

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


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**SCHEDULE A: DEFINITIONS**

Where the Authority has stated 'Please note' under some of the definitions in this Schedule, that wording has been provided by way of explanation only and to assist the Provider in understanding the background and/or context to that defined term but does not form part of the definition itself.

<b>ACCT</b>	<p>means "Assessment, Care in Custody and Teamwork".</p> <p>ACCT is a Prisoner focused care planning system which is used by prisons to manage and support at risk prisoners and is a process whereby staff and at-risk prisoners can work together to provide individual care to those who are in distress in order to help defuse a potentially suicidal crisis, or help individuals with long-term needs (such as those with a pattern of repetitive self-injury).</p>
<b>Acquired Rights Directive</b>	means the EU Acquired Rights Directive 2001/23/EC
<b>Activity Allocation Board (AAB)</b>	<p>means the board which allocates men to work and other activities, such as learning and takes place weekly.</p> <p>AAB routinely allocates men</p> <ul style="list-style-type: none"> <li>i) when they arrive into custody;</li> <li>ii) if the men request to move to another activity; or</li> <li>iii) if there is a change of circumstance and it is no longer appropriate for the men to remain in that activity.</li> </ul> <p>The process consists of a series of reports from key people that are presented to a meeting. The meeting looks at the needs of the individual and the vacancies in the particular activity areas, and makes an appropriate allocation. Men then stay in that allocation until either ii) or iii) as above, or they leave HMP Berwyn.</p>
<b>Acts</b>	means the Pensions Act 2004 sections 257 – 258 and the Pension Schemes Act 1993 section 12
<b>Annual Service Delivery Plan</b>	means the plan submitted annually by the Provider to contain, as a minimum, the information set out in paragraph 5.3.3 of Schedule B (Service Specification) of this Contract and which will be aligned with the Annual Service Delivery Plan of the Learning and Skills Provider.

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

<b>Approval</b>	means the written consent of the Authority.
<b>Approved Operator</b>	means an Operator and/or Third Party Operator appearing in Schedule K (Approved Operators) appointed with the consent of the Authority.
<b>Arbitration Notice</b>	means the notice served on the Provider by the Authority to commence an arbitration as set out in clause 67.7.2 of the Terms and Conditions of this Contract.
<b>Asset</b>	means the property listed in the Asset Register (Schedule L) of this Contract provided by either the Authority or the Provider.
<b>Audit Agents</b>	means the entities set out at paragraph 2.2.1 of Schedule D (Audit) of this Contract.
<b>Authorised Absences</b>	means the absence of a Worker which is approved by the Authority in accordance with paragraph 2.2.7 of the Service Specification (Schedule B) of this Contract. .
<b>Authority</b>	means the Secretary of State for Justice acting through HMPPS.
<b>Authority's Confidential Information</b>	means all Personal Data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, Personnel, and suppliers of the Authority, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential.
<b>Authority Data</b>	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> <li>(a) supplied to the Provider by or on behalf of the Authority; or</li> <li>(b) which the Provider is required to generate, process, store or transmit pursuant to the Contract; or</li> <li>(c) any Personal Data for which the Authority is the Data Controller.</li> </ul>
<b>Authority Group Members</b>	means the individuals appointed by the Authority to attend the Group Meetings

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

<b>Authority's Personnel</b>	means all employees, agents and consultants of the Authority.
<b>Authority Related Party</b>	means:  (a) an officer, servant or agent of the Authority, or any affiliate of the Authority and any officer, servant or agent of such a person; and:  (b) any person on or at the Prison at the express or implied invitation of the Authority.
<b>Authority's Software</b>	means the Software which is owned by or licensed to the Authority or an Authority Related Party, including such Software as is or will be used by the Provider for the purposes of providing the Services (but excluding the Provider's Software) and including any Software specified as such in the Asset Register (Schedule L) of this Contract.
<b>Authority's Assets</b>	means the property listed in Appendix A of the Asset Register (Schedule L) of this Contract.
<b>Authority's Representative</b>	means the individual appointed in accordance with paragraph 2.1 of Schedule H (Governance) of this Contract to exercise certain functions and powers in relation to this Contract on behalf of the Authority
<b>Authority's System</b>	means the Authority's ICT System as set out in Schedule W of this Contract.
<b>Available Employment Positions</b>	means Employment Positions that are available to Prisoners and meet the requirements set out in paragraph 7.1.1 of Schedule B (Service Specification) of this Contract.
<b>BCDR Plan</b>	means the Business Continuity & Disaster and Recovery Plan which is contained in the Contract Controlled Document in the form provided in the Provider's Tender and updated as agreed with the Authority during the Mobilisation Period and appearing at Schedule R of this Contract and which the Provider is responsible for maintaining during the Contract Period pursuant to section 9 of Schedule B of the Contract (Service Specification).
<b>Bedding-In Period</b>	means, in respect of each Contract Delivery Indicator in Schedule B of Schedule F (Performance and Monitoring Mechanism), the period from the Service Commencement Date to the Start Date (where those dates differ) during which an Improvement Notice shall not be issued by the Authority
<b>Benchmark Report</b>	the report produced by the Benchmarker following the Benchmark Review.

