

**DATED 17 March 2010**

**(1) HM SECRETARY OF STATE FOR JUSTICE**

**(2) SOCIAL IMPACT PARTNERSHIP LP**

**(2) SOCIAL FINANCE LIMITED**

---

**CONTRACT**

**relating to the provision of interventions with a view to  
achieving specified outcomes in relation to the  
Social Impact Partnership initiative**

---



**Pinsent Masons**

## CONTENTS

<b>Clause</b>		<b>Page</b>
1	DEFINITIONS AND INTERPRETATION	1
2	CONTRACT PERIOD	11
3	FUND'S OBLIGATIONS	12
4	AUTHORITY'S OBLIGATIONS	16
5	INDEPENDENT ASSESSOR	17
6	SCOPE OF CONTRACT	18
7	NOTICES	18
8	MISTAKES IN AUTHORITY INFORMATION	19
9	CONFLICTS OF INTEREST	20
10	PREVENTION OF FRAUD AND CORRUPTION	20
11	PAYMENT	21
12	RECOVERY OF SUMS DUE	22
13	EURO	23
14	DISCRIMINATION	23
15	THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	23
16	AUTHORITY DATA	23
17	PROTECTION OF PERSONAL DATA	23
18	FREEDOM OF INFORMATION	25
19	CONFIDENTIALITY	26
20	OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989	27
21	PUBLICITY	27
22	INTELLECTUAL PROPERTY RIGHTS	28
23	AUDIT	29
24	ASSIGNMENT AND SUBCONTRACTING	29
25	WAIVER	31
26	VARIATION	31
27	SEVERABILITY	32

28	REMEDIES CUMULATIVE	32
29	ENTIRE AGREEMENT	32
30	COUNTERPARTS	33
31	INDEMNITY AND LIABILITY	33
32	INSURANCE	34
33	WARRANTIES AND REPRESENTATIONS	34
34	TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY	35
35	TERMINATION ON DEFAULT	36
36	TERMINATION FOR CONVENIENCE	37
37	MUTUAL TERMINATION	37
38	CONSEQUENCES OF EXPIRY OR TERMINATION	37
39	RECOVERY UPON EXPIRY OR TERMINATION	37
40	TUPE	38
41	DISRUPTION	38
42	FORCE MAJEURE	38
43	GOVERNING LAW	39
44	DISPUTE RESOLUTION	39

**THIS AGREEMENT** is made on 17 March 2010

**BETWEEN:**

- (1) **HM SECRETARY OF STATE FOR JUSTICE ("Authority");**
- (2) **SOCIAL IMPACT PARTNERSHIP LP** (LP013829) being a limited partnership registered in accordance with the Limited Partnerships Act 1907 and whose registered address is at 42 Portland Place, London W1B 1NB ("**Fund**"); and
- (3) **SOCIAL FINANCE LIMITED** (Company No: 6402143) whose registered address is at 42 Portland Place, London W1B 1NB ("**Agent**"),

**WHEREAS:**

- (A) The Parties have entered into this agreement to regulate the terms upon which the Fund shall raise finance to fund and operate a pilot entitled the Social Impact Partnership initiative for the Authority, in accordance with the advisory services provided by the Agent ("**Contract**").
- (B) Under the pilot Social Impact Partnership initiative, the Fund shall, through the provision of Interventions, work with male prisoners detained at and subsequently discharged from Peterborough Prison to try to reduce the number of offences committed by such prisoners within the 12 month period following their first discharge from Peterborough Prison.
- (C) The Fund shall only be paid for (i) the Fund's properly and reasonably incurred operational costs during the provision of the Interventions and (ii) the achievement of the Outcomes (as determined by the Independent Assessor in accordance with the terms of this Contract).
- (D) The Authority shall use reasonable endeavours to procure from the PFI Contractor, access for the Fund and the relevant Subcontractors to (i) enter and use the Premises and (ii) the Cohort Prisoners, in each case to enable the Fund and the relevant Subcontractors to deliver the Prisoner Interventions with a view to achieving the Outcomes.
- (E) **REDACTED**

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1** In this Contract:

**"Amendment to the PFI Agreement"** means the amendment to the PFI Agreement entered into by (i) the PFI Contractor, (ii) the operating subcontractor to the PFI Contractor and (iii) the Authority pursuant to which, inter alia, the PFI Contractor and the operating subcontractor to the PFI Contractor agree to provide the co-operation and assistance required from the PFI Contractor as specified in the Operating Model;

**"Approval"** means the prior written consent of the Authority (not to be unreasonably withheld or delayed);

<b>"Authority Data"</b>	means:
	(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
	(i) supplied to the Fund or the Agent by or on behalf of the Authority; or
	(ii) which the Fund is required to generate, process, store or transmit pursuant to the Contract;
	and
	(b) any Personal Data for which the Authority is the Data Controller;
	and
	(c) any Authority Information;
<b>"Authority 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 " <b>confidential</b> ") or which ought reasonably to be considered to be confidential;
<b>"Authority Information"</b>	means information to be given by the PFI Contractor to the Fund pursuant to Clause 4.3.2;
<b>"Authority Payments"</b>	Outcome <b>REDACTED</b>
<b>"Big Lottery Fund"</b>	means a non departmental public body established by the Crown to distribute National Lottery funds to good causes;
<b>"BLF Outcome Payments"</b>	<b>REDACTED</b>
<b>"BLF Services Agreement"</b>	means the Approved agreement in substantially the same terms as this Contract between (i) the Big Lottery Fund (ii) the Fund and (iii) the Agent;
<b>"CG Prisoners"</b>	means persons detained in custody in England and Wales as a result of a requirement imposed by a court, tribunal or otherwise that such person shall be so detained as determined by the MoJ PNC from time to time who satisfy limbs (i) and (ii)n of the definition of Cohort Prisoners;

<b>"Cohort"</b>	means Cohort 1, Cohort 2, Cohort 3 or Cohort 4 (as applicable);
<b>"Cohort 1"</b>	means all Cohort Prisoners discharged from Peterborough Prison during Cohort Period 1;
<b>"Cohort 2"</b>	means all Cohort Prisoners discharged from Peterborough Prison during Cohort Period 2;
<b>"Cohort 3"</b>	means all Cohort Prisoners discharged from Peterborough Prison during Cohort Period 3;
<b>"Cohort 4"</b>	means all Cohort Prisoners discharged from Peterborough Prison during Cohort Period 1, Cohort Period 2 and Cohort Period 3;
<b>"Cohort Period"</b>	means each of Cohort Period 1, Cohort Period 2, Cohort Period 3 and Cohort Period 4;
<b>"Cohort Period 1"</b>	means the period commencing on the Measurement Commencement Date and ending on the date that is 18 Months after the Measurement Commencement Date;
<b>"Cohort Period 2"</b>	means the period commencing after the expiry of 24 Months from the delivery of the first Prisoner Interventions to the Prisoners in Cohort 2 (" <b>C2 Start Date</b> ") and ending on the date that is 18 Months after the C2 Start Date;
<b>"Cohort Period 3"</b>	means the period commencing after the expiry of 24 Months from the delivery of the first Prisoner Interventions to the Prisoners in Cohort 3 (" <b>C3 Start Date</b> ") and ending on the date that is 18 Months after the C3 Start Date;
<b>"Cohort Period 4"</b>	means the period commencing on the first day of Cohort Period 1 and ending on the last day of Cohort Period 3;
<b>"Cohort Prisoners"</b>	<p>means those Prisoners who satisfy the following criteria :</p> <ul style="list-style-type: none"> <li>(i) are males of at least 18 years of age upon the date on which such person is sentenced; and</li> <li>(ii) are sentenced for a consecutive period of less than 365 days; and</li> <li>(iii) are discharged from Peterborough Prison after serving the sentence referred to in (ii) above (or any part thereof) at Peterborough Prison;</li> </ul> <p>from time to time as determined by the Inmate Information System;</p>

<b>"Commercially Sensitive Information"</b>	means the information listed in 0 (Commercially Sensitive Information);
<b>"Common Procurement Vocabulary Codes"</b>	means the common procurement vocabulary codes published by the European Commission in Commission Regulation (EC) No 213/2008;
<b>"Comparator Group"</b>	means in relation to each of Cohort 1, Cohort 2, Cohort 3 and Cohort 4 (as applicable) the identification by the Independent Assessor using the propensity score matching statistical methodology further described in Schedule 5) of a group of CG Prisoners whose characteristics are aligned with those of the Cohort Prisoners in the relevant Cohort;
<b>"Confidential Information"</b>	means the Authority's Confidential Information and/or the Contractor's Confidential Information;
<b>"Contract Date"</b>	means the date on which the Contract is executed by and on behalf of each Party;
<b>"Contract Period"</b>	means the period referred to in Clause 2.1 (Contract Period);
<b>"Contracting Authority"</b>	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006;
<b>"Contractor Personnel"</b>	means all employees, agents, or representatives of the (i) Fund, (ii) Agent and (iii) Subcontractor, in each case connected with the performance and discharge of the Fund's and Agent's obligations under this Contract (including the Contractor Key Personnel);
<b>"Contractor Personnel Vetting Procedure"</b>	means the Authority's procedures for the vetting of Contractor Personnel, as advised by the Authority or the Director to the Fund from time to time in writing;
<b>"Contractor's Confidential Information"</b>	means any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, Contractor Personnel and suppliers of the Fund, including IPR, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " <b>confidential</b> ") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;
<b>"Control"</b>	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, by contract or otherwise) and " <b>Controls</b> " and " <b>Controlled</b> " shall be interpreted accordingly;

<b>"Conviction Event"</b>	means the carrying out of an offence within 12 Months of discharge from custody (" <b>Discharge</b> ") and in relation to which a conviction and/or binding over (including any anti-social behaviour order as defined in the Crime and Disorder Act 1998) is issued by a Magistrates Court, County Court, Crown Court, the Court of Appeal, the High Court, or any other court of law or tribunal having similar jurisdiction in England and Wales within 18 Months of the Discharge (" <b>Review Period</b> ") as evidenced by the MoJ PNC at any time prior to the expiry of the Review Period;
<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>"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 Subject"</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 laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
<b>"Default"</b>	means any breach of the obligations of the relevant Party under this Contract (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence of, or negligent statement made by or on behalf of the relevant Party in connection with or in relation to the subject matter of the Contract;
<b>"Determination"</b>	means the decision of the Independent Assessor (from time to time) concerning the extent to which (i) the Fund has achieved any of the Outcomes and (ii) whether an Outcome Payment is due to the Fund, (such decision to be made in accordance with the methodology specified in Schedule 5) the compliance by the Independent Assessor with any other obligation expressed to be undertaken by the Independent Assessor under the terms of the Contract;
<b>"Director"</b>	means the governor or such other person or persons for the time being who is or are responsible for the operation of Peterborough Prison on a day to day basis;



<b>"Discharge Date"</b>	means in relation to each Prisoner who satisfies limbs (i) and (ii) of the definition of Cohort Prisoners, the date upon which such Prisoner is discharged for the first time after the Measurement Commencement Date from Peterborough Prison or any other prison or custodial centre in England and Wales;
<b>"Effective Date"</b>	means the date on which the conditions precedent specified in Clause 2.2 (Contract Period) are satisfied;
<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>"Equipment"</b>	means any item of equipment, plant, materials, ICT device or such other items supplied and used by or on behalf of the Fund for the delivery of the Prisoner Interventions under and in accordance with the terms of the Contract;
<b>"Expiry Date"</b>	means the date that is the eighth anniversary of the Interventions Commencement Date;
<b>"Fees Regulations"</b>	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
<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 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 any industrial action affecting the Agent, the Fund or any Subcontractor;
<b>"Fraud"</b>	means any offence under the Law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown;

<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Fund, the Agent or each Subcontractor (as applicable) under the same or similar circumstances;
<b>"Implementation Plan"</b>	has the meaning given in Clause 3.10.2;
<b>"Independent Assessor"</b>	means the person appointed in accordance with Clause 5 (Independent Assessor) for making Determinations;
<b>"Independent Safeguarding Authority"</b>	means the non-departmental public body sponsored by the Ministry of Justice and 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 children and vulnerable adults;
<b>"Indexation Base Month"</b>	means March 2010;
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Inmate Information System"</b>	means the database of the same name (as updated from time to time) containing details of all persons held in custody in England and Wales;
<b>"Intellectual Property Rights" or "IPR"</b>	means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;
<b>"Interventions Commencement Date"</b>	means 1 July 2010;
<b>"Intervention Period"</b>	means in relation to each Prisoner who satisfy limbs (i) and (ii) of the definition of Cohort Prisoners, the period of time during which such Prisoner is receiving Prisoner Interventions and Post Discharge Interventions;
<b>"Interventions"</b>	means the Prisoner Interventions and the Post Discharge Interventions;

