Clause 19.2.

19.2 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the PCR, then:

19.2.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor; and

19.2.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not appoint the Sub-contractor and the Supplier shall comply with such a requirement.

19.3 The Authority consents to the appointment of the Sub-contractors listed in Schedule 15.

19.4 The Supplier shall ensure that each Sub-contract in relation to the provision of the Services shall:

19.4.1 reflect the Market Stewardship Principles set out in Schedule 16;

- 19.4.2 contain a provision to the effect that the Sub-contractor complies with its legal obligations in the fields of environmental, social and labour law;
 - 19.4.3 contain obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Contract, including those in respect of Clause 9, Clause 15, Clause 22, Clause 23, Clause 31, Clause 32, Clause 33, Clause 34, Clause 35, Clause 36, and Clause 41;
 - 19.4.4 contain a provision enabling the Supplier to assign novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to consent or approval) or payment by the Authority or any Replacement Supplier; and
 - 19.4.5 Contain a right for the Supplier to terminate if the Sub-Contractor does not comply with its legal obligations in connection with Data Protection Legislation, environmental, social or labour law.
- 19.5 If requested by the Authority, within two (2) Working Days of written notice, the Supplier shall provide to the Authority:
- 19.5.1 a copy of any Sub-contract entered into with any Sub-contractor for the purposes of this Contract; and
 - 19.5.2 any other information reasonably requested by the Authority in relation to any Sub-contract or Sub-contractor.
- 19.6 The Authority may require the Supplier to terminate a Sub-contract where:
- 19.6.1 the relevant Sub-contractor fails to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social and/or labour law;
 - 19.6.2 the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 45.1.2 (Termination by the Authority); and/or
 - 19.6.3 the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise.
- 19.7 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 19, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.
20. **SUPPLY CHAIN PROTECTION**
- 20.1 Where the Supplier or a Sub-contractor enters into a Sub-contract, it shall include within such Sub-contract provisions:
- 20.1.1 requiring the Supplier or the Sub-contractor receiving goods or services under the Sub-contract to consider and verify invoices under that contract in a timely fashion;
 - 20.1.2 that if the Supplier or the Sub-contractor (as the case may be) fails to consider and verify an invoice in accordance with Clause 20.1.1, the invoice shall be regarded as valid and undisputed for the purposes of Clause 20.1.3 after a reasonable time has passed;
 - 20.1.3 requiring the Supplier or Sub-contractor (as the case may be) to pay any undisputed sums which are due from it to their Sub-contractor within a specified period not exceeding thirty (30) days of verifying that invoice is valid and undisputed;

- 20.1.4 giving the Authority the right to publish both the Supplier's and the Sub-contractor's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- 20.1.5 requiring each Sub-contractor to include a clause to the same effect as this Clause 20.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

21. **STAFF TRANSFER**

21.1 The Parties agree that:

- 21.1.1 where the commencement of the provision of any of the Services or any part of the Services results in one or more Relevant Transfers of Transferring Former Supplier Employees, Part A of Schedule 14 shall apply and Part B of Schedule 14 shall not apply;
- 21.1.2 where the commencement of the provision of any of the Services or any part of the Services does not result in a Relevant Transfer of employees of the Former Supplier, Part B of Schedule 14 shall apply and Part A of Schedule 14 shall not apply; and
- 21.1.3 on the expiry or termination of the Services or any part of the Services, Part C of Schedule 14 shall apply.

22. **BRIBERY AND COMPLIANCE**

22.1 The Supplier shall not, and shall procure its Personnel shall not, during the Contract Period:

- 22.1.1 commit a Prohibited Act; or
- 22.1.2 do or suffer anything to be done which would cause the Authority or any of its Personnel to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

22.2 The Supplier warrants and represents to the Authority that neither it, nor to the best of its knowledge any of its Personnel, have at any time prior to the Commencement Date:

- 22.2.1 committed a Prohibited Act or been formally notified that is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 22.2.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

22.3 The Supplier shall:

- 22.3.1 in relation to this Clause 22, act in accordance with the Relevant Requirements;
- 22.3.2 immediately notify the Authority if it suspects or becomes aware of any breach of this Clause 22; and
- 22.3.3 respond promptly, and in any event within two (2) Working Days, to any of the Authority's enquiries regarding any breach, potential breach or suspected breach of this Clause 22 and the Supplier shall co-operate with any investigation and allow the Authority, or such third party it elects, to audit the Supplier's books, records and any other relevant documentation in connection with the breach.

- 22.4 If the Supplier, the Supplier's Personnel or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge, is in Default under this Clause 22 and/or 38.1.4 then without prejudice to the Authority's other rights or remedies:
- 22.4.1 the Authority shall be entitled to terminate this Contract by serving on the Supplier notice in writing with effect from the date specified in that notice; and
- 22.4.2 the Supplier shall on demand indemnify the Authority and keep it indemnified and hold it harmless from and against all Losses which the Authority may suffer or incur as a result of or in connection with such Default.

Promoting Tax Compliance

- 22.5 If, at any point during this Contract an Occasion of Tax Non-Compliance occurs the Supplier shall:
- 22.5.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
- 22.5.2 promptly, and in any event within two (2) Working Days of the notification being submitted in accordance with Clause 22.5.1, provide to the Authority:
- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

23. SAFEGUARD AGAINST FRAUD

- 23.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier and/or its Personnel.
- 23.2 The Supplier shall immediately notify the Authority in writing if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur, save where complying with this provision would cause the Supplier and/or its Personnel to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 23.3 If the Supplier and/or the Supplier's Personnel commit Fraud, then without prejudice to the Authority's other rights or remedies:
- 23.3.1 the Authority shall be entitled to terminate this Contract by serving on the Supplier notice in writing with effect from the date specified in that notice; and
- 23.3.2 the Supplier shall on demand indemnify the Authority and keep it indemnified and hold it harmless from and against all Losses which the Authority may suffer or incur as a result of or in connection with any breach of Clause 23.

24. DISCRIMINATION

- 24.1 In providing the Services the Supplier 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**).
- 24.2 The Supplier shall take all reasonable steps to procure the observance of the Equalities Provisions by its Personnel engaged in the provision of the Services.
- 24.3 The Supplier shall provide such information as the Authority may reasonably require for the purpose of assessing the Supplier's compliance with Clause 24.1 and Clause 24.2.

- 24.4 The Supplier shall notify the Authority immediately in writing upon becoming aware of any investigation or legal proceedings brought against the Supplier and/or its Personnel (involved in the provision of the Services) under the Equalities Provisions.
- 24.5 In the event of any finding of unlawful discrimination being made against the Supplier and/or its Personnel under the Equalities Provisions, whether such event happened before the Commencement Date or during the Contract Period, the Supplier shall immediately inform the Authority of this finding 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.
- 24.6 In the event of repeated findings of unlawful discrimination against the Supplier during the Contract Period (whether arising from the same or different acts or omissions, and regardless of any steps it has taken in accordance with Clause 24.5 above) the Authority shall, without prejudice to its other rights and remedies, be entitled to terminate this Contract by serving notice in writing on the Supplier with effect from the date specified in that notice.
- 24.7 If requested to do so by the Authority, the Supplier shall, and shall procure its Personnel shall, at its own expense, fully co-operate with the Authority 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 Supplier and/or its Personnel.