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

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<b>Benchmark Review</b>	any benchmarking of the Gross Profit including the Revenue and Costs generated by the Workshop Activities as conducted in accordance with Schedule E (Payment Mechanism and Profit Share) of this Contract.
<b>Benchmarker</b>	the independent third party appointed by the Authority and the Operator for the purposes of the Benchmark Review.
<b>Business Plan</b>	means the Business Plan submitted annually by the Provider to contain, as a minimum, the information set out in paragraph 5.2.3 of Schedule B (Service Specification) of this Contract.
<b>Business Unit</b>	has the meaning given to it in paragraph 7.1.1 of Schedule E (Payment Mechanism and Profit Share) of this Contract.
<b>Capital Equipment</b>	means the items set out in Schedule Q (Mobilisation and Transition) of this Contract which are purchased by the Provider on the Authority's behalf and for which the Provider is entitled to receive the Capital Payment . All Capital Equipment shall be included Part 1 of A of Appendix A of the Asset Register (Schedule L) of this Contract.
<b>Capital Payment</b>	means the payment by the Authority to the Provider as set out in Schedule E (Payment Mechanism and Profit Share) of this Contract in respect of the purchase of the Capital Equipment.
<b>Change</b>	means a change to this Contract.
<b>Change Authorisation Note</b>	means a form setting out an agreed Contract Change or Fast-track Change which shall be substantially in the form of Appendix 2 of Schedule I (Change Mechanism) of this Contract.
<b>Change Communication</b>	means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to Schedule I (Change Mechanism) of this Contract.
<b>Change Notice</b>	has the meaning given to it in Schedule I (Change Mechanism) of this Contract.
<b>Change Request</b>	means a written request for a Contract Change or Fast-track Change which shall be substantially in the form of Appendix 1 of Schedule I (Change Mechanism) of this Contract.

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

<b>Commencement Date</b>	means the date of this Contract
<b>Commercially Sensitive Information</b>	<p>means the information (i) listed in Schedule O (Commercially Sensitive Information) of this Contract: or (ii) notified to the Authority in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information:</p> <p>(a) which is provided by the Provider to the Authority in confidence for the period set out in that Schedule or notification; and/or</p> <p>(b) that constitutes a trade secret</p>
<b>Community Rehabilitation Companies (CRC)</b>	<p>means the bodies contracted by the Ministry of Justice which are responsible for delivering a resettlement service for all offenders released from custody, engaging with many of the offenders they will manage before release.</p> <p>Please note that there are currently 21 CRCs. The CRCs also manage the majority of offenders in the community (most low to medium risk offenders), which includes identifying any changes in risk, and referring the case to the National Probation Service (NPS) if risk has escalated to high. They are responsible for designing and delivering an innovative new service to rehabilitate offenders and help them turn their lives around by delivering a range of specific interventions and services for offenders managed by either CRCs or the NPS, including Community Payback and most accredited programmes.</p>
<b>Comparison Group</b>	means a sample of organisations which are similar in size to the relevant Provider, Operator, Third Party Operator or Business Unit or which are similarly structured in terms of the business and offerings so to be (in the Benchmarkers' professional opinion) fair comparators with the relevant Provider, Operator, Third Party Operator or Business Unit and which are providing goods and services that are identical, or similar in all material respects, to the goods which are being manufactured, assembled and/or sold or the services which are being delivered as part of the Workshop Activities (including in terms of scope, specification, volume and quality of performance).
<b>Condition</b>	means a condition of this Contract
<b>Confidential Information</b>	means the Authority's Confidential Information and/or the Provider's Confidential Information.