"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Fund, the Agent and each Subcontractor is bound to comply;
"Maximum Authority Liability"	has the meaning given to such term in Clause <b>Error! Reference source not found.</b> (Indemnity and Liability);
"Measurement Commencement Date"	means 9 August 2010 representing the date from which the Independent Assessor shall commence assessment of the number of Conviction Events arising in respect of Cohort 1;
"MoJ PNC"	means data (as updated from time to time) compiled by or on behalf of the Ministry of Justice, derived from the national information system maintained by the National Police Improvement Agency containing details of Conviction Events;
"Month"	means a calendar month;
"Operating Model"	means the operating strategy (as set out in Schedule 7 and as agreed between the PFI Contractor, the Fund and the Authority at the Contract Date) setting out the roles and responsibilities of each of the PFI Contractor and the Fund in relation to the delivery of the Prisoner Interventions;
"Operational Costs Payment"	means the amount to be paid to the Fund pursuant to and in accordance with Clause <b>Error! Reference source not found.</b> (Payment) for the Fund's reasonably and properly incurred operational costs incurred during the provision of the Interventions and start up costs incurred prior to the Contract Date, subject to the maximum amounts specified in Schedule 4;
"Outcome Payment"	<b>REDACTED</b>
"Outcome"	has the meaning given to such term in Schedule 4 and " <b>Outcomes</b> " shall refer to all of them;
"Party"	means the Authority, the Fund and the Agent and " <b>Parties</b> " shall be construed as referring to all of them;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Peterborough Prison"	means HMP Peterborough, Saville Road, Westfield, Peterborough PE3 7PD;

<b>"PFI Contractor"</b>		means Peterborough Prison Management Limited (company number 4350276) whose registered office is situated at Interserve House, Ruscombe Park, Reading, Berkshire, RG10 9JU appointed to, inter alia, operate and maintain Peterborough Prison for the Authority pursuant to an agreement dated 14 February 2003 as the same may have been amended from time to time (" <b>PFI Agreement</b> ")
<b>"PFI Contractor Party"</b>	<b>Related</b>	means any employee, representative, agent, supplier and/or subcontractor of the PFI Contractor working for or on behalf of the PFI Contractor in connection with the PFI Agreement;
<b>"Post Discharge Interventions"</b>		means the delivery of interventions by or on behalf of the Fund to the Cohort Prisoners from the Discharge Date for each Cohort Prisoner;
<b>"Premises"</b>		means that part of Peterborough Prison to be made available by the PFI Contractor (from time to time) for the benefit of the Authority, the Fund and the Subcontractors (pursuant to the Operating Model) for the purposes of enabling the Fund and the Subcontractors to deliver the Prisoner Interventions;
<b>"Prisoner Interventions"</b>		means, from the Intervention Commencement Date and until the day before the Discharge Date for each Cohort Prisoner, the provision of interventions by or on behalf of the Fund to the Prisoners who satisfy limbs (i) and (ii) of the definition of Cohort Prisoners;
<b>"Prisoner Interventions Period"</b>		means the period during which the Fund or its relevant Subcontractors are delivering the Prisoner Interventions;
<b>"Prisoner"</b>		means any person detained at Peterborough Prison as a result of a requirement, imposed by a court or otherwise, that such person is to be detained;
<b>"Process"</b>		has the meaning given to it under the Data Protection Legislation and, for the purposes of the Contract, it shall include both manual and automatic processing;
<b>"Quality Standards"</b>		means the quality standards published by the British Standards Institute, the National Standards body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies) that a skilled and experienced service provider in the same type of industry or business sector as the Fund, the Agent and each Subcontractor would reasonably and ordinarily be expected to comply with in delivering their respective obligations under the Contract;

<b>"Receipt"</b>	means the physical or electronic arrival of the invoice at the address of the Authority detailed at Clause 7 (Notices) or at any other address given by the Authority in writing to the Fund for the submission of invoices;
<b>"Regulatory Bodies"</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and <b>"Regulatory Body"</b> shall be construed accordingly;
<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>"Schedule"</b>	means a Schedule to, and forming part of, the Contract;
<b>"Subcontractor"</b>	means any person or organisation appointed or engaged by or on behalf of the Fund for the performance of any part of the Fund's obligations under the Contract;
<b>"Subcontract"</b>	means the agreement between the Fund and the Subcontractor appointed in accordance with Clause 24.2 (Fund Subcontracting);
<b>"Termination Events"</b>	means termination of Contract pursuant to Clauses 2.3 (Conditions Precedent), 4.6 (Authority Obligations), 5.2 (Appointment of an Independent Assessor) 9.2 (Conflict of Interest), 10.3.1 (Prevention of Fraud and Corruption), 10.6.1 (Prevention of Fraud and Corruption), 20.2 (Official Secrets Act), 22.6 (Intellectual Property Rights), 34 (Termination on Change of Control and Insolvency), 35 (Termination on Default), 36 (Termination for Convenience), 37 (Mutual Termination) or 42.1 (Force Majeure).
<b>"Variation"</b>	has the meaning given to it in Clause 26 (Variation);
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Vetting and Barring Scheme"</b>	means the scheme established under the provisions of the Safeguarding Vulnerable Groups Act 2006;
<b>"Working Day"</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

1.2 In interpreting this Contract:

- 1.2.1 words importing the singular meaning include, where the context so admits, the plural meaning and vice versa;

- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to any Clause is a reference to the whole of that Clause unless stated otherwise;
- 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument where appropriate shall be construed as referring to any subsequent amendment or re-enactment of the same;
- 1.2.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their respective successors and permitted assignees;
- 1.2.6 the words "**include**", "**includes**" and "**including**" are to be construed as if they were immediately followed by the words "**without limitation**";
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 references to "**Fund**" shall be deemed to include where the context so requires reference to any person acting on behalf of the Fund including the Subcontractors;
- 1.2.9 an obligation on a Party to do any act matter or thing includes, unless expressly stated to the contrary, an obligation upon such Party to procure that it is done;
- 1.2.10 subject to any express provision of this Contract to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense;
- 1.2.11 save where otherwise expressly provided, references to amounts expressed to be **indexed** are references to such amounts at Indexation Base Month prices multiplied by:

$$\frac{I_1}{I_2}$$

where I1 is the value of RPIX most recently published prior to the relevant calculation date, and I2 is the value of RPIX for the Indexation Base Month; and

- 1.2.12 save where otherwise expressly stated to the contrary, where an obligation and/or liability is expressed to be assumed by more than one person, all such persons are deemed to be jointly and severally liable for the performance of such obligation and/or the satisfaction of such liabilities.

## 2. **CONTRACT PERIOD**

- 2.1 Subject to Clause 2.2, the rights and obligations of the Parties shall take effect on the Effective Date and shall expire automatically on the Expiry Date, unless the Contract is terminated earlier in accordance with any of the Termination Events.
- 2.2 The Effective Date shall take place on the occurrence of the last to occur of the following events:
  - 2.2.1 the execution of the BLF Services Agreement;

2.2.2 the execution of the Amendment to the PFI Agreement;

2.2.3 **REDACTED**

2.2.4 submission by the Fund to the Authority of a proposed list of Contractor Key Personnel who require regular access to Peterborough Prison for the delivery of the Prisoner Interventions.

2.3 If the obligations specified in Clause 2.2 are not satisfied with 45 Working Days of the Contract Date, either Party may give notice to terminate the Contract forthwith.

2.4 Subject to the satisfaction of the conditions precedent specified in Clause 2.2, the Fund shall commence provision of the Prisoner Interventions from the Interventions Commencement Date.

### 3. **FUND'S OBLIGATIONS**

3.1 The Fund shall deliver the Interventions during the Intervention Period with a view to achieving the Outcomes, and upon the advice of the Agent, shall discharge all obligations of the Fund under this Contract in accordance with the Law and Good Industry Practice.

3.2 The Fund shall engage at all times a sufficient number of Contractor Personnel to fulfil the Fund's obligations under the Contract.

3.3 All Contractor Personnel shall possess the skills, qualifications, experience and competence to deliver the Interventions in accordance with the Law and Good Industry Practice.

3.4 If and when directed in writing by the Authority, the Fund shall within seven (7) days of receipt of such direction, provide to the Authority:

3.4.1 details of the skills, qualifications, experience, competence and training received by any Contractor Personnel engaged or proposed to be engaged by the Fund or the Agent in connection with the discharge by the Fund of its obligations under the Contract; and

3.4.2 a copy of any certificate or any other evidence of the skills, qualifications, experience, competence and training received by each of the Contractor Personnel referred to in Clause 3.4.1.

3.5 The Fund shall, if required by the Authority in writing, provide the Contractor Personnel with a copy of the Cabinet Office *Joint Statement on access to skills, trade unions and advice in government contracting*.

3.6 The Fund shall at all times comply with and shall procure that each Contractor Personnel complies with the Quality Standards, and where applicable, shall procure that the Subcontractors maintain their accreditation with the relevant Quality Standards authorisation body.

3.7 The Fund shall promptly inform and keep informed the Authority in writing of any industrial relations or other matters relating to the Contractor Personnel which may affect the delivery of the Interventions and the compliance by the Fund or the Agent of their respective obligations under the Contract.

3.8 Unless specifically Approved, the Agent or the Fund shall each ensure that the Interventions do not include any act or omission which, in the absolute discretion of the Authority:

3.8.1 would adversely affect the reputation of the Authority or the Crown;

- 3.8.2 involves a payment or inducement of any kind to the Cohort Prisoners, the CG Prisoners, the Prisoners or any other prisoners (save in respect of prisoners used to deliver the Prisoner Interventions who shall be permitted payment for the provision of any part of the Prisoner Interventions in accordance with the Prison Service Order 4460 (Prisoners Pay) dated 7th January 2002);
- 3.8.3 contravenes any Law or any term of this Contract;
- 3.8.4 is inappropriate and contrary to the public interest; or
- 3.8.5 involves the use of indoctrination techniques including but not limited to Interventions involving religious, racial, sect or cult based behaviour.
- 3.9 The Fund and the Agent shall ensure at all times that the Interventions only include services which fall within the following CPV Codes: 80530000, 85312500, 85312300 and 85320000.

### 3.10 Prisoner Interventions

- 3.10.1 The Fund and the Agent shall comply with, and the Fund shall procure the compliance by its Subcontractors with, their respective obligations as set out in the Operating Model and all reasonable requirements of the PFI Contractor as notified by the Authority or the Director from time to time. The Authority shall use reasonable endeavours to procure the compliance by the PFI Contractor with the PFI Contractor's obligations set out in the Operating Model.
- 3.10.2 The Fund shall within 15 Working Days of the Contract Date (or such other date as agreed between the Parties) agree with the Authority and the PFI Contractor a detailed implementation plan, which using the framework agreed in the Operating Model, contains the following information:
- (a) the Contractor Personnel who shall require access to Peterborough Prison and the intervals at which such access is required;
  - (b) the areas of the Premises to which access is required by the Contractor Personnel referred to in Clause (a);
  - (c) the nature of the Prisoner Interventions to be delivered by the Fund;
  - (d) the numbers of Prisoners with whom the Fund expects to be working at any time when it is at the Premises; and
  - (e) any other information reasonably required by the Authority and the PFI Contractor

such agreed document being referred to as the "**Implementation Plan**".

- 3.10.3 Unless otherwise agreed between the Fund, the Authority and the PFI Contractor, the Fund shall not be permitted to enter the Premises until the Implementation Plan has been agreed between the Authority and the PFI Contractor.
- 3.10.4 The Fund shall be permitted to change the Implementation Plan and/or the Operating Model at any time during the Contract Period provided any such change is agreed with the PFI Contractor and receives the Authority's Approval.



- 3.10.5 The Fund shall provide information to the Authority and the PFI Contractor, as the Authority and/or the PFI Contractor may reasonably require, at any time prior to, during or after the provision of the Prisoner Interventions.
- 3.10.6 The Fund shall co-operate with, and establish and maintain for the duration of the Prisoner Intervention Period a good working relationship, with the PFI Contractor to enable the delivery of the Prisoner Interventions.
- 3.10.7 The Fund and all Contractor Personnel shall vacate the Premises at the end of the Prisoner Intervention Period or upon termination of the Contract (whichever is the earlier).
- 3.10.8 In delivering the Prisoner Interventions, the Fund shall, and shall procure that the Contractor Personnel, shall:
- (a) provide a list of the names and addresses, National Insurance numbers, periods of employment or engagement by the Fund or relevant Subcontractor (as relevant), immigration status and tax exemption certificates of all persons who it is expected may require access in connection with the Contract to any part of the Premises, specifying the capacity in which each such person is concerned with the Contract and giving such other particulars as the Authority or the PFI Contractor may reasonably require;
  - (b) when at the Premises, comply with such rules, regulations, requirements and instructions given by or on behalf of the Director (including those relating to security arrangements) as may be in force or issued from time to time for the conduct of third party contractors or other licensees accessing and using the Premises;
  - (c) not engage any person who the Fund, the Agent or any Subcontractor knows, or by reason of the circumstances might reasonably be expected to know, that the person concerned is involved in any unlawful procurement of welfare benefits, tax credits and/or tax exemptions in connection with his engagement by the Fund, the Agent or the Subcontractor (as relevant). The Fund or the Agent and any Subcontractor shall not make, facilitate or participate in the procurement of any unlawful payments to any person engaged by the Fund, the Agent or any Subcontractor (as relevant), whether in the nature of Fraud, evasion of tax or otherwise;
  - (d) comply with and enforce the Contractor Personnel Vetting Procedure in respect of all Contractor Personnel engaged in the delivery of the Prisoner Interventions including if specifically required by the Authority having a Criminal Records Bureau check of the most extensive kind available and/or being vetted by the Independent Safeguarding Authority;
  - (e) not permit any person who (i) has previously been refused permission to enter the Premises by the Authority or the Director or (ii) is removed from the Premises following the instruction of the Authority or the Director to be used in the provision of the Prisoner Interventions;
  - (f) unless otherwise specifically agreed by the Director in writing, limit access to the Premises to such Contractor Personnel as are necessary to deliver the Prisoner Interventions;

- (g) co-operate (and ensure that the Contractor Personnel co-operate) with all other persons at the Premises including the PFI Contractor and all PFI Contractor Related Parties;
- (h) deliver the Interventions 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;
- (i) promptly notify the Authority of any health and safety hazard which may arise prior to or has arisen during provision by the Fund or a Subcontractor of the Prisoner Interventions;
- (j) comply with any health and safety procedures implemented by the Authority or the Director in respect of the Premises;
- (k) notify the Authority immediately in the event of any incident occurring in the delivery of the Prisoner Interventions where that incident causes any personal injury or damage to property or which could give rise to personal injury or damage to property;
- (l) ensure that the Fund and each Subcontractor's health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request; and
- (m) not act, in a way which is likely to cause or provoke or does cause or provoke criminal behaviour or damage to any person or property.