25. CHANGE IN LAW

- 25.1 Subject to Clause 25.2, the Supplier shall neither be relieved of its obligations to supply the Services in accordance with this Contract nor be entitled to an increase in the payments due under this Contract as a result of a change in Law.
- 25.2 Any change to either Party's obligations resulting from a change in Law shall be implemented in accordance with the Change Control Procedure.

26. INTELLECTUAL PROPERTY

- 26.1 Except as expressly set out in this Contract:
- 26.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including:
- (a) Supplier Assets; and
 - (b) Supplier Background IPR.
- 26.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
- (a) Authority Materials; and
 - (b) Authority Background IPR.

27. LICENCES GRANTED BY SUPPLIER

- 27.1 The Supplier hereby grants to the Authority, or shall procure the direct grant to the Authority of, a royalty free, irrevocable, transferable, non-exclusive licence to use the:
- 27.1.1 Supplier Assets; and
- 27.1.2 Supplier Background IPR,
- for any purpose relating to the Services or the Replacement Services.

- 27.2 The licence granted in Clause 27.1 includes the right for the Authority to grant sub-licences to other bodies of the Crown, to the Replacement Supplier(s) and to any Other Supplier, provided in each case that the sub-licence is on terms no broader than the licence granted to the Authority.
- 27.3 The licence granted in Clause 27.1 shall remain in force for the Contract Period provided that if any Supplier Background IPR is embedded in or an integral part of any of the Deliverables, the licence granted shall be a royalty free, irrevocable, sub-licensable, transferable, non-exclusive, perpetual licence for the Authority and its sub-licensees to enjoy the full benefit of the relevant Deliverables.
28. **LICENCES GRANTED BY THE AUTHORITY**
- 28.1 The Authority hereby grants to the Supplier a royalty-free, revocable, non-transferable, non-exclusive licence during the Contract Period to use the:
- 28.1.1 Deliverables;
- 28.1.2 Authority Materials; and
- 28.1.3 Authority Background IPR,
- solely to the extent necessary for performing the Services in accordance with this Contract.
- 28.2 The licence granted in Clause 28.1 includes the right for the Supplier to grant sub-licences to its Sub-contractors only on the same terms provided that:
- 28.2.1 the sub-licences shall not be capable of being further sub-licensed by the Sub-contractors;
- 28.2.2 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 33; and
- 28.2.3 the sub-licence is granted solely to the extent necessary for performing the Services in accordance with this Contract.
- 28.3 The licence referred to in Clause 28.1 and any sub-licence granted pursuant to Clause 28.2 shall terminate automatically at the end of the Contract Period (or, if earlier, on written notice to the Supplier from the Authority) and the Supplier shall promptly thereupon deliver to the Authority (or, if the Authority so elects in relation to some or all of the material destroy and certify that it has done so) in the format and media requested, all materials and all copies thereof licensed by the Authority to the Supplier pursuant to Clause 28.1 or by the Supplier to its Sub-contractor(s) pursuant to Clause 28.2 (as the case may be) in the Supplier's or any Sub-contractor's respective possession or control.
29. **ASSIGNMENT OF THE DELIVERABLES**
- 29.1 The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interests in the Deliverables or shall procure that the first owner of the Deliverables assigns them to the Authority on the same basis.
- 29.2 The assignment under Clause 29.1 shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Deliverables, as applicable.
- 29.3 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Contract.
- 29.4 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do such further acts as the Authority may require to perfect the assignment under Clause 29.1 or shall procure that the first owner of the Deliverables does so on the same basis.
- 29.5 Where the Supplier acquires, by operation of law, title to the Deliverables that is inconsistent with the allocation of title set out in Clause 29.1, it shall assign such Deliverables as it has acquired to the

Authority in accordance with this Clause 29.5 or, where relevant, shall procure that the first owner of the Deliverables does so on the same basis.

30. IPR INDEMNITY

- 30.1 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services (including any Deliverables and/or other materials licensed or supplied to the Authority or Indemnified Persons (whether directly or indirectly)) and shall indemnify the Authority and the Indemnified Persons and keep each indemnified and hold each harmless from and against all Losses which the Authority and Indemnified Persons may suffer or incur as a result of or in connection with any breach of this Clause 30.1.
- 30.2 The Authority shall, and shall use its reasonable endeavours to procure the Indemnified Persons shall, notify the Supplier in writing of any claim or demand brought against it for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier.
- 30.3 Save where the Authority has given written notice in accordance with Clause 40.1 (in which case the provisions of Clause 40 shall apply instead of this Clause 30.3 and Clauses 30.4 and 30.5) the Supplier 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 Supplier, provided always that the Supplier shall:
- 30.3.1 consult the Authority and any Indemnified Persons on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 30.3.2 take due and proper account of the interests of the Authority and Indemnified Persons; and
 - 30.3.3 not settle or compromise any claim without the Authority's Approval (not to be unreasonably withheld or delayed).
- 30.4 The Authority shall, and shall use its reasonable endeavours to procure the Indemnified Persons shall, at the request of the Supplier, afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority, Supplier or Indemnified Persons by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under this Contract and the Supplier shall on demand indemnify the Authority and the Indemnified Persons and keep each indemnified and hold each harmless from and against all Losses which the Authority and Indemnified Persons may suffer or incur in doing so.
- 30.5 The Authority shall not, and shall use its reasonable endeavours to procure the Indemnified Persons 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, Indemnified Persons or the Supplier in materials supplied or licensed by the Supplier under this Contract.
- 30.6 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier is made in connection with this Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Authority and Indemnified Persons and, at its own expense and subject to the Approval of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- 30.6.1 modify any or all of the Services (which for the purposes of this Clause 30.6 shall include any Deliverables and/or other materials licensed or supplied to the Authority or Indemnified Persons (whether directly or indirectly)) without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or

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

and in the event that the Supplier is unable to comply with Clauses 30.6.1 or 30.6.2 within twenty (20) Working Days of receipt of the Supplier's notice the Authority shall, without prejudice to its other rights and remedies, be entitled to terminate this Contract by notice in writing to the Supplier with effect from the date specified in that notice.

31. **AUTHORITY ASSETS**

31.1 The Supplier shall, and shall procure its Personnel shall, comply with the requirements of Schedule 12.

31.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Materials and Deliverables.

31.3 To the extent that Authority Materials and/or Deliverables are held and/or processed by the Supplier or any of its Personnel on its behalf, the Supplier shall (and shall procure that its Personnel shall):

31.3.1 preserve the integrity and maintain in good order and condition the Authority Materials and Deliverables and shall prevent the corruption, loss or damage of or to Authority Materials and Deliverables including any copy thereof;

31.3.2 promptly return the Authority Materials and Deliverables (and all copies thereof) to the Authority upon its request at no additional cost and in the format and on the media requested by the Authority from time to time (save, in respect of the return of Personal Data, where the Supplier is required to store such Personal Data by Law);

31.3.3 destroy, and procure its Sub-contractors destroy, all Authority Materials and/or Deliverables upon the earlier of:

(a) the expiry of the applicable Retention Period; and

(b) the written request of the Authority,

(save, in respect of the destruction of Personal Data, where the Supplier is required to store such Personal Data by Law) and following the destruction of such Authority Materials and/or Deliverables, certify that it has done so (including providing any disposal certificates which may be required under Schedule 12);

31.3.4 without prejudice to any other rights or remedies the Authority may have, permit the Authority and its respective agents to enter upon the Supplier Premises and/or the Accommodation during normal business hours on reasonable notice to remove the Authority Materials and/or Deliverables; and

31.3.5 at the request of the Authority, store such items separately and ensure that they are clearly identifiable as belonging to the Authority.