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

<b>Consultation Nominees</b>	means the individuals nominated and authorised by each Party to act on its behalf to resolve Outstanding Issues pursuant to paragraph 10 (Consultation) of Schedule F (Performance and Monitoring Mechanism) of this Contract, as at the Commencement Date being (for the Authority) the Governor of HMP Berwyn and (for the Provider) Daniella Sinagoga.
<b>Consultation Notice</b>	Means the notice issued by the Provider or the Authority to the Consultation Nominees in accordance with paragraph 10 (Consultation) of Schedule F (Performance and Monitoring Mechanism) of this Contract.
<b>Contract</b>	means this written Contract between the Authority and the Provider consisting of the Contract Letter, the Terms and Conditions and any attached Schedules, including the Provider's Tender which appears at Schedule C of this Contract.
<b>Contract Award</b>	means the award of this Contract to the Provider.
<b>Contract Change</b>	means a Change to this Contract.
<b>Contract Controlled Document</b>	means any document which is expressly stated in this Contract to be a Contract Controlled Document or which is listed in Appendix 3 to Schedule I (Change Mechanism) of this Contract.
<b>Contract Delivery Indicators</b>	means certain key indicators as defined in Appendix B to Schedule F (Performance and Monitoring Mechanism) of this Contract.
<b>Contract Letter</b>	means the letter identifying those documents which form the Contract
<b>Contract Period</b>	means the period from the Commencement Date to:  (a) the date of expiry of this Contract as set out in clause 2.1; or  (b) following an extension of this Contract pursuant to clause 2.3 and/or clause 2.5, the date of expiry of the extended period; or  (c) such earlier date on which the Contract comes to an end upon or following termination of the Contract in accordance with the Law or the provisions of this Contract
<b>Contract Price</b>	means the fees payable by the Authority in consideration of the obligations performed by the Provider under this Contract calculated in accordance with Part A of Schedule E (Payment Mechanism and

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

	Profit Share) of this Contract, including the Capital Payment, Mobilisation Payment and Fee for Service.
<b>Contract Year</b>	means a period of 12 months commencing on and from the Commencement Date, and thereafter a period of 12 months commencing on and from each anniversary of the Commencement Date, provided that the final Contract Year shall end at the end of the Contract Period.
<b>Contracting Authority</b>	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.
<b>Control</b>	means 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.
<b>Core Day</b>	means a day on which the Workers will carry out their Employment Positions in the Workshops within allocated periods of time as set out in paragraph 2.3.1 of Schedule B (Service Specification) of this Contract. Please note that a timetable will be used by the Prison to show Personnel and Prisoners what time things happen, including what time activities start and finish on a daily basis.
<b>Costs</b>	has the meaning given to it in paragraph 7.5.2 of Schedule E (Payment Mechanism and Profit Share).
<b>Crown</b>	means the government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies
<b>Custodial Operator</b>	means HMPPS, or any successor operator, who has overall operational responsibility for the operation of HMP Berwyn.
<b>Cyber Essential Scheme</b>	means the scheme developed by the UK Government setting out technical controls for organisations to use in respect of cyber security, which is further described at <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a>
<b>Cyber Scheme</b>	means a level of assurance as further detailed in the Cyber Essentials Scheme

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

<b>Daily Fee for Service</b>	has the meaning given to it in paragraph 3.1 of Schedule E (Payment Mechanism and Profit Share) of this Contract.
<b>Data Controller</b>	shall have the same meaning as set out in the Data Protection Act 1998
<b>Data Processor</b>	shall have the same meaning as set out in the Data Protection Act 1998.
<b>Data Protection Legislation</b>	means the Data Protection Act 1998 and all applicable legislation and regulations (including successor legislation and regulations) relating to processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
<b>Data Subject</b>	shall have the same meaning as set out in the Data Protection Act 1998
<b>Default</b>	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or their Personnel in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
<b>Disclosure and Barring Service</b>	means the checking service provided by a non-departmental public body sponsored by the Home Office which is responsible for the decision making and maintenance of two lists covering the childrens' and vulnerable adults' sectors
<b>Embedded Learning</b>	means the learning of embedded essential skills which form a fundamental part of learning and skills delivery.  Please note that the aim is to improve numeracy and literacy skills whilst undertaking Workshop activities. Course material is contextualised into the work in the particular area and learners are encouraged to develop these skills in the workplace.
<b>Emergency Audit</b>	means an audit carried out by the Authority's Audit Agents for any of the reasons set out in paragraph 6.2.1(a) to (e) of Schedule D (Audit) of this Contract.
<b>Employability Skills</b>	means any skills delivered through the Employment Positions that enhance a Worker's chance of securing Employment on release.



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

<b>Employability Skills Assessment</b>	means an assessment which is completed for all Workers by the Learning & Skills Provider which determines which Employability Skills are required to be delivered or enhanced through the Employment Positions.
<b>Employment</b>	means a job with an employer providing an income that the Prisoner secures after release from custody
<b>Employment Management Fee</b>	means the amount which the Provider may charge the relevant Operator or Business Unit (or any part thereof) for the management of the Services directly attributable to the Workshop Activities, as calculated in accordance with paragraph 5.2 of Part B of Schedule E (Payment Mechanism and Profit Share) of this Contract.
<b>Employment Positions</b>	means work placements provided to Workers which are supervised by the Provider on behalf of the Prison Governor.
<b>Environmental Information Regulations</b>	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
<b>Equalities Provisions</b>	the Equality Act 2010 and all applicable amendments, regulations and Codes of Practice or any successor legislation or regulations which concern discrimination in employment and service delivery.
<b>Exit Information</b>	the information that the Provider shall provide to the Authority to enable the Authority and/or any Replacement Provider to understand the manner in which the Services have been provided and to effect an orderly, timely and efficient transfer of the Relevant Services to any Replacement Provider and/or to enable the Authority to deliver alternative rehabilitative services to the Prisoners within the Workshops, including the information set out at paragraph 5.1 of Schedule M (Exit Management).
<b>Exit Milestone</b>	means each activity to be completed during the Exit Period as set out in the Exit Plan.
<b>Exit Milestone Date</b>	means the date by which an Exit Milestone must be met as set out in the Exit Plan.
<b>Exit Period</b>	means the period set out in the Exit Plan during which the Exit Services shall be performed by the Provider.