### 3.11 Post Discharge Interventions

3.11.1 In delivering the Post Discharge Interventions, the Fund shall, and shall procure that the Contractor Personnel shall:

- (a) provide such information as may reasonably be required by the Authority concerning the extent to which any such Contractor Personnel are appropriate persons to be engaged in delivering the Post Discharge Interventions;
- (b) comply with such rules, regulations and requirements issued by the Authority or any Regulatory Body from time to time concerning the rehabilitation of offenders;
- (c) deliver the Post Discharge Interventions 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; and
- (d) not act, in a way which is likely to cause or provoke or does cause or provoke criminal behaviour or damage to any person or property.

### 3.12 Equipment

3.12.1 The Fund shall provide all the Equipment necessary for the delivery of the Interventions. The Fund or any person acting on behalf of the Fund shall not bring any Equipment used to deliver the Prisoner Interventions onto the Premises without Approval.

- 3.12.2 All Equipment brought onto the Premises shall be at the Fund's sole risk and the Authority shall have no liability for any loss of or damage to any such Equipment unless the Fund is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. Equipment brought onto the Premises will remain the property of the Fund. The Fund shall provide for the haulage or carriage to and the removal from the Premises of all Equipment at its sole cost. The Fund shall use and maintain all Equipment brought onto the Premises in a safe, serviceable and clean condition.
- 3.12.3 The Fund shall, at the Authority's or the Director's written request, and at its own expense and as soon as reasonably possible remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or contravenes the Fund's other obligations under the Contract.
- 3.12.4 On the Expiry Date or if earlier on termination of the Contract, the Fund shall remove and shall procure the removal, from the Premises of all Equipment used by or on behalf of the Fund to deliver the Prisoner Interventions and the Fund shall ensure the Premises are left in a clean, safe and tidy condition. The Fund is solely responsible for making good any damage to the Premises or any objects contained thereon (other than fair wear and tear) which is caused by the Fund or any Contractor Personnel.

#### 4. **AUTHORITY'S OBLIGATIONS**

- 4.1 The Authority, whose decision shall be final and conclusive, reserves the right under the Contract and at any time to prevent any Contractor Personnel from being involved in the delivery of the Interventions or from being involved in any other way in connection with the Contract, if such involvement would, in the opinion of the Authority, be unsuitable. To the extent the Authority is able to provide prior notice of its decision to prevent any Contractor Personnel from being involved in the delivery of the Interventions or being involved in any other way with the Contract, the Authority shall use reasonable endeavours to provide such notice to the Fund. However, the Fund and the Agent acknowledge and accept that the Authority will not always be able to provide such notice or give any reasoning for any decision made pursuant to this Clause 4.1.
- 4.2 The Authority acknowledges that the Fund may, in the delivery of the Interventions, use persons who have previously spent time detained in custody in England and Wales. The Authority confirms that it shall not exercise its rights under Clause 4.1 against a member of the Contractor Personnel solely because such member has previously spent time detained in custody in England and Wales.
- 4.3 The Authority shall use reasonable endeavours to procure for the benefit of the Fund and any Contractor Personnel:
- 4.3.1 for the duration of the Prisoner Intervention Period, the access to the Premises as specified in the Operating Model for the sole purpose of enabling the Fund and the Contractor Personnel to deliver the Prisoner Interventions; and
- 4.3.2 any other co-operation and assistance reasonably required by the Fund from the PFI Contractor as specified in the Operating Model.
- 4.4 To the extent the Authority is not, having used its reasonable endeavours, able to procure the assistance from the PFI Contractor as specified in Clause 4.3.1, the Authority may terminate the Contract pursuant to Clause 36 and the provisions of Clause **Error! Reference source not found.** shall apply.

- 4.5 The Director, whose decision shall be final and conclusive, reserves the right to refuse to admit to, or to withdraw permission to remain on, the Premises to the Fund or any member of the Contractor Personnel whose admission or continued presence on the Premises would be, in the opinion of the Director unsuitable or inappropriate.
- 4.6 If the Fund fails to comply with Clause 3.10.8(b) the Authority, (whose decision shall be final and conclusive), may decide that such failure is prejudicial to the interests of the Crown; and if the Fund does not comply with the provisions of Clause 3.10.8(b) within three (3) Working Days of the date of a written notice from the Authority so to do then the Authority may terminate the Contract forthwith. The Fund shall reimburse any costs incurred by the Authority in issuing any notice, under Clause 3.10.8(b).
- 4.7 **MoJ PNC**
- 4.7.1 The Authority is responsible for the maintenance and compilation of the MoJ PNC. The Authority shall inform the Fund if it proposes to materially change the manner in which the MoJ PNC is compiled or managed, such notice to be given within a reasonable period of the Authority's decision to make the aforementioned material change.
- 4.7.2 To the extent the Authority intends to materially change the manner in which the MoJ PNC is compiled or managed, the Authority shall discuss the nature of the material change with the Fund within 15 Working Days of receipt by the Fund of the notice given by the Authority prior to Clause 4.7.1, and if such material change will have a substantive impact on the Outcomes or the Determinations, the Parties shall agree a variation to the terms of the Contract to take account of the impact of any such proposed material change on the obligations of the Parties under the Contract (subject to the provisions of Clause 26.1). Any dispute concerning the materiality of any proposed change or its impact on the Outcomes or the Determinations shall be resolved by reference to the Independent Assessor.
5. **INDEPENDENT ASSESSOR**
- 5.1 The Authority shall within three (3) Months of the Effective Date procure the appointment of an Independent Assessor who shall be responsible for making the Determinations in accordance with the methodology specified in Schedule 5. The Authority shall use reasonable endeavours to appoint the Independent Assessor by:
- 5.1.1 issuing an invitation to tender to the contractors set out in Schedule 8 who are approved in writing by the Fund prior to the Effective Date (and a failure by the Fund to respond by the Effective Date shall constitute a deemed approval by the Fund of the sufficient expertise and independence of the contractors listed in Schedule 8) ("ITT");
- 5.1.2 evaluating, with the assistance of the Fund, any and all submissions made by the contractors to whom an ITT is issued pursuant Clause 5.1.1; with a view to selecting the submission which offers the Authority the most value for money solution; and
- 5.1.3 entering into an agreement with the contractor who submitted the most value for money solution, for the provision of the Determinations and any other obligations expressed to be performed by the Independent Assessor pursuant to the terms of the Contract.
- 5.2 If the Independent Assessor is not appointed by the date that is six Months after the Effective Date ("**Initial Period**"), the Parties shall seek to agree the identity and appointment of a suitable person to undertake the obligations of the Independent Assessor as detailed in this Contract, or in default of such an agreement being made within 1 Month of the end of the Initial Period, either Party may give notice to terminate

this Contract forthwith. In the event of a termination pursuant to this Clause, the Fund shall to the extent any such payments have not been previously made, be entitled to be paid Operational Costs Payments for all reasonably and properly incurred operational costs incurred by the Fund but not previously paid by the Authority or the Big Lottery Fund during the period ending on the termination of the Contract.

- 5.3 The Fund and the Agent shall provide all reasonable co-operation and assistance to the Authority (at no cost to the Authority) to enable the Authority to obtain a value for money proposal from the contractors listed in Schedule 8 for delivering the Determinations.
- 5.4 The Fund shall enter into such documents, give such undertakings and/or do such other things as may be reasonably necessary to give effect to the appointment of the Independent Assessor and following such appointment to enable the Independent Assessor to make the Determinations.
- 5.5 The Fund and the Authority each separately confirm as follows:
- 5.5.1 they shall accept the Determinations made by the Independent Assessor;
- 5.5.2 they shall not impede, prevent, seek to influence or otherwise make it difficult for the Independent Assessor to make its Determinations; and
- 5.5.3 they shall permit the Independent Assessor to make its Determinations in accordance with the terms of its appointment.
- 5.6 The Independent Assessor shall review the performance of the Fund in achieving the Outcomes and issue a Determination (following the methodology specified in Schedule 5) in respect of each Outcome by the last date of each of Cohort Period 1, Cohort Period 2, Cohort Period 3 and Cohort Period 4 respectively.

## 6. **SCOPE OF CONTRACT**

- 6.1 At all times during the Contract Period the Fund and the Agent shall each be construed as an independent contractor to the Authority and nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between (i) the Authority and (ii) the Fund and the Agent.
- 6.2 Save as expressly permitted by the express terms of the Contract, the Authority shall not be authorised to act in the name of, or on behalf of, or otherwise bind the Fund or the Agent and the Fund or the Agent shall not be authorised to act in the name of, or on behalf of, or otherwise bind the Authority. The Agent shall be permitted to act on behalf of the Fund as specified by the terms of this Contract.

## 7. **NOTICES**

- 7.1 For the purposes of this Clause 7 (Notices), the address of each Party shall be as stated in Clause 7.4 below. Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 7.2 Any notice or other communication which is to be given by either Party to the other Party shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by receipted facsimile transmission or receipted electronic mail. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or, in the case of electronic mail or facsimile transmission four (4) hours on any Working Day after the facsimile transmission or

electronic mail has been sent or sooner where the other Party acknowledges receipt of such notice or communication.

7.3 Either Party may change its address or facsimile number or electronic mail address for service by serving a notice on the other Party in accordance with this Clause.

7.4 All notices or communications under the Contract shall be served:

If to the Authority:

If to the Fund:

If to the Agent:

**REDACTED**

## **8. MISTAKES IN AUTHORITY INFORMATION**

8.1 The Fund and the Agent shall separately be responsible in accordance with Good Industry Practice for reviewing the Authority Information for any omissions, errors or anomalies. The Fund or the Agent shall notify the Authority immediately upon becoming aware of any such omission, error or anomaly. Upon the discovery of any aforementioned omission, error or anomaly, the Parties shall co-operate with each other to rectify the omission, error or anomaly and shall mitigate the affect of any such omission, error or anomaly on the performance by each Party of their respective obligations under the Contract.

8.2 The Fund and the Agent shall be deemed to have separately satisfied themselves of the adequacy of the Operating Model in providing the information and assistance required by the Fund and the Agent from the PFI Contractor to enable the Fund and the Agent to deliver the Interventions, achieve the Outcomes and otherwise comply with their respective obligations under the Contract.

8.3 The Fund and the Agent each acknowledge that they have:

8.3.1 raised all relevant due diligence questions with the Authority before the Contract Date;

8.3.2 satisfied themselves that they have sufficient information to ensure that they can deliver the Interventions with a view to achieving the Outcomes in accordance with the terms of the Contract; and

8.3.3 entered into the Contract in reliance on their own respective due diligence.

## 9. CONFLICTS OF INTEREST

9.1 The Fund shall take appropriate steps to ensure that neither the Fund, the Agent or any Contractor 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 Fund or the Agent or any Subcontractor and the duties owed by the Fund and/or the Agent and/or the relevant Subcontractor to the Authority under or in connection with the Contract; or

9.1.2 the behaviour of the Fund, the Agent, the relevant Subcontractor or any Contractor Personnel might adversely affect the Authority's reputation.

The Fund and the Agent shall as soon as reasonably practicable, disclose to the Authority full particulars of any behaviour which may give rise to the circumstances specified in Clauses 9.1.1 or 9.1.2 and shall procure that the Subcontractors provide all information to the Fund in a prompt manner to enable the Fund and the Agent to comply with their respective obligations under this Clause in respect of the behaviour and interests of the Subcontractors.

9.2 If the circumstances specified in Clauses 9.1.1 and/or 9.1.2 relate to a Subcontractor or a specified member or members of the Contractor Personnel, the Authority may give notice to the Fund to terminate the Contract unless within 5 Working Days of receipt of such notice the Fund terminates or procures the termination of the relevant subcontract or the contract of employment or other form of engagement of the relevant Contractor Personnel and procures the performance of such part of the Interventions or any other part of the Fund's or Agent's obligations under the Contract by another person.