31.4 Authority Materials shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority in writing within five (5) Working Days of receipt.

31.5 In the event that through any Default of the Supplier and/or its Personnel, Authority Data is either lost, corrupted, degraded or damaged, the Supplier shall on demand indemnify the Authority and keep it indemnified and hold it harmless from and against all Losses which the Authority may suffer or incur as a result of or in connection with any such Default.

32. **PROTECTION OF PERSONAL DATA**

32.1 The Parties acknowledge that the factual arrangement between them dictates the role of each Party in respect of the Data Protection Legislation. With respect to the Parties' rights and obligations under

this Contract, the Parties agree that the Authority is the Data Controller and the Supplier is the Data Processor with respect of the Supplier's Processing of the Authority Data. A detailed description of the data Processing activities, including the Personal Data concerned, is set out in Schedule 18. Each of the Parties acknowledges and agrees that Schedule 18 is an accurate description of the data Processing activities.

32.2 The Supplier shall:

- 32.2.1 at all times comply with the requirements of the Data Protection Legislation and shall take such steps as are requested by the Authority to enable the Authority to comply with its obligations under Data Protection Legislation, including by providing such assistance to the Authority as is contemplated by Article 28(3)(e) and (f) (Processor) of the UK GDPR and entering into such further agreements as are necessary to enable the Authority to comply with its obligations under Data Protection Legislation;
- 32.2.2 ensure that at all times it has in place appropriate technical and organisational measures to:
 - (a) ensure the security, integrity and confidentiality of the Authority Data; and
 - (b) to guard against unauthorised or unlawful Processing of the Authority Data and against accidental loss or destruction of, or damage to, the Authority Data (including accidental loss, damage or destruction of the Personal Data) and such measures shall, at a minimum, meet the requirements of Data Protection Legislation (including the requirements of Article 32 (Security of processing) of the UK GDPR);
- 32.2.3 without prejudice to 32.2.2, comply with the provisions of Schedule 12 and ensure that any technical and organisational measures are to a standard no less than that set out in that Schedule 12;
- 32.2.4 promptly, and in any event within two (2) Working Days, provide the Authority such information as the Authority may reasonably request to satisfy itself that the Supplier is complying with its obligations under this Contract and the Data Protection Legislation;
- 32.2.5 comply with any notification requirements under the Data Protection Legislation;
- 32.2.6 in the event of any change in Data Protection Legislation subsequent to the Commencement Date take such steps (including agreeing to additional obligations and/or executing additional documents) as may be requested by the Authority to ensure that the Processing by the Supplier of Authority Data complies with Data Protection Legislation;
- 32.2.7 immediately notify the Authority in writing:
 - (a) of any unlawful or unauthorised Processing of any Authority Data or if any Authority Data is disclosed in breach of this Contract and/or any breach of the security measures to be put in place under this Contract or if any Personal Data is lost or stolen, and shall provide such assistance in relation to each of the foregoing as is requested by the Authority;
 - (b) if in the Supplier's opinion, the Supplier's compliance with Clause 32.2.10 would breach a requirement of applicable Law (including Data Protection Legislation); and
 - (c) if in the Supplier's opinion, an instruction from the Authority breaches a requirement of applicable Law (including Data Protection Legislation).
- 32.2.8 ensure that it does not knowingly or negligently do or omit to do anything which places the Authority in breach of its obligations under the Data Protection Legislation;

- 32.2.9 Process the Authority Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified in writing by the Authority to the Supplier during the Contract Period) unless required to do otherwise by Law;
- 32.2.10 Subject to Clause 32.2.9, Process the Authority Data only to the extent, and in such manner, as is necessary for the provision of the Services and as described in Schedule 18;
- 32.2.11 ensure that access to the Authority Data is strictly limited to those of its Personnel who reasonably require access to the Authority Data in order to meet the Supplier's obligations under this Contract;
- 32.2.12 take all reasonable steps to ensure the reliability of any Supplier's Personnel who have access to the Authority Data and ensure that the Supplier's Personnel:
- (a) are informed of the confidential nature of the Authority Data, have entered into appropriate contractually-binding confidentiality undertakings and comply with the Supplier's obligations set out in this Clause 32 and otherwise under this Contract;
 - (b) are aware of the confidential nature of the Authority Data and do not publish, disclose or divulge any of the Authority Data to any third party unless directed in writing to do so by the Authority; and
 - (c) have undergone adequate training in the use, care, protection and handling of Authority Data, including any training set out in Schedule 12;
- 32.2.13 notify the Authority within five (5) Working Days if it receives:
- (a) a request from a Data Subject (or a third party on their behalf) to have access to that person's Personal Data and shall not disclose any Authority Data in response to such Data Subject request without the Authority's prior written consent;
 - (b) a complaint or request relating to the Authority's obligations under the Data Protection Legislation; or
 - (c) any communication from the Information Commissioner or any other regulatory authority in connection with the obligations of the Authority in relation to Data Protection Legislation;
- 32.2.14 provide the Authority with full co-operation and assistance within reasonable time scales in relation to any complaint made or requests received in relation to Authority Data, including by promptly, and in any event within two (2) Working Days, providing:
- (a) the Authority with full details of the complaint or request;
 - (b) such assistance and information as is reasonably requested to enable the Authority to comply with the request or complaint within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions; and
 - (c) the Authority with any Authority Data it holds in relation to a Data Subject;
- 32.2.15 provide, within a reasonable timescale, a written description of the technical and organisational methods employed by the Supplier for the purpose of compliance with its obligations under this Clause 32 and provide to the Authority copies of all documentation relevant to such compliance including protocols, procedures, guidance, training and materials; and

32.2.16 not Process Authority Data outside of the United Kingdom without the Approval of the Authority and if the Authority approves to a transfer:

- (a) comply with any reasonable instructions notified to it by the Authority;
- (b) at the request of the Authority, enter into or procure the recipient of the Authority Data enters into such data transfer agreement as may be required by the Authority which may include any data transfer agreement which is approved or recognised by a data protection regulator; and
- (c) take such other steps as are required by the Authority to enable the Processing of Authority Data outside the United Kingdom (and if the Authority approves to the Processing of Authority Data within the European Economic Area, then outside of that area) to take place in accordance with Data Protection Legislation.

32.3 The Supplier shall not Sub-contract the Processing of Personal Data without the Approval of the Authority (such Approval not to be unreasonably withheld or delayed). In the event that the Authority gives its Approval to the appointment of a sub-processor, the Supplier shall ensure that, prior to any Processing of Personal Data by the sub-processor, the Supplier enters into an agreement with the sub-processor on terms that provide no less protection for Personal Data than those set out in this Clause 32. The Authority may subsequently withdraw its consent to the engagement of a sub-processor where it has reasonable grounds for doing so (including where the Authority has concerns over the ability of the sub-processor to Process the Personal Data in the manner contemplated by this Clause 32) and in such circumstances the Supplier shall cease to use the sub-processor to Process Personal Data. The Supplier shall remain fully responsible for the acts and omissions of any sub-processor appointed in accordance with this Clause 32.3 and the acts and omissions of those employed or engaged by the sub-processor as if they were its own.