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

<b>Exit Plan</b>	means the plan produced and updated by the Provider during the Contract Period in accordance with paragraphs 3 and 4 of Schedule M (Exit Management) of this Contract.
<b>Exit Services</b>	means the services to be performed by the Provider to effect an orderly, timely and efficient transfer of the Relevant Services to any Replacement Provider and/or to enable the Authority to deliver alternative rehabilitative services to the Prisoners within the Workshops in accordance with paragraph 6 of Schedule M (Exit Management) , including those services set out in the Exit Plan.
<b>Expiry Date</b>	means the date on which the Contract Period comes to an end.
<b>Facilities Management</b>	means the soft and hard maintenance of HMPPS property and assets. Hard maintenance covers the upkeep and repair of the Premises' fabric and soft maintenance is the provision of services such as cleaning, grounds maintenance and stores management at the Premises.
<b>Facilities Management Provider</b>	The provider who is contracted by the Authority to deliver Facilities Management.
<b>Fast-track Change</b>	any Contract Change which the Parties agree to expedite in accordance with paragraph 7 of Schedule I (Change Mechanism) of this Contract.
<b>Fee for Service</b>	means the fee payable by the Authority to the Provider, as calculated in accordance with paragraph 3.1 of Schedule E (Payment Mechanism and Profit Share).
<b>Fees Regulations</b>	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
<b>Festive Period</b>	means the period of Christmas when the Prison regime is altered and the Workshops are closed.
<b>Final Warning Notice</b>	means the notice served on the Provider by the Authority in accordance with clause 55.2 of the Terms and Conditions of this Contract.
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information

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

	Commissioner or relevant government department in relation to such legislation.
<b>Force Majeure</b>	means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:  (a) any industrial action occurring within the organisation of the Provider or its Sub-contractors; or  (b) any other failure in the supply chain.
<b>Future Service Contractor</b>	means each and every future service Contractor who provides any services equivalent to any of the services included in the Service Specification (Schedule B) of this Contract.
<b>Good Industry Practice</b>	means the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, with such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws
<b>Governance Groups</b>	means the Contract Review Group, Operational Management Group and Service Integration Group set out in Schedule H (Governance) of this Contract (together 'the Groups' and each 'the Group')
<b>Governor</b>	means the manager appointed by the Authority to be in charge of HMP Berwyn.
<b>Gross Profit</b>	means the profit generated by the relevant Operator, Third Party Operator or Business Unit in the provision of the Workshop Activities, as calculated in accordance with paragraph 7.6 of Schedule E (Payment Mechanism and Profit Share).
<b>Group Meetings</b>	means the meetings of the Governance Groups
<b>Guarantor</b>	means a party who enters into the Parent Company Guarantee with the Authority at Annex 2 of this Contract.

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

<b>Hardware</b>	<p>means the mechanical, magnetic, electronic and electrical components making up a computer system.</p> <p>Please note that the computer hardware consists of collection of physical objects or components such as the <a href="#">monitor</a>, <a href="#">keyboard</a>, <a href="#">computer data storage</a>, <a href="#">hard disk drive</a> (HDD), graphic cards, sound cards, memory (RAM), motherboard, that can be programmed by Software to provide prescribed service or function.</p>
<b>Head of Activities</b>	means a senior manager at HMP Berwyn who has responsibility for the management and oversight of all activities which are accessed by Prisoners, including Employment Positions and Learning & Skills.
<b>Health &amp; Safety at Work legislation</b>	means The Health and Safety at Work etc. Act 1974 (c 37) (abbreviated to "HSWA 1974", "HASWA" or "HASAWA") and all applicable amendments, regulations and Codes of Practice or any successor legislation or regulations which concern health and safety at work.
<b>HMPPS</b>	is Her Majesty's Prison and Probation Service, an executive agency of the Ministry of Justice.
<b>Impact Assessment</b>	means an assessment of a Change Request in accordance with paragraph 4 of Schedule I (Change Mechanism) of this Schedule.
<b>Improvement Actions</b>	means the actions set out in the Improvement Plan that are necessary to remedy any Reduced Performance or Default identified in any Improvement Notice and to prevent its re-occurrence.
<b>Improvement Notice</b>	means a notice that is issued by the Authority to the Provider in the event of Reduced Performance and/or where there is a Default by the Provider in relation to any aspect of the provision of the Services.
<b>Improvement Plan</b>	Means the plan issued by the Provider to the Authority in respect of the relevant failures stated in the Improvement Notice.
<b>Information</b>	has the meaning given under Section 84 of the FOIA.
<b>Information Asset</b>	means a definable piece of information stored in any manner that is determined by the Authority as valuable and relevant to the provision of the Services.