9.3 If the circumstances specified in Clauses 9.1.1 and/or 9.1.2 relate to the Fund or the Agent, the Authority shall be permitted to terminate the Contract unless within 5 Working Days of receipt of such notice the Fund is able to demonstrate to the reasonable satisfaction of the Authority that the behaviour or interest giving rise to the relevant circumstances specified in Clauses 9.1.1 and/or 9.1.2 shall not adversely affect the reputation of the Authority or be prejudicial to the interests of the Crown.

9.4 Any notice of termination served under Clauses 9.2 and 9.3 shall specify:

9.4.1 the nature of the act giving rise to the circumstances set out in Clauses 9.1.1 or 9.1.2 (as applicable);

9.4.2 the identity of the person to whom the conflict, potential conflict or behaviour relates; and

9.4.3 the date on which the Contract will terminate in accordance with and subject to the provisions of Clause 9.2 or 9.3 (as applicable).

## 10. PREVENTION OF FRAUD AND CORRUPTION

10.1 The Fund shall take all reasonable steps, in accordance with Good Industry Practice and the Law to prevent Fraud by or on behalf of the Fund, the Agent or any Contractor Personnel in connection with this Contract.

10.2 The Fund shall notify the Authority immediately if the Fund or the Agent or any Contractor Personnel has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

- 10.3 If the Fund, the Agent or any Contractor Personnel commit Fraud in relation to this or any other contract with the Crown (including with the Authority) the Authority may:
- 10.3.1 give notice to the Fund to terminate the Contract, and this Contract will terminate unless within 5 Working Days of receipt of such notice the Fund terminates the relevant Subcontract or terminates or procures the termination of the contract of employment or other form of engagement of the member of the Contractor Personnel who has committed such Fraud and if necessary procures the performance of such Subcontractor's or such Contractor Personnel's obligations by another person. If such Fraud is committed by the Agent or the Fund the Contract shall terminate forthwith ; and
  - 10.3.2 recover in full from the Fund any loss sustained by the Authority in consequence of any breach of this Clause 10 (Prevention of Fraud and Corruption).
- 10.4 Save as otherwise expressly agreed by the Authority in writing, the Fund, the Agent or any Subcontractor shall not offer or give or agree to give to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract.
- 10.5 Each of the Fund and the Agent warrant that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person engaged by or on behalf of the Authority or any other public body in connection with the subject matter of the Contract. The Fund shall procure a warranty from each Subcontractor on the same terms as this Clause 10.5.
- 10.6 If the Fund, the Agent or any member of the Contractor Personnel engages in conduct prohibited by Clauses 10.4 (Prevention of Fraud and Corruption) or 10.5 (Prevention of Fraud and Corruption), the Authority may:
- 10.6.1 give notice to the Fund to terminate the Contract and this Contract will terminate unless the activity which is the source of the complaint is committed by a Subcontractor or a member of the Contractor Personnel and within 5 Working Days of receipt of such notice the Fund terminates the relevant Subcontract or procures the termination of the relevant Contractor Personnel's contract of employment or engagement with the Fund, the Agent or a Subcontractor (as applicable) and if necessary procures the performance of such Subcontractor's or such Contractor Personnel's obligations by another person; and
  - 10.6.2 recover in full from the Fund any other loss sustained by the Authority in consequence of any breach of Clauses 10.4 (Prevention of Fraud and Corruption) or 10.5 (Prevention of Fraud and Corruption).

11. **PAYMENT AND INVOICES REDACTED**

11.1 **REDACTED**

11.2 **REDACTED**

11.3 **REDACTED**

11.4 **REDACTED**



## 11.5 Operational Costs Payment

- 11.5.1 The Fund shall ensure that each invoice relating to an Operational Costs Payment is submitted to the Big Lottery Fund by the date for submission of the invoice specified in column 1 of the table set out in Schedule 4 (Operational Costs Payment).
- 11.5.2 The Fund shall ensure that each invoice relating to an Operational Costs Payment shall contain all appropriate supporting evidence, including the (i) date of the invoice, (ii) the Fund's banking details, (iii) the relevant purchase order number supplied by the Authority, (iv) the amount of the Operational Costs Payment being sought, (v) evidence of the services for which payment is being sought, (vi) evidence of the expenses for which payment is being sought and (vii) a detailed breakdown of all the operating costs incurred by the Fund and each Subcontractor in the delivery of the Interventions for the relevant part of the Interventions Period covered by the invoice.
- 11.5.3 The Big Lottery Fund and the Authority may request additional supporting documentation or clarification of any item included in the Fund's invoice submitted in accordance with Clause 11.5.
- 11.5.4 If the Fund is seeking an Operational Costs Payment from the Authority pursuant to Clause **Error! Reference source not found.**, the Fund shall submit the information required under Clauses 11.5.2 and 11.5.3 to the Authority.

## 11.6 Outcome Payments **REDACTED**

11.7

11.8

11.9

11.10

11.11

11.12

## 12. RECOVERY OF SUMS DUE

- 12.1 Whenever under the Contract any sum of money is recoverable from or payable by the Fund (including any sum which the Fund is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due to the Fund, or which at any later time may become due to the Fund under the Contract.
- 12.2 Any overpayment by the Fund or the Authority shall be a sum of money recoverable by the person who made the overpayment from the other person in receipt of the overpayment and such overpayment shall be recoverable within ten (10) Working Days of receipt of a notice from the person who gave the overpayment, after the expiry of which the terms of Clause **Error! Reference source not found.** (Invoice) shall apply.
- 12.3 The Fund shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Fund has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Fund.

**13. EURO**

13.1 Any legislative requirement to account for the performance by the Fund of its obligations under the Contract in Euro (€) (or to prepare for such accounting), instead of and/or in addition to GB Pounds Sterling (£), shall be implemented by the Fund at nil charge to the Authority.

13.2 The Authority shall provide all reasonable assistance to facilitate compliance by the Fund with its obligations under Clause 13.1 (Euro).

**14. DISCRIMINATION**

The Fund shall not unlawfully discriminate within the meaning and scope of the Law relating to discrimination in employment. The Fund shall take all reasonable steps to secure the observation of these provisions by the Agents and all the Fund Personnel and the Subcontractors. The Fund shall have proper regard to the Codes of Practice relating to discrimination prepared and issued from time to time by the Equality and Human Rights Commission (or any of its predecessors) and/or the Authority.

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

A person who is not the Fund, the Agent or the Authority shall have no right to enforce any of the provisions of this Contract which, expressly or by implication, confer a benefit on such person, without the prior written agreement of the Fund, the Agent and the Authority. This Clause does not affect any right or remedy of any person which exists or is available apart from under the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

**16. AUTHORITY DATA**

16.1 The Fund shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

16.2 The Fund shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Fund or the Contractor Personnel of their obligations under the Contract or as otherwise expressly authorised in writing by the Authority.

16.3 To the extent that Authority Data is held and/or processed by or on behalf of the Fund, the Fund shall supply that Authority Data to the Authority as requested by the Authority in the format reasonably requested by the Authority.

16.4 The Fund shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

16.5 If at any time the Fund or any person acting on behalf of the Fund suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Fund shall (i) notify the Authority immediately in writing, (ii) inform the Authority of the remedial action the Fund or any person acting on behalf of the Fund propose to take within three (3) Working Days of issuing the aforementioned notification and (iii) implement such remedial action at its sole cost to the satisfaction of the Authority.

**17. PROTECTION OF PERSONAL DATA**

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

17.2 The Fund and any person acting on behalf of the Fund shall:

- 17.2.1 process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Authority to the Fund during the Contract Period) and the Fund and the Agent shall at the very least comply with the provisions of Schedule 3(Information Security) and HM Government Security Framework as updated from time to time;
- 17.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the performance by the Fund or any person acting on behalf of the Fund of their obligations under the Contract or as is required by Law or in accordance with the request of any Regulatory Body;
- 17.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected and in any event the measures shall not be of a lesser standard than those set out in Schedule 3(Information Security);
- 17.2.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;
- 17.2.5 obtain prior written consent from the Authority prior to making available any order to transfer the Personal Data to any Subcontractor of the Fund or the Agent who require such Personal Data to enable the Fund to discharge its obligations under the Contract;
- 17.2.6 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and ensure they comply with the obligations set out in this Clause 17 (Protection of Personal Data);
- 17.2.7 ensure that none of the Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 17.2.8 notify the Authority (within five (5) Working Days) if it receives:
- (a) a request from a Data Subject to have access to that person's Personal Data; or
  - (b) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 17.2.9 provide the Authority with full co-operation and assistance in relation to any complaint or request made to the Authority, including by:
- (a) providing the Authority with full details of the complaint or request;
  - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
  - (c) providing the Authority with any Personal Data it holds in relation to a Data Subject, within the timescales required by the Authority; and
  - (d) providing the Authority with any information requested by the Authority;

- 17.2.10 permit the Authority to inspect and audit, in accordance with Clause 23 (Audit), the Fund's and the Agent's data Processing activities (and/or those of the Contractor Personnel) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Fund and the Agent is in full compliance with its obligations under the Contract;
- 17.2.11 provide a written description of the technical and organisational methods used by the Fund and the Agent for Processing Personal Data (within the timescales required by the Authority); and
- 17.2.12 not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to any such Processing, to comply with:
- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is Processed; and
  - (b) any reasonable instructions notified to it by the Authority from time to time.
- 17.3 The Fund and the Agent shall comply at all times with the Data Protection Legislation and shall not perform their respective obligations under the Contract in such a way as to cause the Authority to breach any of its obligations under the Data Protection Legislation.
18. **FREEDOM OF INFORMATION**
- 18.1 The Fund and the Agent acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 18.2 The Fund and the Agent shall and shall procure that the Subcontractors shall:
- 18.2.1 transfer to the Authority all Requests for Information that it or they receive as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
  - 18.2.2 provide the Authority with a copy of all Information in its or their possession, or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
  - 18.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations (as relevant).
- 18.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA and/or the Environmental Information Regulations.
- 18.4 In no event shall the Fund, the Agent or a Subcontractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

18.5 The Fund and the Agent acknowledges that (notwithstanding the provisions of this Clause 18 (Freedom of Information)) the Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information relating to the Contract:

18.5.1 in certain circumstances without consulting the Fund or the Agent; or

18.5.2 following consultation with the Fund and having taken its view into account;

provided always that where Clause 18.5.1 (Freedom of Information) applies the Authority shall take reasonable steps, where appropriate, to give the Fund advanced notice, or failing that, to draw the disclosure to the Fund's attention after any such disclosure.

18.6 The Fund and the Agent shall ensure that all Information is retained for disclosure in accordance with Schedule 6 (Commercially Sensitive Information) and shall permit the Authority to inspect such records as required from time to time.

18.7 The Fund and the Agent acknowledges that the Commercially Sensitive Information listed in Schedule 6 (Commercially Sensitive Information) is of indicative value only and that the Authority may be obliged to disclose it in accordance with Clause 18.5 (Freedom of Information).

19. **CONFIDENTIALITY**

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

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

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

19.2 Clause 19.1 (Confidentiality) shall not apply to the extent that:

19.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 18 (Freedom of Information);

19.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

19.2.3 such information was obtained from a third party without an obligation of confidentiality attaching to such information;

19.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

19.2.5 it is independently developed without access to the other Party's Confidential Information.

19.3 The Fund and the Agent may only disclose the Authority's Confidential Information to the Contractor Personnel who are directly involved in the delivery of the Interventions and who need to know such Confidential Information for the proper performance by the Fund and the Agent of their respective obligations under the Contract, and shall ensure that the Contractor Personnel are aware of and shall comply with this Clause 19 (Confidentiality).

- 19.4 The Fund shall not, and shall procure that the Contractor Personnel shall not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- 19.5 At the written request of the Authority, the Fund shall procure that the Contractor Personnel sign a confidentiality undertaking containing similar terms to this Clause 19 (Confidentiality) of the Contract prior to taking any action in connection with the Contract.
- 19.6 Nothing in the Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 19.6.1 to the Crown or any other Contracting Authority on the understanding that they shall be entitled to further disclose the Confidential Information to any other part of the Crown or any other Contracting Authority on the basis that the information is confidential and is not to be disclosed to a third party who is not a part of the Crown or any Contracting Authority;
  - 19.6.2 to any consultant, contractor or other person engaged by the Authority (but excluding the Fund, the Agent and the Subcontractors) or any person conducting an Office of Government Commerce gateway review;
  - 19.6.3 for the purpose of the examination and certification of the Authority's accounts; or
  - 19.6.4 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.
- 19.7 The Authority shall use all reasonable endeavours to ensure that any part of the Crown, any or any person to whom the Confidential Information is disclosed under Clause 19.6 (Confidentiality) above, the Contracting Authority, is made aware of the Authority's obligations of confidentiality in this Clause 19 (Confidentiality).
20. **OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989**
- 20.1 The Fund and the Agent undertake to abide by, and ensure that the Contractor Personnel abide by, the provisions of:
- 20.1.1 the Official Secrets Acts 1911 to 1989; and
  - 20.1.2 Section 182 of the Finance Act 1989.
- 20.2 In the event that the Fund or the Contractor Personnel fail to comply with the provisions of this Clause, the Authority reserves the right to terminate the Contract forthwith by giving notice in writing to the Fund unless the activity is that of a Subcontractor or person engaged by a Subcontractor and within 5 Working Days of receipt of such notice the Fund terminates the relevant Subcontract or procures the termination of the employment or engagement of the relevant member of the Contractor Personnel who has failed to comply with the obligations in this Clause 20.1 and procures the performance of such part of the Fund's obligations by another person.
21. **PUBLICITY**
- 21.1 Without prejudice to the Authority's obligations under the FOIA, (i) the Fund, the Agent or any member of the Contractor Personnel shall not make any press announcement or publicise the Contract or any part thereof in any way, except with Approval as to the form and content of any such press announcement or publicity and (ii) the Authority

shall not make any press announcement or publicise the Contract or any part thereof in any way, except with prior written approval of the Fund as to the form and content of any such press announcement or publicity,

- 21.2 The Fund and the Agent shall take all reasonable steps to ensure that the Contractor Personnel comply with the provisions of this Clause 21 (Publicity).