32.4 Without prejudice to the Authority's rights under Clause 15, the Supplier shall provide the Authority with all information requested by the Authority to enable the Authority to verify the Supplier's and each sub-processor's compliance with this Clause 32 including the Authority being entitled to inspect, test and audit or appoint any Auditors to inspect, test and audit all facilities, premises, equipment, systems, documents and electronic data relating to the Processing of Personal Data by or behalf of the Supplier. The Supplier shall provide (and shall procure that each sub-processor provides) full cooperation and assistance in relation to each inspection, test and audit.

32.5 Without prejudice to the Authority's other rights and remedies, in the event that the Authority or the Auditors identify any non-compliance with this Clause 32, the Supplier shall:

32.5.1 remedy the non-compliance and shall take such steps as the Authority reasonably requests for this purpose; and

32.5.2 pay the Authority on demand the reasonable costs incurred by the Authority and any Auditor undertaking the audit.

32.6 The Supplier shall at all times on demand indemnify the Authority and keep it indemnified and hold it harmless from and against all Losses which the Authority may suffer or incur as a result of or in connection with any breach of this Clause 32.

32.7 The provisions of this Clause 32 shall apply during the Contract Period and for so long as the Supplier processes any Authority Data.

32.8 In relation to Personal Data processed for Law Enforcement Purposes, the Supplier shall:

32.8.1 maintain logs for its processing operations in respect of:

- a) collection;
- b) alteration;
- c) consultation
- d) disclosure (including transfers)

- e) combination; and
 - f) erasure;
- (together the “Logs”)

32.8.2 ensure that:

- a) the Logs of consultation make it possible to establish the justification for, and date and time of, the consultation; and as far as possible, the identity of the person who consulted the data;
- b) the Logs of disclosure make it possible make it possible to establish the justification for, and date and time of, the disclosure; and the identity of the recipients of the data; and
- c) the Logs are made available to the Information Commissioner on request;

32.8.3 use the Logs only to:

- a) verify the lawfulness of Processing;
- b) assist with self-monitoring by the Authority or (as the case may be) the Supplier, including the conduct of internal disciplinary proceedings;
- c) ensure the integrity of Personal Data;
- d) or assist with criminal proceedings;

32.8.4 as far as possible, distinguish between Personal Data based on fact and Personal Data based on personal assessments; and

32.8.5 where relevant and as far as possible, maintain a clear distinction between Personal Data relating to different categories of Data Subject, for example:

- a) persons suspected of having committed or being about to commit a criminal offence;
- b) persons convicted of a criminal offence;
- c) persons who are or maybe victims of a criminal offence; and
- d) witnesses or other persons with information about offences.

33. **CONFIDENTIALITY**

33.1 To the extent that either Party discloses Confidential Information to the other the receiving party shall comply with this Clause 33.

33.2 Except to the extent set out in this Clause 33 or where disclosure is expressly permitted elsewhere in this Contract, the receiving party shall:

33.2.1 treat all Confidential Information belonging to the disclosing party as confidential and safeguard it accordingly; and

33.2.2 not disclose any Confidential Information belonging to the disclosing party to any other person without Approval of the disclosing party.

33.3 Subject to Clause 33.4, the Supplier may only disclose the Confidential Information of the Authority to:

33.3.1 its Personnel who are directly involved in the provision of the Services and need to know such Confidential Information for the provision of the Services;

33.3.2 its auditors;

33.3.3 its professional advisors for the purposes of obtaining advice in relation to this Contract; and

- 33.3.4 an assignee (and its employees, professional advisors, auditors or group companies) of the right to receive the Contract Price (together with other rights) in accordance with Clause 54, for purposes relating to the exercise and enforcement of such right.
- 33.4 Where the Supplier discloses the Confidential Information of the Authority in accordance with Clause 33.3 it shall:
- 33.4.1 ensure that its Personnel shall not use or exploit any of the Confidential Information received from or on behalf of the Authority otherwise than to enable the performance of the Supplier's obligations under this Contract;
 - 33.4.2 ensure that its auditors and professional advisors shall not use or exploit any of the Confidential Information received from or on behalf of the Authority otherwise than in respect of providing advice to the Supplier in respect of this Contract;
 - 33.4.3 ensure that an assignee of the right to receive the Contract Price (together with other rights) in accordance with Clause 54, and the employees, professional advisors, auditors and group companies of any such assignee, shall not use or exploit any of the Confidential Information received from or on behalf of the Authority otherwise than for purposes relating to the exercise and enforcement of such right;
 - 33.4.4 ensure that its Personnel, auditors and professional advisors, and any assignee and the employees, professional advisors, auditors and group companies of any such assignee as are referred to in Clause 33.3.4, are aware of and comply with the Supplier's confidentiality obligations under this Contract; and
 - 33.4.5 at the written request of the Authority, procure that its Personnel, auditors and professional advisors and any assignee as is referred to in Clause 33.3.4 that the Authority deems necessary sign a confidentiality undertaking on similar terms to this Contract for the benefit of the Authority prior to commencing any work in accordance with this Contract.
- 33.5 In respect of the Confidential Information of the Authority, the Supplier undertakes:
- 33.5.1 to maintain adequate security arrangements that meet the requirements of Good Industry Practice, including the security arrangements set out in Schedule 12;
 - 33.5.2 immediately notify the Authority of any breach of security in relation its Confidential Information obtained in the performance of this Contract and shall:
 - (a) keep a record of such breaches;
 - (b) use its best endeavours to recover the Confidential Information however it may have been recorded, which has been lost or corrupted due to any act or omission of the Supplier or its Personnel;
 - (c) co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to the Confidential Information; and
 - (d) at its own expense, alter any security systems used in connection with the performance of this Contract at any time during the Contract Period at the request of the Authority if the Authority believes (acting reasonably) the Supplier has failed to comply with this Clause 33.
- 33.6 Where the Supplier discloses Confidential Information of the Authority pursuant to Clause 33.3, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

- 33.7 Clauses 33.2 shall not apply to any Confidential Information received by one party from another to the extent that:
- 33.7.1 it was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
 - 33.7.2 such information was obtained from a third party who lawfully acquired it and who is under no obligation of restricting its disclosure;
 - 33.7.3 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; and/or
 - 33.7.4 it is independently developed without access to the other party's Confidential Information.
- 33.8 Nothing in this Contract shall prevent the Authority from disclosing the Supplier's Confidential Information:
- 33.8.1 to its Personnel, its professional advisors and Auditors for any purpose relating to or connected with this Contract;
 - 33.8.2 to any Crown body on the understanding that they shall be entitled to further disclose the Supplier's Confidential Information to other Crown bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of the Crown (unless disclosure is required by Law or is permitted under this Contract);
 - 33.8.3 for the purpose of the examination and certification of the accounts of the Authority;
 - 33.8.4 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;
 - 33.8.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 33.8.6 to the extent that the Authority (acting reasonably) deems disclosure necessary in the course of carrying out its public functions; and/or
 - 33.8.7 to a proposed transferee, assignee or novatee of, or successor in title to the Authority.
- 33.9 The receiving party may disclose the Confidential Information of the disclosing party where such Confidential Information must be disclosed pursuant to Law (including any requirements for disclosure under FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations) provided that, where a party is seeking to disclose Confidential Information of another under this Clause 33.9. it shall, to the extent permitted by Law, notify the original disclosing party of the full circumstances of the required disclosure and shall co-operate with that disclosing party to limit any such disclosure so far as legally possible.
- 33.10 Nothing in this Clause 33 shall prevent a Party from using any techniques, ideas or Know-How gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of such party's Confidential Information or an infringement of its Intellectual Property Rights.
- 33.11 This Clause 33 shall operate without prejudice to and be read subject to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
34. **FREEDOM OF INFORMATION**
- 34.1 The Supplier acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations.