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

<b>Intellectual Property Materials</b>	means any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material subject to Intellectual Property Rights.
<b>Intellectual Property Rights</b>	means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information, discovery, invention, process, formula, specification, improvement, technique and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by either Party for the purposes of the provision of the Services and/or otherwise for the purposes of this Contract.
<b>Intelligence Reporting (IR) Information</b>	The Intelligence Reporting system is a national networked IT system for managing, interrogating and developing multiple data sources for the purpose of the development of intelligence within HMPPS. Individual pieces of intelligence are inputted into the system using IT based Intelligence Reports.
<b>Key Personnel</b>	means the Provider's Personnel listed in Schedule J (Key Personnel)
<b>Large items or Large volumes of Waste</b>	means waste that is beyond what is reasonably expected to be generated in a given period of time consistent with routine processing by the Prison's Recycling Centre
<b>Law</b>	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice (whether industry or otherwise), judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Parties are bound to comply.
<b>Learning and Skills Provider</b>	means the provider who has contractual responsibility for delivery of the Learning and Skills provision at HMP Berwyn
<b>Licence</b>	means the Licence Agreement at Annex A of this Contract granted by the Authority for the Provider to occupy part of the Prison.

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

<b>Local Security Instructions</b>	<p>means the restricted documents that provide guidance about how security is managed and maintained within a prison.</p> <p>Please note that Local Security Instructions are tailored to the needs of each prison and are sourced from National Security Instructions. Instructions are available for all staff and providers on the HMP Berwyn intranet.</p>
<b>Management Information</b>	<p>means the data and information to be provided by the Provider to the Authority under the Contract, including the reports set out in Appendix A (Management Information Reporting Requirements) of Schedule F (Performance and Monitoring Mechanism) of this Contract.</p>
<b>Maintaining a Roll</b>	<p>means the maintenance of a register kept by the Provider's Personnel to record the number of Prisoners currently under their supervision to ensure all movements are recorded accurately at all times, which is a fundamental part of prison security.</p>
<b>Mediator</b>	<p>An independent third party appointed by the Parties in the event of a dispute concerning the provision of the Services or other obligations under this Contract.</p>
<b>Mobilisation Milestone</b>	<p>means each activity to be completed during the Mobilisation and Transition Period as set out in the Mobilisation and Transition Plan.</p>
<b>Mobilisation Milestone Date</b>	<p>means the date by which a Mobilisation Milestone must be met as set out in the Mobilisation and Transition Plan.</p>
<b>Mobilisation</b>	<p>means the period between the Commencement Date and the Service Commencement Date.</p>
<b>Mobilisation and Transition Period</b>	<p>means the Mobilisation Period and the Transition Period.</p>
<b>Mobilisation and Transition Plan</b>	<p>means the Controlled Document specifying the Provider's obligations from the Commencement Date to the end of the Transition Period.</p> <p>Please note that the Mobilisation and Transition Plan will be used to manage and prepare for delivery of the Services including:</p> <p>(a) the preparation for Service Commencement on a Workshop by Workshop basis and fitting out of all the Workshops during the Mobilisation Period; and</p>

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

	(b) the gradual delivery of Employment Positions within the Workshops during the Transition Period.
<b>Mobilisation Period</b>	means the period commencing on the Commencement Date and ending on the Service Commencement Date.
<b>Mobilisation and Transition Services</b>	the activities, functions and services the Provider is required to perform during the Mobilisation and Transition Period as set out in the Mobilisation and Transition Plan, leading to the delivery of all 520 Employment Positions.
<b>Month</b>	means a calendar month.
<b>Monthly Fee for Service</b>	has the meaning given to it in paragraph 3.1 of Schedule E (Payment Mechanism and Profit Share) of this Contract.
<b>Monthly Management Information Report</b>	means the Management Information report to be submitted by the Provider to the Authority in accordance with paragraph 4 of Schedule F (Performance and Monitoring Mechanism) of this Contract containing the information set out in Section 2 of Appendix A of that Schedule.
<b>NOMS</b>	the National Offender Management Service became HMPPS on 1 April 2017
<b>NOMIS</b>	means the HMPPS National Offender Management Information System and is the operational database used for the collection, management and storage of offender information, including personal details, sentence information and an up to date diary of their behaviour, events and achievements.
<b>Occasion of Tax Non-Compliance</b>	means any occasion where:  (a) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:  (i) a Relevant Tax Authority successfully challenging the Provider 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;