## 22. INTELLECTUAL PROPERTY RIGHTS

- 22.1 The Fund and the Agent shall not infringe any Intellectual Property Rights of any third party in performing its obligations under the Contract and the Fund shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and any other liabilities (whatsoever) which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this Clause by the Fund or the Agent, except where such claim arises from the use of Authority Data.

- 22.2 The Authority shall notify the Fund in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right of any third party attributable to the Fund's or the Agent's performance of their respective obligations under the Contract.

- 22.3 The Fund shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of any Intellectual Property Rights of any third party or in the materials supplied or licensed by the Fund, provided always that the Fund shall:

- 22.3.1 consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- 22.3.2 take due and proper account of the interests of the Authority; and
- 22.3.3 not settle or compromise any claim without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

- 22.4 The Authority shall at the request of the Fund afford to the Fund all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Fund by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Fund's or the Agent's obligations under the Contract and the Fund shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.

- 22.5 The Authority shall not make any admission which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Fund in connection with the performance of the Fund's or the Agent's obligations under the Contract.

- 22.6 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Fund or the Agent is likely to be made, the Fund shall notify the Authority as soon as reasonably practicable and, at its own expense and subject to the consent of the Authority (such consent not to be unreasonably withheld or delayed), use its best endeavours to:

- 22.6.1 modify the discharge of its obligations under the Contract, without adversely affecting its ability to deliver the Interventions so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such delivery of the Interventions; or

22.6.2 procure a licence to use the relevant IPRs, which are the subject of the alleged infringement, on terms which are acceptable to the Authority;

and in the event that the Fund is unable to comply with Clauses 22.6.1 or 22.6.2 within twenty (20) Working Days of receipt of the Fund's notification the Authority may terminate the Contract forthwith by giving written notice to the Fund provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or which shall thereafter accrue to the Authority.

## 23. **AUDIT**

23.1 The Fund, the Agent and all Subcontractors shall keep and maintain until six (6) years after the end of the Contract Period, or such other period as may be agreed in writing between the Parties, full and accurate records relating to the performance by the Fund and the Agent of their respective obligations under the Contract, including the delivery of the Interventions, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Fund, the Agent and all Subcontractors shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

23.2 The Fund, the Agent and all Subcontractors shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all documents referred to in Clause 23.1 (Audit) (including computerised documents and data) for the purposes of the financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Fund, the Agent and all Subcontractors shall provide such explanations as are reasonably required for these purposes. This Clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Fund or the Agent by the Comptroller and Auditor General under section 6(3)(d) of the National Audit Act of 1983.

## 24. **ASSIGNMENT AND SUBCONTRACTING**

### 24.1 **Fund and Agent Assignment**

24.1.1 Subject to Clause 24.2, the Fund and the Agent shall not assign or in any other way dispose of any of their respective obligations under the Contract other than after having obtained Approval.

24.1.2 Any costs incurred by the Fund, the Agent or the Authority in giving effect to any assignment or such other disposal as referred to in Clause 24.1.1 above shall be borne by the Fund or the Agent (as applicable).

### 24.2 **Fund Subcontracting**

24.2.1 The Fund may subcontract the performance of the Interventions (or any part thereof) provided:

- (a) the Fund has in procuring the Subcontract followed and complied with the principles of equal treatment, transparency, proportionality and mutual recognition and undertaken advertising and ensured effective competition as would apply to the Authority if the Authority was procuring the award of the contract in accordance the term of Part B of the Public Contract Regulations 2006;
- (b) the Fund has demonstrated to the reasonable satisfaction of the Authority that the Fund has awarded any such Subcontract in a manner which secures best value for money for the Authority;



- (c) the Fund has maintained an accurate and comprehensive audit of all correspondence and discussions leading to the award of the Subcontract;
- (d) the Fund has confirmed to the Authority in writing that:
  - (i) the appointment of the proposed Subcontractor would not place the Fund or the Agent in breach of any of their respective obligations under the Contract; and
  - (ii) the proposed Subcontractor is able and willing to be bound by the terms of this Contract in the same manner as the Contractor; and
- (e) the Fund has obtained Approval. For the avoidance of doubt, the Authority shall not be permitted to unreasonably withhold or delay giving Approval if the Fund has complied with its obligations under Clauses (a) to (d) above.

24.2.2 Any costs incurred by the Fund and/or the Authority in giving effect to the provisions of this Clause 24.2 shall be borne by the Fund.

24.2.3 Subcontracting any part of the Contract shall not relieve the Fund of any of its obligations or duties under the Contract. The Fund shall be and shall remain responsible for the acts and omissions of the Subcontractors as though such acts and omissions were those of the Fund.

24.2.4 The Authority shall be entitled upon giving at least 5 Working Days notice to the Fund to receive copies of all Subcontracts awarded by the Fund in accordance with this Clause.

### 24.3 **Agent Subcontracting**

The Agent shall not be permitted to subcontract any part of its obligations under the Contract unless it has obtained Approval.

### 24.4 **Authority Assignment**

24.4.1 Subject to Clause 24.4.4, the Authority may assign novate or otherwise dispose of its rights and obligations under the Contract or any part thereof as necessary provided that any such assignment, novation or other disposal shall not increase the burden of the Fund's or the Agent's obligations under the Contract and provided the Authority demonstrates to the reasonable satisfaction of the Independent Assessor that the person who assumes the obligations of the Authority shall be of sufficient financial standing and possess the authority to be able to discharge the obligations of the Authority under the Contract.

24.4.2 Any costs incurred by the Fund, the Agent or the Authority in giving effect to any assignment in accordance with this Clause 24.3 shall be borne by the Authority.

24.4.3 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 24.4.1, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

24.4.4 If the rights and obligations of the Authority under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 24.4.1 or 24.4.3 to a body which is not a Contracting Authority, or if there is a change in the legal

status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this Clause both such bodies being referred to as the "**Transferee**");

- (a) the rights of termination of the Authority in Clauses 34 (Termination on Change of Control and Insolvency) and 35 (Termination on Default) shall be available to the Fund in the event of respectively, the bankruptcy or insolvency or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose its rights and obligations under the Contract or any part thereof with the prior written consent of the Fund.

24.5 The Authority may disclose to any Transferee any Confidential Information of the Fund or the Agent which relates to the performance of the Fund's or the Agent's obligations (as applicable) under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Fund's and Agent's respective obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

## 25. **WAIVER**

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

25.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 7 (Notices).

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

## 26. **VARIATION**

26.1 The Parties may mutually agree to vary the terms of the Contract in writing provided any such proposed variation:

26.1.1 does not materially change the Operational Costs Payment and/or the Outcome Payment; and/or

26.1.2 shall not in any circumstance increase the Authority's liability so that it exceeds the Maximum Authority Liability; and

26.1.3 the financial, practical and administrative implications of the proposed variation are clearly documented and agreed between the Parties.

26.2 If the Parties agree to vary the terms of the Contract, the terms of any such variation shall be recorded in writing, including a date from which the variation shall become effective, and such terms shall be signed by both Parties ("**Variation**"). The Parties shall implement the Variation in accordance with the terms of the Contract as amended by the Variation.

**27. SEVERABILITY**

- 27.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 27.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

**28. REMEDIES CUMULATIVE**

- 28.1 Except as otherwise expressly provided by the Contract, all remedies available to the Fund, the Agent or the Authority for breach of the 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.
- 28.2 Notwithstanding any other provision of the Contract, the Fund and the Agent shall not be entitled to recover compensation or make a claim under the Contract in respect of any loss that the Agent or the Fund has incurred to the extent that the Agent or the Fund (as applicable) has already been compensated in respect of that loss pursuant to the Contract or otherwise. The Authority shall not be entitled to recover compensation or make a claim under the Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to the Contract or otherwise.

**29. ENTIRE AGREEMENT**

- 29.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.
- 29.2 In the event of, and only to the extent of, any conflict between the Clauses of the Contract, the Schedules, and any document referred to in those Clauses and the Schedules, the conflict shall be resolved, in accordance with the following order of precedence:
- 29.2.1 the Clauses of this Contract;
- 29.2.2 the Schedules;
- (a) Schedule 1; (TUPE)
- (b) Schedule 2; (Peterborough Prison Specific Rules);
- (c) Schedule 3; (Information Security);
- (d) Schedule 4; (Operational Costs Payment);
- (e) Schedule 5; (Outcome Payments);
- (f) Schedule 6; (Commercially Sensitive Information);
- (g) Schedule 7; (Operating Model)

- (h) Schedule 8; (Approved List of Contractors for the Role of Independent Assessor); and

29.2.3 any other document referred to in the Contract.

### 30. COUNTERPARTS

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

### 31. INDEMNITY AND LIABILITY

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

31.1.1 death or personal injury caused by its negligence; or

31.1.2 Fraud; or

31.1.3 fraudulent misrepresentation; or

31.1.4 any breach of any obligation imposed by section 13 of the Supply of Goods and Services Act 1982.

31.2 Subject to Clauses 31.1 and 31.5, the Agent shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the performance or non-performance by the Agent of its obligations under or in connection with the Contract.

31.3 Subject to Clauses 31.1 and 31.5, the Fund shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the performance or non-performance by the Fund of its obligations under or in connection with the Contract including the presence of the Fund or any Contractor Personnel on the Premises, (including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Fund or any Contractor Personnel, or any other loss which is caused directly or indirectly by any act or omission of the Fund or any Contractor Personnel).

31.4 The Fund and the Agent shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or the breach by the Authority of its obligations under the Contract.

31.5 **REDACTED**

31.6 Subject always to Clauses 31.1 and 31.7 in no event shall either Party be liable to the other for:

31.6.1 loss of profits, business, revenue, goodwill; and/or

31.6.2 loss of savings (whether anticipated or otherwise); and/or

31.6.3 indirect or consequential loss or damage.

31.7 The Fund or the Agent shall not be permitted to exclude liability for additional operational and/or administrative costs and/or expenses or wasted expenditure incurred by the Authority as a result of the Fund's or the Agent's Default.

## 32. **INSURANCE**

- 32.1 The Fund shall put in place with effect from the Effective Date, a policy or policies of insurance covering the performance of the Fund's obligations under the Contract with a minimum limit of indemnity of one million five hundred thousand pounds (£1,500,000) for professional liability or such higher level which provides a sufficient level of cover in respect of all risks which may be incurred by the Fund, arising out of the Fund's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss, provided such policy or policies are taken out with a reputable insurance provider Approved by the Authority. Such policy or policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Fund. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the Expiry Date or earlier termination of the Contract.
- 32.2 The Agent shall effect and maintain with a reputable insurance provider Approved by the Authority a policy or policies of insurance covering the performance of the Agent's obligations under the Contract with a minimum limit of indemnity of one million five hundred thousand pounds (£1,500,000) for professional liability or such higher level which provides a sufficient level of cover in respect of all risks which may be incurred by the Agent, arising out of the Agent's performance of its obligations under the Contract. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the Expiry Date or earlier termination of the Contract.
- 32.3 The Fund shall ensure that the Subcontractors maintain for the duration of their involvement in the Social Impact Partnership initiative, a policy or policies of insurance covering the performance of each Subcontractor's obligations under their Subcontract with a minimum limit of indemnity of one million five hundred thousand pounds (£1,500,000) for professional liability or such other amount Approved by the Authority to cover all risks which may be incurred by the relevant Subcontractor, from the performance of such Subcontractor's obligations under its Subcontract with the Fund, including cover for death or personal injury, loss of or damage to property or any other loss.
- 32.4 The Fund shall maintain, and shall ensure that the Subcontractors maintain, for the duration of the Contract Period and for a minimum of six (6) years following the Expiry Date or earlier termination of the Contract, all insurances required by Law.
- 32.5 The Fund and the Agent shall give the Authority, on request, copies of all insurance policies referred to in this Clause 32 (Insurance) or a broker's certificate of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of all premia due under those policies.
- 32.6 If, for whatever reason, the Fund, the Agent or any Subcontractor fails to ensure that insurances required by the provisions of the Contract are maintained, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Fund in accordance with Clause 12.
- 32.7 The provisions of any insurance or the amount of cover shall not relieve the Fund or the Agent of any liabilities under the Contract.