- 34.2 The Supplier shall and shall procure that its Personnel shall:
- 34.2.1 assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations;
 - 34.2.2 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information; and
 - 34.2.3 promptly provide and in any event within two (2) Working Days of request, the Authority with a copy of all Information that is relevant to a Request for Information and in its possession, or power in the form that the Authority requires (or such other period as the Authority may specify).
- 34.3 In no event shall the Supplier respond directly to a Request for Information without prior Approval of the Authority.
- 34.4 The Supplier acknowledges that (notwithstanding the provisions of this Clause 34) the Authority may be obliged under FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier and/or the Services (including its Confidential Information and Commercially Sensitive Information):
- 34.4.1 in certain circumstances without consulting the Supplier; or
 - 34.4.2 following consultation with the Supplier and having taken their views into account,
- provided always that where Clause 34.4.1 applies the Authority shall take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 34.5 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Authority and any Auditors to inspect such records as requested from time to time.
35. **TRANSPARENCY**
- 35.1 Notwithstanding any other term of this Contract, the Supplier hereby gives its consent for the Authority to publish this Contract in its entirety (subject only to redaction of any information that the Authority determines is exempt from disclosure in accordance with the provisions of FOIA) including any agreed Contract Changes.
- 35.2 The Authority may consult with the Supplier to help with its decision regarding any exemptions under Clause 35.1 but the Authority shall have the final decision in its absolute discretion.
- 35.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this Contract.
36. **OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**
- 36.1 The Supplier shall comply with and shall ensure that its Personnel comply with the provisions of:
- 36.1.1 the Official Secrets Acts 1911 to 1989; and
 - 36.1.2 Section 182 of the Finance Act 1989.
- 36.2 In the event that the Supplier and its Personnel fail to comply with this Clause, without prejudice to its other rights and remedies, the Authority shall be entitled to terminate this Contract by serving notice in writing with effect from the date specified in that notice.

37. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

37.1 The Supplier shall not make any press announcements or publicise this Contract or any part thereof in any way, except with the prior Approval of the Authority.

37.2 The Supplier shall not have any right to use any of the names, logos or trademarks of the Authority without its Approval.

38. WARRANTIES, UNDERTAKINGS AND REPRESENTATIONS

38.1 The Supplier warrants, represents and undertakes to the Authority that:

38.1.1 it has full capacity and authority and all necessary consents (and has and will maintain sufficient working capital) to enter into and perform its obligations under this Contract;

38.1.2 this Contract is executed by a duly authorised representative of the Supplier;

38.1.3 all information, statements, warranties and representations made in the procurement process, including those contained in the Service Solution, and (unless otherwise agreed by the Authority in writing) any other document which resulted in the award to the Supplier of this Contract are true, accurate and not misleading and it shall promptly advise the Authority in writing of any fact, matter or circumstances of which it may become aware which would render any such information, statement, warranty or representation to be false or misleading;

38.1.4 neither it, nor to the best of its knowledge, its Personnel, have:

(a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed on any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(c) committed any Fraud.

38.1.5 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Contract;

38.1.6 it has not caused or induced any person to enter any such agreement as is referred to in Clause 38.1.5;

38.1.7 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;

38.1.8 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 the Supplier Assets and/or the Accommodation which will or might affect its ability to perform its obligations under this Contract;

38.1.9 it is not subject to any contractual obligation, compliance with which will be likely to have an adverse effect on its ability to perform its obligations under this Contract;

38.1.10 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier 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 Suppliers Assets or revenue;

38.1.11 in the three (3) years prior to the date of this Contract (or, if the Supplier has been in existence for less than three (3) years, in the whole of such shorter period) it has:

- (a) conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles in England and Wales; and
- (b) it has not performed any act or made any omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an on-going business concern or its ability to fulfil its obligations under this Contract;

38.1.12 the Services will be performed in accordance with the standards set out in this Contract;

38.1.13 all Personnel employed or engaged by the Supplier for the provision of the Services have been and will continue to be vetted and recruited to a standard that meets or exceeds the terms of this Contract;

38.1.14 use of the Deliverables, Supplier Assets and/or Accommodation and the Intellectual Property Rights in them (including Supplier Background IPR) shall not infringe the rights of any third parties;

38.1.15 the Deliverables and the Supplier Assets made available by the Supplier will each be materially free of defects and errors including viruses, bugs, malware, spyware and malicious code;

38.1.16 the Deliverables will each conform in all material respects to the Service Specification (and, where applicable, any specification set out in the Transition Plan and/or Exit Plan);

38.1.17 the Supplier's ICT systems and other systems used in the provision of the Services and including the Caseload Management System will be coded so as to minimise (to the extent reasonably practicable and in accordance with Good Industry Practice) vulnerability to web application attacks of a type known to the Supplier (or would have been known about by a reasonably competent practitioner in the field);

38.1.18 it uses all up-to-date versions of firewall and anti-virus protection applications in accordance with Good Industry Practice to prevent the introduction into the Supplier's systems and other systems used in the provision of the Services (including the Caseload Management System) of any viruses, containments or any other disabling attacks of any kind through the Supplier's systems or the provision of the Services;

38.1.19 as at the Commencement Date:

- (a) it has not created or permitted to subsist any Encumbrance over any Service Property; and/or
- (b) it has not entered into or agreed to enter into a single transaction or series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of any Service Property;

38.1.20 at any time during the Contract Period and the Exit Period:

- (a) it will not create or permit to subsist any Encumbrance over any Service Property; and/or

- (b) it will not enter into or agree to enter into a single transaction or series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, license, sub-license, transfer or otherwise dispose of any Service Property;

38.1.21 there is no conflict between its charitable objects and its role as Supplier, and there are no grounds on which the documents by which it is incorporated, constituted and governed prevent it from performing the role of Supplier; and

38.1.22 any funding it is in receipt of which constitutes State aid is compliant with the State aid rules, and that it shall act in a manner which remains compliant with State aid rules in respect of the use of such funding for the duration of the Contract Period.

38.2 The Supplier shall promptly notify the Authority in writing if it becomes aware that a warranty, undertaking or representation given by it under this Contract has been breached, is untrue or is misleading or any fact, matter or circumstance of which it may become aware which would render any such information, statement, warranty or representation to be false or misleading if repeated, giving the Authority sufficient detail to enable it to make an accurate assessment of the situation.

38.3 The fact that any provision within this Contract is expressed as a warranty, undertaking or representation shall not preclude any right of termination the Authority may have in respect of breach of that provision by the Supplier.