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

	<p>(ii) the failure of an avoidance scheme which the Provider was involved 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</p> <p>(b) any tax return of the Provider submitted to a Relevant Tax Authority on or after 1 October 2012 gives 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 civil penalty for fraud or evasion.</p>
<b>Offender</b>	means any person who has been found guilty by a court and who has received a community sentence or a custodial sentence from a court.
<b>Open Book Data</b>	means the data set out at paragraph 4.1.2 of Schedule D (Audit) of this Contract
<b>Operating Costs</b>	means all costs related to staff, materials, consumables, transport, insurance, PPE, IT, maintenance of machinery owned by the Authority or by the Provider and any Provider owned capital and all other costs associated by operating the Providers own economic operations.
<b>Operator</b>	means any Sub-contractor appointed by the Provider from time to time to undertake the Workshop Activities.
<b>Outstanding Issues</b>	means the issues in respect of and arising from the matters set out at paragraphs 10.1 to 10.3 (Consultation) of Schedule F (Performance and Monitoring Mechanism) of this Contract requiring remedial action.
<b>Outstanding Issues Notice</b>	means a notice that is issued by the Authority to the Provider in the circumstances set out in paragraph 8.9 of Schedule F (Performance and Monitoring Mechanism) of this Contract.
<b>P-NOMIS</b>	<p>means the system currently used in prisons which holds prisoner records, including those relating to attendance at work.</p> <p>Please note that at HMP Berwyn the intention is to introduce prisoner self-service technology and associated management level applications so the recording of prisoner attendance will be through either P-NOMIS or another application.</p>
<b>Party</b>	means a party to this Contract.
<b>Parties</b>	means both parties to this Contract



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

<b>Performance Report</b>	has the meaning given to it in paragraph 3 (Performance Report) of Schedule F (Performance and Monitoring Mechanism) of this Contract.
<b>Personal Data</b>	shall have the same meaning as set out in the Data Protection Act 1998.
<b>Personal Protective Equipment (PPE)</b>	means the protective garments, such as clothing, helmets, goggles and gloves, which are designed to protect the wearer's body from injury or infection.  Please note that Personal Protective Equipment may be worn for job-related occupational safety and health purposes.
<b>Personnel</b>	means the Authority's Personnel and the Provider's Personnel .
<b>Planned Service Commencement Date</b>	means the target date set out in the Mobilisation and Transition Plan for the commencement of delivery of the first Available Employment Positions.
<b>Prison</b>	means HMP Berwyn where the Premises are located.
<b>Premises</b>	means the location where the Services are to be delivered or provided as set out in the Service Specification (Schedule B) and the Licence Agreement (Annex A) to this Contract.
<b>Prisoners</b>	means those people who are detained in Prison custody. Prisoners may be un-convicted or on remand, or convicted and awaiting or serving a prison sentence.
<b>Prison Officers</b>	means HMPPS staff responsible for ensuring security at HMP Berwyn.
<b>Prison Staff</b>	means staff that are directly employed by HMPPS and in work at HMP Berwyn.
<b>Privacy Impact Assessment</b>	means a process to identify and reduce the privacy risks in relation to this Contract and the performance of the Services
<b>Privacy Risk Treatment Plan</b>	means a plan setting out the actions of that the Provider shall take to mitigate against all privacy risks identified during the Privacy Impact Assessment as being applicable to the Provider.
<b>Process</b>	has the meaning given to it under the Data Protection Legislation and, for the purposes of this Contract, it shall include both manual and automatic processing.

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

<b>Profit Share</b>	means the amount which is payable by the relevant Provider ,Operator or Business Unit to the Authority in accordance with Part D of Schedule E (Payment Mechanism and Profit Share) or the agreement between the Provider and the Operator.
<b>Provider</b>	means the Party who has contracted with the Authority to perform the Services under this Contract.
<b>Provider's Assets</b>	means the property listed in Appendix B of the Asset Register (Schedule L of this Contract) provided by the Provider.
<b>Provider Data</b>	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (a) supplied by the Provider to the Authority; or (b) any Personal Data for which the Provider is the Data Controller.
<b>Provider Group Members</b>	means the individuals appointed by the Provider to attend the Group Meetings
<b>Provider's Personnel</b>	means the staff who are employed by the Provider.
<b>Provider's Personnel Induction</b>	means an induction which is delivered by the Authority to the Provider's Personnel and/or Sub-contractors' Personnel as set out in paragraph 4.4 of the Service Specification (Schedule B of this Contract.)
<b>Provider's Confidential Information</b>	means any information which has been designated as confidential by the Provider in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business affairs, developments, trade secrets, know-how, Personnel and Sub-contractors of the Provider, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.
<b>Provider's Senior Person</b>	means the most senior representative that is employed by the Provider to oversee the Provider's Personnel and delivery of this Contract.
<b>Provider's Software</b>	means the Software which is owned by or licensed to the Provider, including such Software as is or will be used by the Provider for the purposes of providing the Services (but excluding the Authority's Software) and including any Software specified as such in the Asset Register (Schedule L of this Contract).