## 33. **WARRANTIES AND REPRESENTATIONS** REDACTED

33.1 REDACTED

33.2 REDACTED

33.3 The Agent warrants and represents as follows:

- 33.3.1 in the two (2) years prior to the Contract Date:
- (a) the Agent has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to the Agent in any country where it files accounts; and
  - (b) the Agent has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
- 33.3.2 the Agent has not done or omitted to do anything which could have a materially adverse effect on their respective assets, financial condition or position as ongoing business concerns or their respective ability to fulfil their obligations under the Contract.
- 33.3.3 the Agent will not cease to be resident in the United Kingdom and/or transfer in whole or in part their respective undertakings, business or trade outside the United Kingdom;
- 33.3.4 the Agent will not undertake the performance of any of its obligations under the Contract otherwise than by itself;
- 33.4 The Authority warrants and represents that it has the authority and capacity to enter into the Contract.
34. **TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY**
- 34.1 Subject to Clause 34.2, the Authority may terminate the Contract by giving 10 Working Days written notice where in respect of the Agent:
- 34.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 34.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - 34.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
  - 34.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 34.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - 34.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - 34.1.7 being a "**small company**" within the meaning of section 382 (3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

- 34.1.8 any event similar to those listed in Clauses 34.1.1 to 34.1.7 occurs under the law of any other jurisdiction.
- 34.2 For the purposes of Clause 34.1, the Authority shall not terminate the Contract if the Fund nominates for Approval a suitable replacement person to discharge the liabilities of and carry out the obligations of the Agent under the Contract within 5 Working Days of receipt of the notice referred to in Clause 34.1.
- 34.3 The Authority may terminate the Contract with immediate effect by notice in writing where in respect of the Fund:
- 34.3.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with or assignment for the benefit of its creditors; or
- 34.3.2 it is for any reason dissolved; or
- 34.3.3 a petition is presented for its winding up or for the making of an administrative order, or an application is made for the appointment of a provisional liquidator; or
- 34.3.4 a receiver, or similar officer, is appointed over the whole or any part of its assets; or
- 34.3.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- 34.3.6 any of the following occurs in relation to any of its partners:
- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of his creditors; or
- (b) a petition is presented for his bankruptcy; or
- (c) a receiver, or similar officer, is appointed over the whole or any part of his assets.
- 34.4 The Fund shall notify the Authority immediately when the Agent or the Fund become aware that a change of control (within the meaning given to such term in section 416 of the Income and Corporation Taxes Act 1988) is due to occur in relation of the Fund or the Agent and shall obtain Approval prior to such change of control taking place.
- 34.5 The Authority may (in its absolute discretion) terminate the Contract by notice in writing with immediate effect where:
- 34.5.1 no notification of a change of control has been given pursuant to Clause 34.4 or
- 34.5.2 if such notification has been given, the Authority is not able to Approve the change of control.
35. **TERMINATION ON DEFAULT**
- Fund or Agent Default**

- 35.1 The Authority may terminate the Contract with immediate effect if the Fund or the Agent commit a Default and if:
- 35.1.1 the Default is a persistent default and the Fund or the Agent (as applicable) have not remedied the Default to the satisfaction of the Authority within twenty (20) Working Days of issue of a written notice from the Authority specifying the nature of the persistent Default and requesting the Fund or the Agent (as applicable) to remedy the persistent Default within such 20 Working Days; or
  - 35.1.2 the Default is not, in the opinion of the Authority, capable of remedy; or
  - 35.1.3 the Default is a material breach of the Contract.
- 35.2 If the Fund ceases to carry on all or a substantial part of that part of their respective businesses relating to the subject matter of the Contract, or dispose of all or a substantial part of its assets the Authority may terminate the Contract with immediate effect.
- 35.3 In the event that through any Default of the Fund or the Agent, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Fund shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

#### **Authority Default**

- 35.4 If the Authority fails to pay the Fund an undisputed payment when due in accordance with Clause **Error! Reference source not found.** (Invoices), the Fund shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed payment within ninety (90) Working Days of the date of such written notice, the Fund may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause 12.1 (Recovery of Sums Due).

#### **36. TERMINATION FOR CONVENIENCE**

The Authority shall have the right at any time during the Contract Period to terminate the Contract by giving 3 Months' written notice to the Fund, provided the date upon which such termination shall take place is expressly stated in such notice ("**TC Date**").

#### **37. MUTUAL TERMINATION**

Either Party may terminate the Contract at any time during the Contract Period by obtaining the written consent of the other Party to such termination.

#### **38. REDACTED**

#### **39. RECOVERY UPON EXPIRY OR TERMINATION**

- 39.1 On the termination or expiry of the Contract, the Fund shall:
- 39.1.1 immediately return to the Authority all Confidential Information and Authority Data in its possession or in the possession or under the control of any Contractor Personnel, which relates to the subject matter of the Contract;
  - 39.1.2 immediately deliver to the Authority all property (including materials, documents, and information and access keys) provided to the Fund and any person acting on behalf of the Fund for the purposes of the Contract. Such



property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

39.1.3 promptly provide all information concerning the subject matter of this Contract which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Interventions have been delivered or the Outcomes achieved or the performance of any of the other Fund's obligations under the Contract for the purpose of allowing the Authority to conduct due diligence.

39.2 If the Fund fails to comply with Clauses 39.1.1 and 39.1.2, the Authority may recover possession thereof and the Fund grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Fund or the Contractor Personnel where any such items may be held.

39.3 The Fund shall provide all assistance under Clause 39.1.3 free of charge.

#### 40. **TUPE**

Where, following the Expiry Date or earlier termination of the Contract (in accordance with its terms), there is a transfer of an undertaking or a service provision change, within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006, the terms of Schedule 3 (Transfer of Undertakings) shall have effect.

#### 41. **DISRUPTION**

41.1 The Fund shall use best endeavours to ensure that in the performance of its obligations under the Contract it does not impede, disrupt or otherwise adversely affect the Authority, its employees and any other contractor engaged by the Authority (including the PFI Contractor and any PFI Contractor Related Party) in the execution of their respective obligations in connection with or at the Premises. If the Fund or any person acting on behalf of the Fund through any act, omission, negligence, breach or other matter gives rise to a liability on the part of the Authority to any third party (including the PFI Contractor or any PFI Contractor Related Party), the Fund shall fully and effectively indemnify the Authority for all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses suffered or incurred by the Authority or any servant, agent or representative of the Authority arising in connection with such act, omission, negligence, breach or other matter.

41.2 Any amount recovered by the Authority pursuant to Clause **Error! Reference source not found.** shall not be liable for indemnification by the Fund under Clause 41.1.

#### 42. **FORCE MAJEURE**

42.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of three (3) Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.

42.2 Any failure or delay by the Fund in performing its obligations under the Contract which results from any failure or delay by a Subcontractor shall be regarded as due to Force Majeure only if that a Subcontractor is itself impeded by Force Majeure from complying with an obligation to the Fund.

- 42.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause 42.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

43. **GOVERNING LAW**

Subject to the provisions of Clause 44, the Authority, the Fund and the Agent accept the exclusive jurisdiction of the English courts and agree that the Contract shall be governed by and construed in accordance with English Law.

44. **DISPUTE RESOLUTION**

- 44.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute, such efforts shall involve the escalation of the dispute to the Director of Offender Management at the Authority and the Chief Executive (or any person holding an equivalent post) at the Fund and the Agent).

- 44.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- 44.3 If the dispute cannot be resolved by the Parties pursuant to Clause 44.1 the dispute shall be referred to mediation pursuant to the procedure set out in Clause 44.5 unless the Parties agree that the dispute is not suitable for resolution by mediation.

- 44.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Fund and the Contractor Personnel shall comply fully with the requirements of the Contract at all times.

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

44.5.1 the Parties shall within 20 Working Days of the Contract Date select three experts who shall comprise the Mediation Panel from whom a mediator shall be appointed to resolve disputes. If a member of the Mediation Panel resigns during the Contract Period a replacement expert shall be selected by the Parties as soon as practicable. In the event the nominated member of the Mediation Panel is unwilling or unable to confirm acceptance of his appointment as Mediator within 2 Working Days of receipt of a notice for a mediation from either Party, another member of the Mediation Panel shall be invited to accept the appointment. If no member of the Mediation Panel is willing or able to accept the appointment as Mediator, the Parties shall apply to the Centre for Effective Dispute Resolution for the appointment of a Mediator.

44.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with the Mediator to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure;

44.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

- 44.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 44.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 44.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in Clause 44.6.
- 44.6 Subject to Clause 44.2, the Parties shall not institute court proceedings until the procedures set out in Clauses 44.1, 44.3 and 44.5 have been completed save that:
- 44.6.1 The Authority may at any time before court proceedings are commenced, serve a notice on the Fund or the Agent requiring the dispute to be referred to and resolved by arbitration in accordance with Clause 44.7.
- 44.6.2 If the Fund 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 Fund or the Agent requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause 44.7.
- 44.6.3 The Fund or the Agent may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with the provisions of Clause 44.7, to which the Authority may consent as it sees fit.
- 44.7 In the event that any arbitration proceedings are commenced pursuant to Clause 44.6:
- 44.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- 44.7.2 the Authority shall give a written notice of arbitration to the Fund (the "**Arbitration Notice**") stating:
- (a) that the dispute is referred to arbitration; and
- (b) providing details of the issues to be resolved;
- 44.7.3 the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with Clause 44.7.2 shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 44.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- 44.7.5 if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under Clause 44.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

- 44.7.6 the arbitration proceedings shall take place in London and in the English language; and
- 44.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

This Contract has been duly executed and delivered on the date stated at the beginning of this Contract

**SIGNED ON BEHALF of HM SECRETARY OF STATE FOR JUSTICE** was affixed hereto in the presence of:

)  
)  
)  
)

REDACTED

Signature of Witness: N K VIRK

Name of Witness: NAVJEET VIRK

Address: 30 AYLESBURY STREET, LONDON, EC1R 0ER

Occupation: SOLICITOR

**SIGNED** by a duly authorised officer/ representative for and on behalf of **SOCIAL IMPACT PARTNERSHIP LP** (a Limited Partnership) in the presence of:-

)  
)  
)  
)

REDACTED

Signature of Witness: T GRIFFITHS

Name of Witness: TOM GRIFFITHS

Address: 247C, FULHAM ROAD, SOUTH KENSINGTON, LONDON, SW3 6HY

Occupation: SOLICITOR

**SIGNED** by a duly authorised officer/ ) **REDACTED**  
 representative for and on behalf of )  
**SOCIAL FINANCE LIMITED** (Company No: )  
 6402143) in the presence of:- )

Signature of Witness: T GRIFFITHS

Name of Witness: TOM GRIFFITHS

Address: 247C, FULHAM ROAD, SOUTH  
 KENSINGTON, LONDON, SW3 6HY

Occupation: SOLICITOR

**SCHEDULE 1**

**TUPE**

**1. DEFINITIONS AND INTERPRETATIONS**

In this Contract:

- "Acquired Rights Directive"** means the EU Acquired Rights Directive 2001/23/EC;
- "Employee Liability Information"** means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(2) of the Regulations;
- "Potential Transferring-Out Employees"** means those personnel who are employees of the Fund, the Agent or any Subcontractor and who are assigned to delivering the Interventions or a relevant part of the Interventions for the purposes of the Regulations;
- "Regulations"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (Council Directive 77/187/EEC as amended by Council Directive 98/50 EEC and consolidated in Council Directive 2001/23/EEC ) into English law;
- "Relevant Transfer"** has the same meaning given to it as in Regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- "Replacement Contractor"** means any third party service provider appointed by the Authority to deliver services which are substantially similar to the Interventions and which the Authority receives in substitution for any of the Interventions falling

after the Expiry Date or earlier termination of the Contract;

<b>"Subsequent Effective Date"</b>	means the date or dates on which there is a transfer of responsibility for the delivery of the Interventions or any part of the Interventions between the Fund, the Agent and the Authority and/or a Replacement Contractor (as the case may be) pursuant to the terms of the Contract;
<b>"Transferring-In Employees"</b>	means all those employees of the Authority wholly and/or mainly engaged in the delivery of the Interventions immediately before the Effective Date save for those who object to their transfer pursuant to Regulation 4(7) of the Regulations or otherwise resign or treat their employment as terminated;
<b>"Transferring-Out Employees"</b>	means those persons listed in a Schedule to be agreed by the parties prior to the Subsequent Effective Date who it is agreed were employed by the Fund or the Agent (and/or any Subcontractor) wholly and/or mainly in the delivery of the Interventions immediately before the Subsequent Effective Date; and
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246).

## 2. RELEVANT TRANSFER ON THE EFFECTIVE DATE

- 2.1 The Authority, the Agent and the Fund believe that TUPE will not apply as a consequence of this Contract to transfer the contracts of employment of employees of the Authority or the PFI Contractor to the Fund or the Agent on the Effective Date.
- 2.2 Notwithstanding paragraph 2.1, the Authority and the Fund and the Agent agree that if the commencement of the performance by the Fund or the Agent of its obligations under the Contract on the Effective Date does constitute a Relevant Transfer, then as a consequence of that Relevant Transfer the contracts of employment made between the Authority and the Transferring-In Employees and any collective agreements (save insofar as such contracts and such agreements relate to benefits for old age, invalidity or survivors under any occupational pension scheme) shall have effect from and after the Effective Date as if originally made between the Fund or the Agent and the Transferring-In Employees (or between the Fund or the Agent and the relevant trade union as the case may be).