38.4 The Authority represents and warrants that:

38.4.1 it has full capacity and authority to enter into and to perform this Contract;

38.4.2 this Contract is executed by its duly authorised representative; and

38.4.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract.

39. **LIMITATION OF LIABILITY**

39.1 Neither Party excludes or limits liability to the other Party for:

39.1.1 death or personal injury caused by its negligence, or that of its Personnel;

39.1.2 Fraud or fraudulent misrepresentation by it or its Personnel;

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

39.1.4 any liability to the extent it cannot be limited or excluded by Law.

39.2 The Supplier's liability shall be unlimited in respect of:

39.2.1 the indemnities given under Clauses 7, 10, 18, 21, 22, 23, 30, and 32 and Schedule 11 and Schedule 14 (but not any sums payable pursuant to Paragraph 3 of Part C of Schedule 14, entitled "Redundancy Sums Indemnity"); and

39.2.2 any costs incurred in respect of repairing damage to Accommodation caused by CAS-2 Residents in accordance with Paragraph G8 of Schedule 1.

39.3 Subject to Clauses 39.1, 39.2 and 39.5 the Supplier's aggregate liability in any twelve Month period commencing on the Commencement Date or any anniversary of such date in respect of all Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier (whether occurring during the Contract Period or after the end of the Contract Period) shall in no event exceed ten million pounds (£10,000,000) provided that where any Losses referred to in this Clause 39.3 have been incurred by the Authority as a result of the Supplier's abandonment of

this Contract or the Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the Supplier's liability shall be unlimited.

- 39.4 Subject to Clauses 39.1 and 39.5 and without prejudice to the Authority's obligation to pay the Contract Price and any other amounts properly due from it to the Supplier the Authority's aggregate liability:
- 39.4.1 in relation to the Termination Payment referred to at Clause 48.2 below, shall in no event exceed the maximum termination payment applicable to the relevant Contract Year as indicated in the pricing template provided by the Supplier in the bidding phase;
 - 39.4.2 arising under Schedule 14, Part A and B (including any Redundancy Costs which may be due under Paragraph 8 of Part A and any sums due under Paragraph 2.1 of Part B of that Schedule 14), whether occurring during the Contract Period or after the end of the Contract Period, shall in no event exceed the sum of £1,000,000;
 - 39.4.3 arising under Schedule 14, Part C (including any Redundancy Sums which may be due under Paragraph 3 of Part C) shall in no event exceed the sum of £500,000; and
 - 39.4.4 in any twelve Month period commencing on the Commencement Date or any anniversary of such date in respect of all other Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Authority (whether occurring during the Contract Period or after the end of the Contract Period) shall in no event exceed the sum of one million pounds (£1,000,000), provided always that any amounts paid by the Authority in accordance with Clauses 39.4.1 to 39.4.3 above shall be separate to and shall not be taken account of when calculating the Authority's liability against this cap.
- 39.5 Subject to Clause 39.1 and 39.6, neither Party shall be liable to the other Party for:
- 39.5.1 any indirect, special or consequential Loss; or
 - 39.5.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 39.6 Subject to Clause 39.3 (except where stated otherwise) and Clause 39.5, the Supplier acknowledges and agrees that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- 39.6.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including interim operational services and the costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 39.6.2 the additional cost of procuring Replacement Services for the remainder of the Contract Period and/or replacement Deliverables, which shall include both the respective Authority's internal cost of undertaking the procurement process and the costs payable to the Replacement Supplier(s) for the particular Replacement Services and/or replacement Deliverables;
 - 39.6.3 any wasted expenditure or charges;
 - 39.6.4 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty (and this provision shall not be limited by the limits of liability set out in Clause 39.3); and
 - 39.6.5 Losses arising from any claim made by a CAS-2 Resident against the Authority as a result of any Default by the Supplier, including in respect of the Supplier's failure to carry out repairs to the Accommodation (and this provision shall not be limited by the limits of liability set out in Clause 39.3).

39.7 Each Party shall use reasonable endeavours to mitigate any loss or damage suffered or arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

40. CONDUCT OF CLAIMS

40.1 The Supplier agrees (and shall procure that its Sub-contractors agree) that the Authority has the sole right, on giving written notice to such effect to the Supplier at any time, to control of any proceedings in relation to any Third Party Claim (including any claim by employees of the either the Authority or the Supplier), regardless of whether the Supplier (or any Sub-contractor) is also a party to such proceedings.

40.2 The Authority agrees that it shall not settle or compromise any Third Party Claim giving rise to losses exceeding £10,000 (ten thousand pounds) for which the Supplier is liable to indemnify or compensate the Authority under this Contract without prior consultation with the Supplier. The Authority shall keep the Supplier reasonably informed as to the progress and status of any such Third Party Claim until such Third Party Claim is settled or withdrawn.

40.3 If, in contesting, settling or compromising any Third Party Claim, the Authority takes or fails to take any action which prejudices any entitlement of the Supplier to recover any portion of the claim from any insurer under any insurance policy maintained by the Supplier in accordance with this Contract, the liability of the Supplier to indemnify or compensate the Authority in respect of such claim shall be reduced by such portion.

40.4 The Supplier undertakes that:

40.4.1 it shall not, without the Approval of the Authority, settle or compromise any claim (whether insured or uninsured) to which the Authority is, or is likely to become, a party;

40.4.2 where a claim relating to this Contract is made against the Supplier and the Authority is not, and is not likely to become, a party to such claim as a defendant, the Supplier shall not settle or compromise any such claim exceeding £10,000 (ten thousand pounds) without prior consultation with the Authority; and

40.4.3 it shall ensure that its Sub-contractors give undertakings identical to those given by the Supplier to the Authority under this Clause 40.

40.5 If conduct of a claim is assumed by the Authority pursuant to this Clause 40, the Supplier may recover from the Authority any reasonably incurred Losses which either the Supplier or its insurers incur by reason of the Authority's conduct of the claim and any settlement of the relevant claim or judgment being given if the settlement is made without the Supplier's consent (such consent not to be unreasonably withheld or delayed).

41. INSURANCE

41.1 The Supplier shall comply, and shall procure its Sub-contractors comply with, the provisions of Schedule 10 in relation to obtaining and maintaining insurance.

42. CONTRACT PERIOD

42.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the later of:

42.1.1 the end of the Initial Contract Period;

42.1.2 if the Authority elects to extend the Initial Contract Period in accordance with Clause 43, the last day of the latest extension period; or

42.1.3 if later, the end of the last Exit Period.

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

43. EXTENSION OF INITIAL CONTRACT PERIOD

43.1 The Authority may, by giving written notice to the Supplier not less than six (6) Months prior to the Expiry Date extend the term of this Contract for up to two periods of twelve (12) Months each.

43.2 The Authority shall be entitled to exercise its right to extend the term of the Contract pursuant to clause 43.1 provided that an aggregate of such periods does not exceed two (2) years.

43.3 The provisions of this Contract will apply throughout any extension period.

44. PERFORMANCE FAILURES

44.1 The Parties shall at all times comply with the provisions of Schedule 4.

44.2 In the event of the Authority's breach of the terms of this Contract (including payment of any Contract Price properly due), the Supplier shall not be entitled suspend the Services (or any part thereof) or terminate this Contract (whether in whole or in part) but shall refer the matter to the Dispute Resolution Procedure.