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

<b>Provider's Management Team</b>	means the members of the Provider's Personnel who are employed by the Provider to oversee the work of other members of the Provider's Personnel and the delivery of this Contract.
<b>Provider's Representative</b>	means the individual appointed in accordance with paragraph 2.2 of Schedule H (Governance) of this Contract to exercise certain functions and powers in relation to this Contract on behalf of the Provider
<b>Provider's System</b>	means the Provider's ICT System as set out in Schedule W of this Contract.
<b>Public Acceptability Test</b>	means a test as to whether the relevant activity is one that, in the Authority's view, is unlikely to undermine public confidence
<b>Purposeful Activity</b>	means an activity designated by HMP Berwyn as purposeful activity such as education, work or a behavioural programme.
<b>Receipt</b>	means the physical or electronic arrival of documents, including invoices, at the addresses provided for the submission of such documents.
<b>Receiving Party</b>	means the Party which receives a proposed Contract Change
<b>Recharge Costs</b>	has the meaning given to it in paragraph 6.1 of Schedule E (Payment Mechanism and Profit Share) of this Contract.
<b>Rectification Actions</b>	means the actions contained in the Rectification Plan that are necessary to ensure that the Outstanding Issues identified in the Outstanding Issues Notice are rectified and do not re-occur.
<b>Rectification Notice</b>	means a notice that is issued by the Authority to the Provider in respect of any Outstanding Issues in the circumstances set out in paragraph 9.1 of Schedule F (Performance and Monitoring Mechanism
<b>Rectification Plan</b>	Means a plan that is issued by the Provider to the Authority following receipt of a Rectification Notice which sets out the Rectification Actions.
<b>Relevant Event</b>	means the occurrence of a serious incident which materially affects the Provider's ability to perform the Services including (but not limited to) prison lock down, serious damage to equipment, machinery or building, attack on an IT system or data, theft of data, strike action, robbery, kidnapping or hijacking, flood, fire or explosion, power or water cut, fatality on duty, major food poisoning incident, national epidemic, structural collapse or terrorist attack.

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

<b>Replacement Provider</b>	means any third party provider appointed by the Authority to supply services in substitution for any of the Services following the expiry or termination of this Contract.
<b>Requests for Information</b>	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).
<b>Required Standard</b>	means the targets applicable to the Contract Delivery Indicators identified within Appendix B (Contract Delivery Indicators) of Schedule F (Performance and Monitoring Mechanism of this Contract.
<b>Recycling Centre</b>	means the place inside HMP Berwyn where general waste is taken to be sorted into appropriate recycling groups.
<b>Reduced Performance</b>	means any instances where the performance of the Provider and any Sub-contractors falls below the Required Standard.
<b>Regulations</b>	means The Transfer of Employment (Pension Protection) Regulations 2005
<b>Rehabilitation Services</b>	means the Services that are provided to support the Workers in gaining Employment upon release from custody.
<b>Relevant Authority</b>	means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspector (including the Prison Inspector and the Probation Inspector), minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.
<b>Relevant Provisions</b>	has the meaning given to it in paragraph 2 of Schedule P (Provisions for Sub-contracts with Operators) of this Contract.
<b>Relevant Tax Authority</b>	means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Provider is established;
<b>Resettlement</b>	means the process of preparing an offender for release.
<b>Resettlement Window</b>	means the last weeks of an offender's sentence.  Please note that this is generally 12 weeks. If the offender is serving an indeterminate sentence, then the resettlement window will extend to before any parole board hearing.
<b>Re-tendering Employment Information</b>	means the information required under paragraph 3.1 of Schedule N (TUPE) of this Contract
<b>Revenue</b>	has the meaning given to it in paragraph 7.6.1 of Schedule E (Payment Mechanism and Profit Share) of this Contract.