## 3. INFORMATION AND CONSULTATION

- 3.1 The Fund and the Agent shall comply (and shall procure that any Subcontractor complies) with its obligations under Regulation 13 of the Regulations during the period prior to the Effective Date.
- 3.2 The Authority shall comply with its obligations under Regulations 13 and 14 of the Regulations during the period prior to the Effective Date, save where the Authority is unable to do so as a result of the failure of the Fund, the Agent and/or any Subcontractor to comply with their duties under Regulation 13 of the Regulations.

## 4. INDEMNITIES IN RESPECT OF TRANSFERRING-IN EMPLOYEES

- 4.1 The Authority shall indemnify and keep indemnified and hold the Fund and the Agent harmless from and against all actions, suits, claims, demands, losses, charges,

damages, costs and expenses and other liabilities which the Fund and the Agent may suffer or incur as a result of or in connection with:

- 4.1.1 any claim or demand by any Transferring-In Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising from any act, fault or omission of the Authority in respect of any Transferring-In Employee on or before the Effective Date; or
  - 4.1.2 any failure by the Authority to comply with its obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Fund or the Agent to comply with its duties under Regulation 13 of TUPE; or
  - 4.1.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring-In Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.
- 4.2 The Fund and the Agent shall indemnify the Authority against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Authority in connection with or as a result of:
- 4.2.1 any claim or demand by any Transferring-In Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, disability, age, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault or omission of the Fund, the Agent or any Subcontractor in respect of any Transferring-In Employee on or after the Effective Date;
  - 4.2.2 any failure by the Fund, the Agent or any Subcontractor to comply with its obligations under Regulation 13 of the Regulations;
  - 4.2.3 any claim (including any individual entitlement of an Transferring-In Employee under or consequent on such claim) by any trade union or other body or person representing the Transferring-In Employees arising from or connected with any failure by the Fund, the Agent or any Subcontractor to comply with any legal obligation to such trade union, body or person;
  - 4.2.4 any change or proposed change in the terms and conditions of employment or working conditions of the Transferring-In Employees on or after their transfer to the Fund, the Agent on the Effective Date, or to the terms and conditions of employment or working conditions of any person who would have been a Transferring-In Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of the Regulations on or before the Effective Date as a result of any such changes; and
  - 4.2.5 the change of identity of employer occurring by virtue of the Regulations and/or this Contract being significant and detrimental to any of the Transferring-In Employees, or to any person who would have been a Transferring-In Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) of the Regulations on or before the Effective Date as a result of the change in employer.



**5. EMPLOYEES REMAINING EMPLOYED BY THE AUTHORITY**

5.1 If it is found or alleged that any of the Transferring-In Employees remain an employee of the Authority after the Effective Date:

5.1.1 the Authority shall notify the Fund or the Agent of that finding or allegation as soon as reasonably practicable after becoming aware of it;

5.1.2 in consultation with the Authority, the Fund or the Agent shall within seven (7) days of becoming aware of the finding or allegation make that person a written offer of employment to commence immediately on the same terms and conditions as the Fund or the Agent would be obliged to provide to that person if his employment had transferred pursuant to the Regulations and under which the Fund or the Agent agrees to recognise that person's period of service with the Authority, and the Authority shall give all reasonable assistance requested by the Fund or the Agent to persuade that employee to accept the offer;

5.1.3 if the offer of employment made by the Fund or the Agent is accepted by that person, the Authority agrees to permit that person to leave the Authority's employment without having worked his full notice period, if that person so requests;

(a) the Authority may within 28 days after becoming aware of that allegation or finding, if that person is still or still claims to be an employee of the Authority and has not accepted an offer of employment with the Fund or the Agent, dismiss the employee with immediate effect; and

(b) the Fund or the Agent shall indemnify and keep indemnified the Authority against all costs, liabilities and expenses (including reasonable legal expenses) which the Authority may suffer or incur in respect of that dismissal in each case provided that the Authority takes all reasonable steps to minimise such costs, liabilities and expenses (including, for the avoidance of doubt, by following the ACAS Code of Practice On Disciplinary And Grievance Procedures where applicable).

5.2 The Parties shall co-operate with a view to ensuring that any requirement to inform and consult with the employees and or employee representatives in relation to a Relevant Transfer will be fulfilled.

**6. PAYMENTS TO EMPLOYEES**

6.1 The Authority shall be responsible for all emoluments and outgoings in respect of the Transferring-In Employees (including, without limitation, all wages, bonuses, commission, premia, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the Effective Date (including bonuses or commission which are payable after the Effective Date but attributable in whole or in part to the period on or before the Effective Date), and will indemnify and keep indemnified and hold the Fund or the Agent harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Fund or the Agent may incur in respect of the same.

6.2 The Fund and the Agent shall be responsible for all emoluments and outgoings in respect of the Transferring-In Employees (including, without limitation, all wages, bonuses, commission, premia, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Effective Date (including any bonuses, commission, premia,

subscriptions and any other pre-payments which are payable before the Effective Date but which are attributable in whole or in part to the period after the Effective Date) and will indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, damages, costs and expenses and other liabilities which the Authority may incur as a result of the same.

## 7. **EMPLOYEE INFORMATION**

7.1 The Authority agrees that the Employee Liability Information:

7.1.1 will be provided to the Fund and the Agent at such time or times as are required by the Regulations;

7.1.2 will be updated to take account of any changes to such information, as required by the Regulations; and

7.1.3 the Authority shall provide an Employees Schedule which shall contain the name, age, date of birth, gender, date of commencement of employment, period of continuous employment, job title, salary and other benefits, notice period and holiday entitlement of each of the Transferring-In Employees.

## 8. **EXIT MANAGEMENT**

8.1 **Transfer of Transferring-Out Employees**

8.1.1 The parties acknowledge and agree that where all or part of delivering the Interventions cease to be provided by the Fund or the Agent (or by a Subcontractor) for any reason and where all or part of the delivery of the Interventions continue to be provided by the Authority or a Replacement Contractor, there may be a transfer of the Transferring-Out Employees to the Authority or a Replacement Contractor for the purposes of the Regulations. If there is a transfer for the purposes of the Regulations, the contracts of employment of the Transferring-Out Employees shall transfer to the Authority or a Replacement Contractor in accordance with the Regulations with effect from the Subsequent Effective Date.

8.1.2 Save where the parties reasonably believe that there will be no relevant transfer for the purpose of the Regulations, the parties shall co-operate in agreeing a list of Transferring-Out Employees prior to the Subsequent Effective Date, and shall co-operate in seeking to ensure the orderly transfer of the Transferring-Out Employees to the Authority and/or the Replacement Contractor.

## 9. **DISCLOSURE OF INFORMATION**

9.1 Not later than twelve (12) Months prior to the end of the Contract Period or such other period as may be specified by the Authority, the Fund and the Agent shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Contractor Personnel to the extent lawfully permitted including the following:

9.1.1 a list of the Potential Transferring-Out Employees, including details of their job titles, age, length of continuous service, current remuneration, benefits and notice;

9.1.2 details of any Potential Transferring-Out Employees who might reasonably be regarded as a key employee in the context of the maintenance of the delivery of the Interventions after the Subsequent Effective Date;

- 9.1.3 a list of agency workers, agents and independent contractors engaged by the Fund and the Agent and any Subcontractor;
- 9.1.4 the total payroll bill of the Potential Transferring-Out Employees;
- 9.1.5 the terms and conditions of the Potential Transferring-Out Employees, including hours of work, arrangements for overtime; redundancy entitlement and factors that may affect redundancy entitlement;
- 9.1.6 outstanding industrial injury or other claims;
- 9.1.7 probationary periods;
- 9.1.8 current pay agreement and any agreed settlement yet to come into effect;
- 9.1.9 gender;
- 9.1.10 immigration status;
- 9.1.11 annual leave entitlement;
- 9.1.12 sick leave entitlement;
- 9.1.13 maternity/paternity leave arrangements;
- 9.1.14 special leave entitlement;
- 9.1.15 season ticket loans, provision of cars and other contractual or customary benefits, if applicable;
- 9.1.16 pension arrangements;
- 9.1.17 location and any contractual provisions relating to location;
- 9.1.18 nature of job;
- 9.1.19 percentage of time spent in delivery of the Interventions;
- 9.1.20 details of all death, disability benefit or permanent health insurance schemes and other similar arrangements with or in respect of the Potential Transferring-Out Employees including the identities of any such employees in receipt of benefits under any such scheme;
- 9.1.21 any disciplinary action taken by the Fund or the Agent against a Potential Transferring-Out Employee within the previous two (2) years or current circumstances likely to give rise to such proceedings in respect of the Potential Transferring-Out Employees;
- 9.1.22 any grievance procedure taken by a Potential Transferring-Out Employee against the Fund and the Agent within the previous two (2) years or current circumstances likely to give rise to such proceedings in respect of the Potential Transferring-Out Employees;
- 9.1.23 any court or tribunal case, claim or action:
  - (a) brought by a Potential Transferring-Out Employee against the Fund and the Agent within the previous two (2) years;

- (b) that the Fund and the Agent has reasonable grounds to believe a Potential Transferring-Out Employee may bring against a new contractor arising out of the Potential Transferring-Out Employee's employment with the Fund and the Agent; and

9.1.24 any collective agreement which will have effect after a transfer of employment in relation to the Potential Transferring-Out Employees, pursuant to TUPE.

9.2 At intervals to be stipulated by the Authority (which shall not be more frequent than every thirty (30) days) and immediately prior to the end of the Contract Period the Fund and the Agent shall deliver to the Authority a complete update of all such information which shall be disclosable pursuant to clause 9.1.

9.3 At the time of providing the information disclosed pursuant to clauses 9.1 and 9.2, the Fund and the Agent shall warrant the completeness and accuracy of all such information and the Authority may assign the benefit of this warranty to any Replacement Contractor.

9.4 The Authority may use the information it receives from the Fund or the Agent pursuant to clauses 9.1 and 9.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Fund and the Agent shall provide the Replacement Contractor with such assistance as it shall reasonably request.

9.5 Without prejudice to clauses 9.1, 9.2 and 9.3, the Fund and the Agent agree to provide the Employee Liability Information to the Authority (or, where relevant, the Replacement Contractor) at such time or times as are required by the Regulations, and, at the time of providing such Employee Liability Information, the Fund and the Agent shall warrant that the Employee Liability Information:

9.5.1 is complete and accurate at the time it is provided; and

9.5.2 will be updated to take account of any changes to such information, as required by the Regulations.

9.6 The Fund and the Agent shall be responsible for all emoluments and outgoings in respect of the Transferring-Out Employees (including without limitation all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the Subsequent Effective Date (including any bonuses or commission which are payable after the Subsequent Effective Date but attributable in whole or in part to the period on or before the Subsequent Effective Date) and the Fund and the Agent will indemnify the Authority (both for itself and any Replacement Contractor) against any costs, claims, liabilities and expenses (including reasonable legal expenses) incurred or suffered by the Authority or any Replacement Contractor in respect of the same.

9.7 The Fund and the Agent shall indemnify and keep indemnified and hold the Authority and the Crown (both for themselves and any Replacement Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:

9.7.1 the provision of information pursuant to clause 9.1 and 9.2; and

9.7.2 any claim or demand by any Transferring-Out Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising from any act, fault or omission of the Fund or any Subcontractor

in respect of any Transferring-Out Employee on or before the end of the Contract Period; and

- 9.7.3 any failure by the Fund and the Agent or any Subcontractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under Regulation 13 of the Regulations; and
  - 9.7.4 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring-Out Employees arising from or connected with any failure by the Fund and the Agent or any Subcontractor to comply with any legal obligation to such trade union, body or person; and
  - 9.7.5 any claim by any person whose name is not included in the list of Transferring-Out Employees.
- 9.8 If the Fund and the Agent becomes aware that the information it provided pursuant to clause 5.1 has become untrue, inaccurate or misleading, it shall notify the Authority immediately and promptly provide the Authority with up to date information.
- 9.9 This clause applies during the Contract Period and indefinitely thereafter.
- 9.10 The Fund and the Agent undertakes to the Authority that, during the twelve (12) Months prior to the end of the Contract Period the Fund and the Agent shall not (and shall procure that any Subcontractor shall not) without the prior consent of the Authority (such consent not be unreasonably withheld or delayed):
- 9.10.1 amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Contractor Personnel (other than where such amendment or variation has previously been agreed between the Fund and the Agent and the Contractor Personnel in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the delivery of the) Interventions ;
  - 9.10.2 terminate or give notice to terminate the employment or engagement of any of the Contractor Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - 9.10.3 transfer away, remove, reduce or vary the involvement of any of the Contractor Personnel from or in the delivery of the Interventions (other than where such transfer or removal:
    - (a) was planned as part of the individual’s career development;
    - (b) takes place in the normal course of business; and
    - (c) will not have any adverse impact upon the delivery of the Interventions by or on behalf of the Fund and the Agent;
- PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the delivery of the Interventions); and
- 9.10.4 recruit or bring in any new or additional individuals to provide the delivery of the Interventions who were not already involved in delivering the Interventions prior to the twelve (12) months prior to the end of the Contract Period.