45. TERMINATION BY THE AUTHORITY

45.1 The Authority may terminate this Contract by written notice to the Supplier:

45.1.1 for convenience at any time;

45.1.2 if a Supplier Termination Event occurs;

45.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days;

45.1.4 where this Contract should not have been entered into in view of a serious infringement of obligations under Retained European Law (including declared by the Court of Justice of the European Union under Article 258 of the Treaty of the Functioning of the EU); and/or

45.1.5 if this Contract has to be substantially amended to the extent that the PCR require a new procurement procedure,

and this Contract shall terminate on the date specified in the notice sent by the Authority to the Supplier save that, where the Authority terminates this Contract in accordance with Clause 45.1.1, the Authority shall give the Supplier at least 6 (six) Months' written notice.

45.2 Where the Authority is terminating this Contract under Clause 45.1.2 due to the occurrence of either limb (c) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default.

45.3 Where the Authority has the right to terminate this Contract, it may prior to or instead of terminating the whole of this Contract, serve notice requiring Partial Termination of this Contract.

46. NOT USED

47. NOT USED

48. PAYMENTS ON TERMINATION

Payments by the Authority

- 48.1 Except in the circumstances described in Clause 48.2, the Authority shall not be liable to make any payment to the Supplier as compensation for termination or expiry of this Contract save in respect of any unpaid Contract Price for Services which have been properly performed prior to the date of termination or any other payment properly due.
- 48.2 Subject to Clauses 39.4 and 48.3 to 48.8 below, where the Authority terminates this Contract for convenience under Clause 45.1.1, the Authority shall reimburse the Supplier in respect of:
- 48.2.1 the Redundancy Payment; and
- 48.2.2 any other reasonable sums which would otherwise represent an unavoidable direct loss to the Supplier by reason of the termination of this Contract, provided that the Supplier takes all reasonable steps to mitigate such loss (the **Breakage Payment**),
- (and the Redundancy Payment and the Breakage Payment shall together be referred to as the **Termination Payment**).
- 48.3 The value of the Termination Payment shall be reduced or extinguished to the extent that the Supplier and/or any Sub-contractor has already received the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.
- 48.4 The Authority shall not be liable under Clause 48.2.1 for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Payment.
- 48.5 The Supplier agrees to use all reasonable endeavours to, and shall procure that any Sub-contract shall, minimise and mitigate the Redundancy Payment, including but not limited to by redeployment.
- 48.6 Where the Supplier and/or any Sub-contractor holds insurance, the Authority shall only reimburse the Supplier for those unavoidable direct costs that are not covered by the insurance available.
- 48.7 The Supplier shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority under Clause 48.2, with supporting evidence (including details of depreciation and residual value of items), of losses reasonably, necessarily, and actually incurred by the Supplier and/or any Sub-contractor as a result of termination under Clause 45.1.1.
- 48.8 The Supplier may only recover those costs under Clause 48.2 incurred by it directly as a result of the termination of this Contract which:
- 48.8.1 are unavoidable, proven, reasonable, and not capable of recovery;
- 48.8.2 are incurred under arrangements or agreements that are directly associated with this Contract;
- 48.8.3 relate directly to the termination of the Services; and
- 48.8.4 are not associated with repairing or making good any dilapidation of the Accommodation.

Payments by the Supplier

- 48.9 In the event of termination or expiry of this Contract, the Supplier shall:
- 48.9.1 repay to the Authority within thirty (30) days of the date of such termination or expiry all of the Contract Price it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination; and
- 48.9.2 where this Contract has been terminated by the Authority as a result of a Supplier Termination Event, pay to the Authority within thirty (30) days of the date of the Authority's invoice any costs and expenses reasonably incurred by the Authority in procuring services to replace the Services (whether or not those replacement services are provided by the

Authority or Replacement Supplier(s) provided that the Authority shall take all reasonable steps to mitigate such additional expenditure.

Estimate of the Termination Payment

- 48.10 The Authority may issue a Request for Estimate at any time during the Contract Period provided that no more than 2 Requests for Estimate may be issued in any 6 Month period.
- 48.11 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment that would be payable by the Authority based on a postulated termination date specified in the Request for Estimate (such estimate being the **Termination Estimate**). The Termination Estimate shall:
- 48.11.1 be based on the relevant amounts set out in the Financial Model;
- 48.11.2 include:
- (a) details of the mechanism by which the Termination Payment is calculated (including the treatment of any outstanding Housing Benefit);
 - (b) full particulars of the estimated Termination Payment in respect of each Sub-contract and/or relevant third-party contract and appropriate supporting documentation;
 - (c) such other information as the Authority may reasonably require; and
 - (d) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 48.12 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Contract.
- 48.13 Subject to Clause 39.4.1, if the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

49. SURVIVAL

- 49.1 Termination or expiry of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier including under Clauses 4, 6, 8, 10, 11, 14, 15, 18, 19, 21, 22, 23, 24, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 41, 44, 48, 49, 50, 51, 54, 56, 59, 62, 63 and 64 and without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Contract.

50. NON-SOLICITATION

- 50.1 Neither Party shall, directly or indirectly, solicit or procure (otherwise than by general advertising or under TUPE, any employees or contractors (including the Staff) of the other Party who are directly employed or engaged in connection with the provision of the Services while such persons are employed or engaged and for a period of 6 Months thereafter.
- 50.2 If either Party breaches the clause 50.1, it shall pay the other Party a sum equivalent to 20% of the annual base salary payable by the Party in breach in respect of the first year of person's employment.

50.3 The Parties agree that the sum specified in clause 50.2 is a reasonable pre-estimate of the loss and damage which the party not in breach would suffer if there was a breach of clause 50.1.

51. **EXIT MANAGEMENT**

51.1 The Parties shall comply with the provisions of Schedule 11 and any current Exit Plan in relation to orderly transition of the Services to the Authority and any Replacement Supplier(s).

52. **BUSINESS CONTINUITY AND DISASTER RECOVERY**

52.1 The Parties shall comply with the provisions of Schedule 17 and their respective obligations under the BCDR Plan.

53. **FORCE MAJEURE**

53.1 Subject to Clause 53.2, neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Contract to the extent that such delay or failure is a result of Force Majeure Event.

53.2 Where the Supplier is the Affected Party, it shall:

53.2.1 take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event; and

53.2.2 not be entitled to claim relief under Clause 53.1 to the extent that the consequences of the relevant Force Majeure Event:

(a) are capable of being mitigated by any of the Services including any services to be provided under the BCDR Plan but the Supplier has failed to do so; and/or

(b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

53.3 Notwithstanding Clause 53.1 each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of a Force Majeure Event.

53.4 The Authority shall not be obliged to pay any Contract Price or any other payment in respect of any Service(s) which is subject to the Force Majeure Event.

53.5 The Supplier shall promptly resume the Services following the expiry of the Force Majeure Event.

53.6 If either Party becomes aware of Force Majeure Event which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 53.1 it shall immediately notify the other by the most expeditious method then available and at regular intervals thereafter the Parties shall consult in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract.

53.7 The notice given in accordance with Clause 53.6 shall include details of the Force Majeure Event together with evidence of its effects on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effects.

54. **ASSIGNMENT AND NOVATION**

54.1 Subject to Clause 19 and Clause 54.2, the Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the Approval of the Authority. When seeking the Authority's Approval under this Clause 54.1, the Supplier shall provide the Authority with such information as it may reasonably require in order

to assess whether the proposed third party recipient of the Supplier's rights and/or obligations under this Contract is acceptable.