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

<b>Safe Systems of Work</b>	has the meaning ascribed in Health and Safety Legislation.
<b>Schedule</b>	means a schedule attached to, and forming part of, this Contract.
<b>Security Failure</b>	means a failure to comply with information security requirements in this Contract including those set out in Schedule U (Information Security).
<b>Security Improvement Plan</b>	means a plan which specifies how the Provider proposes to redress each Security Failure.
<b>Security Policy Framework</b>	means HM Government's Security Policy Framework (available from the Cabinet Office's Government Security Secretariat) as updated from time to time.
<b>Service Commencement Date</b>	means the date notified by the Authority for the commencement of delivery of the first Available Employment Positions.
<b>Service Lead</b>	means the lead Provider in a consortium arrangement.
<b>Services</b>	means the services to be provided as described in the Services Specification (Schedule B of this Contract).
<b>Session(s)</b>	means periods of time in the mornings and afternoons when the Workshops are operational.
<b>Software</b>	means system software, operating systems, applications, programs and procedures, tools to recreate or recompile any of the foregoing (including build files, computer files, test scripts and configurations), and all updates and upgrades to any of the foregoing, that enable an ICT System to perform tasks or operations or process data, in each case in object code form unless expressly provided otherwise in this Contract and excluding any other data or input or output.
<b>Sub-contract</b>	means any agreement (or proposed agreement) between the Provider and any third party or Sub-contractor and any third party whereby that third party agrees to provide to the Provider or the Sub-contractor all or any part of the Services or facilities or services which are necessary for the provision, management, direction or control of the Service or any part thereof.
<b>Sub-contractor</b>	means any third party engaged directly by the Provider or a Sub-contractor under a Sub-contract, including the Operator(s) and Third Party Operator(s).

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

<b>Sub-contractor's Personnel</b>	means the staff who are employed by a Sub-contractor.
<b>System</b>	means the Authority's System and the Provider's System
<b>Transition</b>	means the ramp-up to deliver all 520 Employment Positions.
<b>Transition Period</b>	means the period from the Service Commencement Date to the delivery of all 520 Employment Positions.
<b>Transition Week</b>	means each week from the Service Commencement Date to the delivery of all 520 Employment Positions.
<b>Tender</b>	means any document(s) submitted by the Provider to the Authority in response to the Authority's invitation to bidders for final bids for this Contract.
<b>Third Party Operator</b>	means any Sub-contractor appointed by an Operator from time to time to undertake the Workshop Activities.
<b>Tool(s)</b>	<p>means all implements available for use as part of work processes within Workshops.</p> <p>Please note that a tool in prison is something that the Custodial Operator determines as a tool. Tools could be used as a weapon or an aid to escape. It is important to recognise that items which may not be deemed as a risk in the community, may be seen as such in custody, for instance, an Allen key or plastic items.</p>
<b>Transferring-In Employees</b>	means those employees wholly or mainly engaged in the provision of the Services immediately before the commencement of the Contract whose employment transfers from the Authority or the current contractor pursuant to TUPE.
<b>Transferring-Out Employees</b>	means those employees wholly or mainly engaged in the provision of the Services immediately before the expiry or earlier termination of the Contract.
<b>TUPE</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246).

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

<b>Un-authorised Absence</b>	means the absence of a Worker which has not been Approved by the Authority in accordance with paragraph 2.2.7 of the Service Specification (Schedule B) of this Contract.
<b>Uninsured Losses</b>	means any losses, including any deductible and excess of loss, of which fall outside of the Provider's insurance policies, including the Required Insurances pursuant to clause 51 of the Terms and Conditions of this Contract,
<b>Users</b>	those members of the Provider's Personnel and Sub-contractor's Personnel with access to or who are involved in handling Authority Data
<b>VAT</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
<b>The Vetting and Barring Scheme</b>	means the scheme set up under the provisions of the Safeguarding Vulnerable Groups Act 2006.
<b>Warning Notice</b>	means the notice served on the Provider by the Authority in accordance with clause 55.1 of the Terms and Conditions of this Contract.
<b>Weekends</b>	means Saturdays and Sundays
<b>Worker Induction</b>	An induction delivered by the Provider to the Workers who shall be allocated to Employment Positions in the Workshops.  Please note that the list of what the induction must include as a minimum is found at paragraph 2.6 of the Schedule B (Service Specification) to this Contract
<b>Workers</b>	means Prisoners employed by the Provider pursuant to Prison rules and under the control of the Prison Governor.  Please note that Workers are not engaged pursuant to a contract of employment.
<b>Working Day</b>	means a day (other than Saturday or Sunday) on which banks are open for general business in the City of London.
<b>Workshop Activities</b>	means the commercial operation of the Workshops and the sale or transfer of goods produced and/or services performed by the Workers to another third party by the relevant Provider, Operator, Third Party Operator or Business Unit.

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

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<b>Workshop Observation Book</b>	means a paper or electronic diary of events in the Workshops.  Please note that each area has their own Workshop Observation Book where staff record routine or non-routine information about Workers. The Workshop Observation Group is auditable and the Prison will determine what information is mandated to be entered into it.
<b>Worker Portfolio and Appraisal Record</b>	means a record for each Worker that includes as a minimum the content found at paragraph 2.9.5 of Schedule B (Service Specification) of the Contract.
<b>Workshop</b>	means an area of HMP Berwyn designated for the purpose of delivering Employment Positions to Workers.
<b>Workshop Session</b>	means a Session (as defined in this Schedule) within a Workshop (as defined in this Schedule).