- 9.11 The Fund and the Agent shall comply (and shall procure that any Subcontractor shall comply) with its duties under regulations 13 and 14 of the Regulations in relation to any Relevant Transfer, save where it is unable to do so as a result of the failure of the Authority and/or a Replacement Contractor to comply with their obligations under regulation 13 of the Regulations.
- 9.12 The Authority shall and shall procure that any Replacement Contractor shall comply with its/their duties under regulation 13 of the Regulations in relation to any Relevant Transfer.
- 9.13 The Fund and the Agent will comply with the provisions of ss.257-258 Pensions Act 2004 and s.12 Pension Schemes Act 1993 (the "**Acts**"), and with the provisions of The Transfer of Employment (Pension Protection) Regulations 2005 (the "**Pension Regulations**"). The Fund and the Agent will indemnify the Authority for any failure by the Fund to comply with the Acts and the Pension Regulations against any claims for loss or damage which may be made against the Authority as an organisation as a result of the Fund and the Agent's failure. The Fund and the Agent further undertakes that it warrants to the Authority that the Fund and the Agent has thoroughly researched its obligations under the Acts and the Pension Regulations, and has taken appropriate actuarial and financial advice as may be necessary to ensure compliance with the Acts and the Pension Regulations; and that the Fund and the Agent has made an estimate of the costs which will be incurred by it as a result of complying with its obligations under the Acts and the Pension Regulations and that those estimated costs are included in the Fund's payments.

**SCHEDULE 2****PETERBOROUGH PRISON SPECIFIC RULES****10. ACCESS TO PETERBOROUGH PRISON**

- 10.1 Where the Contractor Personnel are required to have a pass for admission to the Premises the Authority shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued. The Contractor Personnel who cannot produce a proper pass when required to do so by any of the Authority's personnel, or anyone acting on behalf of the Authority or the Director, and who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Premises or required to leave the Premises if already at the Premises.
- 10.2 The Fund shall promptly return any pass if at any time the Authority so requires or if the person to whom the pass was issued ceases to be involved in the performance of the Contract. The Fund shall promptly return all passes on the Expiry Date or earlier termination of the Contract.
- 10.3 The Contractor Personnel attending the Premises may be subject to search at any time. Strip searches shall only be conducted on the specific authority of the Authority or the Director under the same rules and conditions applying to the Authority's personnel or the PFI Contractor. The Fund is referred to the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008.

**11. SECURITY**

- 11.1 Whilst on the Premises the Contractor Personnel shall comply with all security measures implemented by or on behalf of the Authority and/or the Director in respect of staff and other persons attending the Premises. The Authority shall provide copies of its written security procedures to the Fund on request. The Fund and all Contractor Personnel shall be prohibited from taking any photographs on the Premises unless the Authority has given prior Approval and an Authority representative is present so as to have full control over the subject matter of each photograph to be taken. No such photograph shall be published or otherwise circulated without the Authority's Approval.
- 11.2 The Authority shall have the right to carry out any search of Contractor Personnel or of vehicles used by the Contractor Personnel for access to and from Premises.
- 11.3 The Fund shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters, and when required by the Authority shall:
- 11.3.1 take all reasonable measures to make any Contractor Personnel identified by the Authority available to be interviewed by the Authority, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. The Contractor Personnel shall have the right to be accompanied by and to be advised or represented by the other person whose attendance at the interview is acceptable to the Authority; and
- 11.3.2 subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Fund from performing its obligations under the Contract. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Fund with a copy of any material retained.

12. **OFFENDER MANAGEMENT ACT 2007**

Nothing in the Contract shall be deemed to provide any authorisation to the Fund or the Agent in respect of any provision of the Offender Management Act 2007. The Fund in performing its obligations under the Contract will comply with the provisions of PSO 1100 as published by the Authority from time to time.



## SCHEDULE 3

### INFORMATION SECURITY

#### Part 1

#### PROCESS MEASURES TO MANAGE INFORMATION RISK

1. The Fund must:
  - 1.1 identify, keep and disclose to the Authority upon request a record of those members of the Contractor Personnel with access to or who are involved in handling Authority Data (“**Data Users**”); and
  - 1.2 provide to the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected personal data and ICT security incidents and its procedures for reducing risk and raising awareness; and
  - 1.3 immediately report information security incidents to the Authority. Significant actual or potential losses of Personal Data may be shared with the Information Commissioner and the Cabinet Office by the Authority.

#### Part 2

#### SPECIFIC MINIMUM MEASURES TO PROTECT PERSONAL INFORMATION

1. The Fund must be particularly careful to protect Authority Data whose release or loss could cause harm or distress to individuals. The Fund must handle all such Authority Data as if it were confidential while it is Processed or stored by the Fund, applying the measures in this Schedule.
2. When Authority Data is held on paper it must be kept secure at all times, locked away when not in use or the premises on which it is held secured. If Authority Data held on paper is transferred it must be by an approved secure form of transfer with confirmation of receipt. When Authority Data is held and accessed on ICT systems on secure premises, the Fund must apply the minimum protections for information set out in this Contract or equivalent measures, as well as any additional protections as needed as a result of the Authority’s risk assessment. Where in exceptional circumstances equivalent measures are adopted the Fund must obtain the Authority’s Approval.
3. Wherever possible, Authority Data should be held and accessed on paper or ICT systems on secure premises protected as above. This means the Fund should avoid the use of removable media (including laptops, removable discs, CD-ROMs, USB memory sticks, PDAs and media card formats) for storage or access to such Authority Data where possible. Where the Authority agrees that this is not possible the Fund should work to the following hierarchy, recording the reasons why a particular approach has been adopted in a particular case or a particular business area:
  - 3.1 best option: hold and access data on ICT systems on secure premises; or
  - 3.2 second best option: secure remote access, so that data can be viewed or amended without being permanently stored on the remote computer. This is possible for Authority Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise Approved; or
  - 3.3 third best option: secured transfer of Authority Data to a remote computer on a secure site on which it will be permanently stored. Both the Authority Data at rest and the link should be protected at least to the FIPS 140-2 standard or equivalent. Protectively

marked Authority Data must not be stored on privately owned computers unless they are protected in this way; and

- 3.4 in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.
4. Where the Authority agrees that it is not possible to avoid the use of removable media, the Fund should apply all of the following conditions:
  - 4.1 the Authority Data transferred to the removable media should be the minimum necessary to achieve the business purpose, both in terms of the numbers of people covered by the Authority Data and the scope of Authority Data held. Where possible only Authority Data which has been made anonymous should be held;
  - 4.2 the removable media should be encrypted to a standard or at least FIPS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password;
  - 4.3 user rights to transfer Authority Data to removable media should be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business purposes and subject to monitoring by the Fund and the Authority; and
  - 4.4 the individual responsible for the removable media should handle it – themselves or if they entrust it to others – as if it were the equivalent or a large amount of their own cash.
5. Where the Authority agrees that the second condition of encryption in paragraph 4 cannot be applied due to business continuity and disaster recovery considerations, such unprotected Authority Data should only be recorded, moved, stored and monitored with strong controls.
6. All material that has been used for confidential Authority Data should be subject to controlled disposal. The Fund shall:
  - 6.1 destroy paper records containing protected personal data by incineration, pulping or shredding so that reconstruction is unlikely; and
  - 6.2 dispose of electronic media that has been used for protected personal data through secure destruction, overwriting, erasure or degaussing for re-use.
7. The Fund must have appropriate mechanisms in place in order to comply with the Authority's requirements as set out in this Schedule, including adequate training in handling confidential data for the Contractor Personnel.
8. The Fund must:
  - 8.1 put in place arrangements to log activity of Data Users in respect of electronically held protected personal information, and for managers to check it is being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality. Summary records of managers' activity must be shared with the Authority and be available for inspection by the Information Commissioner's Office on request; and
  - 8.2 minimise the number of Data Users with access to the Authority Data.

**ANNEX A**

**MINIMUM SCOPE OF AUTHORITY DATA WHICH IS PROTECTED PERSONAL DATA**

In the absence of specific instructions from the Authority, all the data identified in the table below is data whose release or loss in the Authority's view could cause harm or distress to individuals. The Fund must treat the information identified below as Personal Data.

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

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

**SCHEDULE 4**  
**OPERATIONAL COSTS PAYMENT**

1. **REDACTED**


2. **REDACTED**

3. **REDACTED**

**SCHEDULE 5**

**OUTCOMES REDACTED**

## **SCHEDULE 6**

### **COMMERCIALLY SENSITIVE INFORMATION**

The following information shall constitute Commercially Sensitive Information:

- Definition of "Authority Outcome Payment"
- Definition of "BLF Outcome Payment"
- Definition of "Maximum Authority Liability" and Clause 32.5 (Indemnity and Liability)
- Clause 11 (Payment)
- Clause 34 (Warranties and Representations)
- 
- Clauses 39 (Consequences of Expiry or Termination)
- Schedule 5 (Operational Costs Payment)
- Schedule 6 (Outcome Payment)

## SCHEDULE 7

### OPERATING MODEL

#### **Social Impact Partnership – Reducing Re-Offending Operating Model**

The aim of the Social Impact Partnership initiative is to reduce re-offending by Prisoners who have been detained for a period of less than 365 days, over a six year period. The operating or service delivery model will evolve and develop during this six year period to deliver the most effective services to meet Prisoner needs and reduce rates of re-offending. This operating model has been agreed with the PFI Contractor. It is anticipated that this operating model will change over time. Any changes to this operating model will be agreed with the Director. It is anticipated that to effectively deliver services the following support from the PFI Contractor and the PFI Contractor Related Parties will be needed:

#### **Service Delivery Model**

The following elements are an important part of effective service delivery inside Peterborough Prison:

- **Prisoner involvement** – trusted Prisoners may be involved in delivering the interventions or services inside Peterborough Prison.
- **Ex-offender staff** – some Fund and its Subcontractors may employ staff with a criminal record. These staff will need to operate inside Peterborough Prison to deliver the interventions or the services.
- **Ability to work with Prisoners** - the ability to work with all male Prisoners on a sentence of less than 12 Months.
- **Access to Prisoners** – the Fund and its Subcontractors will require access to various locations around Peterborough Prison to offer Prisoners the full range of services.
- **Access for other service providers** – in addition to the Fund and its Subcontractors, other service providers or potential employers may need to access Peterborough Prison to work with Prisoners.

#### **Prisoner Information and Access**

- **Cohort information** – the Fund and its Subcontractors will need access to information on Prisoners to deliver the services – this could include information on all Prisoners who satisfy limbs (a) and (b) of the definition of Cohort Prisoners on arrival at Peterborough Prison, the identity and location of Prisoners, release date, offence type, whether they are PPOs<sup>1</sup> or MAPPAs<sup>2</sup> etc.
- **Information on specific Prisoners** – to ensure effective delivery of services the Fund and its Subcontractors would need information on the Prisoners. This could include:
  - Pre-sentencing reports
  - OASys reports.
  - Offending history from the MoJ PNC.

<sup>1</sup> Prolific and other Priority Offenders – offenders who commit the highest volume of crime.

<sup>2</sup> Multi-Agency Public Protection Arrangements – offenders who commit the most severe crimes, such as violent or sexual offenders.

- Geographic area that the Prisoner is from.
- Geographic area that the Prisoner is returning to.
- **Management information** – ongoing information to enable effective programme management e.g. churn rate of Prisoners serving sentences less than 12 months.

### **Logistical Support**

To deliver the programme inside Peterborough Prison the Fund and its Subcontractors will need logistical support from Peterborough Prison, including:

- **Office facilities** – the Fund and its Subcontractors will require an operational base inside Peterborough Prison with desks, computers, phone lines and internet connection.
- **Logistics** – the Fund and its Subcontractors will require some freedom of movement around Peterborough Prison to deliver services, meet Prisoners and prison staff. This will require a system involving key carriers.
- **Meeting spaces** – elements of the programme may require group and family work spaces where services can be delivered, as well as places to hold confidential meetings between participants and other service providers.
- **Single point of contact** – a single point of contact with Peterborough Prison.
- **Regular review meetings** – joint review of KPIs with Peterborough Prison senior management on a monthly/quarterly basis.

### **Administration**

To deliver the programme effectively, the following administrative support will be needed:

- **Clearance** – CRB checks and any other clearance processes conducted in a timely manner to allow implementation of the operating model.
- **Training** – the Fund and its Subcontractors will require training in Peterborough Prison's processes, health and safety procedures etc.



**SCHEDULE 8**

**APPROVED LIST OF CONTRACTORS FOR THE ROLE OF THE INDEPENDENT ASSESSOR**

1. Atkins Advantage Technical Consulting
2. Cambridge Econometrics
3. DTZ
4. Experian
5. Fast Future
6. Hartley McMaster
7. Henley Centre (re-named The Futures Company)
8. HVR
9. USER (University of Essex)
10. LSE (School for Economic Performance)
11. Loughborough University
12. Matrix Research and Consultancy
13. Morgan Harris Burrows
14. NERA ;
15. NIESR
16. PA Consulting
17. Rand Europe
18. Red Scientific
19. Tribal Group
20. University of York
21. UCL Consultants (Economics)