54.2 The Supplier may assign to a third party (the **Assignee**) its existing and future rights under this Contract to include the right to receive payment of the Contract Price or any part thereof due to the Supplier under this Contract. Any assignment under this Clause 54.2 shall be subject to:

54.2.1 reduction of any sums in respect of which the Authority exercises its right of recovery under Clause 11;

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

54.2.3 the Authority receiving notification under Clause 54.3.

54.3 In the event that the Supplier assigns the right to receive the Contract Price under Clause 54.2, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective. The Supplier 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 and the Authority shall not be held liable to either the Supplier and/or the Assignee for any delay in making payment as a result of not receiving such information. The provisions of Clause 10 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.

54.4 The Authority may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof (including the licences granted at Clause 27) as it sees fit to a third party (**Transferee**) provided:

54.4.1 that any such assignment, novation or other disposal shall not materially increase the burden of the Supplier's obligations under this Contract; and

54.4.2 the Transferee is, in the reasonable opinion of the Authority, of good financial standing to meet the obligations of the Authority under this Contract.

54.5 If the rights and obligations of the Authority under this Contract are assigned, novated or otherwise disposed of pursuant to Clause 54.4 to a Transferee which is not a body of the Crown, or if there is a change in the legal status of the Authority such that it ceases to be a body of the Crown:

54.5.1 the Supplier shall have the right to terminate this Contract if the Transferee is subject to an Insolvency Event; and

54.5.2 the Transferee shall only be able to assign, novate or otherwise dispose its rights and obligations under this Contract or any part thereof with the Approval of the Supplier.

54.6 Any change in the legal status of the Authority such that it ceases to be a body of the Crown shall not affect the validity of this Contract and any of the rights granted to the Authority and, in such circumstances, this Contract and all rights granted shall bind and inure to the benefit of each successor body.

55. **NOTICES AND COMMUNICATIONS**

55.1 Any notice or communication given under or in relation to this Contract shall be "written" or "in writing". Such notice is not valid unless it is made by letter, (signed by or on behalf of the Party giving it) sent by hand, post, or recorded signed for delivery service, or by electronic mail (email) to the address and for the attention of the relevant Party set out in Clause 55.3 or to such other address as that Party may have stipulated in accordance with Clause 55.3..

55.2 A notice shall be deemed to have been received:

55.2.1 if delivered personally, at the time of delivery;

55.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting; and

55.2.3 in the case of electronic communication four (4) hours after the time it was sent provided it was sent on a Working Day.

55.3 For the purposes of Clause 55.1, the postal address and email address of each Party shall be:

55.3.1 for the Authority:

The Ministry of Justice

Address: Ministry of Justice, Post Point 8.17, 102 Petty France, London, SW1H 9AJ

For the attention of: David Scott (CAS-2 Senior Contract Manager)

Tel: 07976 633860

Email: david.scott1@justice.gsi.gov.uk

55.3.2 for the Supplier:

Address: Walkden House, 16-17 Devonshire Square, London, England, EC2M 4SQ

Email: Lindsay.Ryder@nacro.org.uk

55.4 Either Party may change its address for service by serving a notice in accordance with this Clause 55.

56. **RELATIONSHIP OF THE PARTIES**

56.1 At all times during the Contract Period the Supplier shall be an independent supplier and nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Supplier 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 this Contract.

57. **WAIVER**

57.1 The rights and remedies provided by this Contract may be waived with written agreement of the Parties in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

57.2 No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

58. **SEVERABILITY**

58.1 If any provision of this 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 this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

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

59. **REMEDIES CUMULATIVE**

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

60. **ENTIRE AGREEMENT**

- 60.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of this Contract. The Contract supersedes all prior negotiations between the Parties and, except as set out in this Contract, all representations and undertakings made by one Party to the other, whether written or oral provided that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

61. **COUNTERPARTS**

- 61.1 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.

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

- 62.1 Subject to Clause 62.2, no term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 (**CRTPA**) by a person who is not a Party to this Contract. This Clause 62.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

- 62.2 The provisions of Clause 30 and Paragraph 2.1, 2.6, 3.1 and 3.3 of Part A, Paragraphs 2.1 and 2.3 of Part B and Paragraphs 1.4, 2.3 and 2.8 of Part C of Schedule 14 confer benefits on persons named in such provisions other than the Parties (each such person a **Third Party Beneficiary**) and are intended to be enforceable by Third Party Beneficiaries by virtue of the CRTPA.

- 62.3 The consent of any Third Party Beneficiary is not necessary for any variation to this Contract (including by way of Change Control Request) or termination of this Contract.

63. **DISPUTE RESOLUTION**

- 63.1 All disputes under this Contract shall be handled in accordance with this Clause 63. In seeking to resolve a dispute, the Parties shall act in good faith, including providing such documentation as the respective forum of the dispute may reasonably require.

- 63.2 Either Party may refer any dispute it may have with the other arising out of or in connection with this Contract to the Service Management Group for review.

- 63.3 If the dispute cannot be resolved by the Service Management Group pursuant to Clause 63.2 within ten (10) Working Days of it being referred to them, the matter shall be referred to the Relationship Management Group for review.

- 63.4 If the dispute cannot be resolved by the Relationship Management Group within fifteen (15) Working Days of it being referred to them, the dispute shall be referred to mediation pursuant to the procedure set out in Clause 63.5 unless the Parties agree that the dispute is not suitable for resolution by mediation.

- 63.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- 63.5.1 a neutral adviser or mediator (**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;

- 63.5.2 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;
 - 63.5.3 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;
 - 63.5.4 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;
 - 63.5.5 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 this Contract without the Approval of both Parties; and
 - 63.5.6 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 63.6.
- 63.6 Subject to Clause 63.9, the Parties shall not institute court proceedings until the procedure set out in Clauses 63.2 to 63.5 (inclusive) have been completed save that:
- 63.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with Clause 63.7;
 - 63.6.2 if the Supplier 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 Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause 63.7; and
 - 63.6.3 the Supplier 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 63.7, to which the Authority may consent as it sees fit.
- 63.7 In the event that any arbitration proceedings are commenced pursuant to Clause 63.6:
- 63.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
 - 63.7.2 the Authority shall give a written notice of arbitration to the Supplier (**Arbitration Notice**) stating:
 - (a) that the dispute is referred to arbitration; and
 - (b) providing details of the issues to be resolved;
 - 63.7.3 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 63.6 shall be applied and are deemed to be incorporated by reference to this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 63.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

- 63.7.5 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 63.6 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 63.7.6 the arbitration proceedings shall take place in London and in the English language; and
- 63.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.
- 63.8 The obligations of the Parties under this Contract shall not cease or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Supplier's Personnel shall comply fully with the requirements of this Contract at all times.
- 63.9 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.
64. **GOVERNING LAW**
- 64.1 Subject to the provisions of Clause 63, the Authority and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

IN WITNESS of which the Contract is duly executed by the Parties on the date which appears at the head of page 1.

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

Name:

Signature:

Position:

Date:

SIGNED for and on behalf of the Supplier

Name:

Signature:

Position:

Date:

Appendix – CAS-2 Schedules 1-20

REDACTED – Provided separately