

AUTHORITY: The Secretary of State for the Home Department

Schedule N – Change Control Procedures

Yarl's Wood IRC

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1. INTRODUCTION

- 1.1 This Schedule sets out the procedure for implementing changes to the Contract.
- 1.2 All references to the Contract are to the Contract as amended from time to time either by the Authority or with the Authority's approval pursuant this Schedule and to Clause 13 (*Changes*) of the Contract.

2. RIGHT OF AUTHORITY TO REQUEST A CHANGE

- 2.1 The Authority may delete, suspend, amend, or alter the extent of any obligation to be met by the Service Provider under the Contract, or add to the obligations of the Service Provider under the Contract, by giving written notice (the "**Notice of Change**") to the Service Provider of the required change.
- 2.2 The Authority is permitted to withdraw a Notice of Change by way of written notice to the Service Provider, or to allow a Notice of Change to lapse.
- 2.3 Where the Authority withdraws a Notice of Change or elects to allow a Notice of Change to lapse, the Parties will be responsible for their own costs incurred prior to such withdrawal or lapse. Lapse shall occur six (6) months from the date of the last recorded activity on the proposed Notice of Change.
- 2.4 Subject to Paragraph 2.1 above and Paragraph 11 below, following service of any Notice of Change, the Authority will consult with the Service Provider with respect to the deletion, suspension, alteration, extension of or addition to the Parties' respective obligations under the Contract, and the Service Provider shall provide the Authority on or before the date falling ten (10) Working Days after the date of the Notice of Change with:
 - 2.4.1 an analysis of the changes (if any) which are required to Schedule F (*Operating Fee*) to reflect the financial impact on the Service Provider of the proposed changes, and/or
 - 2.4.2 a proposal of other changes to the terms of the Contract, which it believes should occur as a result of the changes set out in the Notice of Change.
- 2.5 Any such proposal shall be accompanied by a detailed financial breakdown which shall include (without limitation) details of:
 - 2.5.1 the cost impact of the change, by year, over the remainder of the Contract Term;
 - 2.5.2 any redundancy costs which are reasonably expected to be incurred by reason of the proposed change;
 - 2.5.3 an analysis of any operational risks associated with the proposed change; and
 - 2.5.4 any information which the Authority may reasonably require including, without limitation, breakdowns of price and supporting material for the purpose of satisfying the Authority that the proposed revised price is fair and reasonable.
- 2.6 The Authority may accept or reject such proposal. In the event that the Authority accepts such proposal:
 - 2.6.1 the changes referred to in the Notice of Change shall come into immediate effect on the issue by the Authority of a signed -Notice of Change,

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2.6.2 the terms of Schedule F (*Operating Fee*) (or other relevant terms hereof) shall change as set out in the Service Provider's estimate or proposal, and

2.6.3 the terms of the Contract shall be deemed changed as set out in the signed Notice of Change

(except when the changes cannot be reasonably effected immediately, in which case the Authority shall allow the Service Provider such further period to effect such changes as is reasonably necessary).

2.7 If the Authority rejects a proposal provided under Paragraph 2.6 above, it may either:

2.7.1 elect to allow the Notice of Change to lapse; or

2.7.2 elect that the changes referred to in the Notice of Change shall come into immediate effect (except when the changes cannot be reasonably effected immediately, in which case the Authority shall allow the Service Provider such further period to effect such changes as is reasonably necessary) but that the provisions of Paragraph 7.3 below shall apply.

2.8 The Service Provider shall review, and the Authority shall have the right to audit, actual costs incurred six (6) months after the completion of the Contract Change Note to verify actual expenditure.

3. NOTICE OF CHANGE REQUIRING CAPITAL EXPENDITURE

3.1 In the event that the Notice of Change would result in a change in any Capital Expenditure following the Date of Contract, the Service Provider shall within two weeks of the date of the Notice of Change provide the Authority with a written estimate of the amount of such Capital Expenditure together with its reasonable estimate of any increase or decrease in the Operating Fee which it believes should occur as a result of the changes set out in the Notice of Change.

3.2 Where the change affects the Services and involves construction works, the Service Provider shall, subject to Paragraph 3.4 below, provide with such estimate its proposals for carrying out such works, including a proposed programme and schedule of payments. Such schedule of payments shall, unless the Parties otherwise agree, provide for payment in monthly instalments to be spread over the then remaining Contract Term (and not merely over the period of construction) and in a manner which complies with the Housing Grants Act.

3.3 In all cases, any such estimate and/or proposal shall be accompanied by a reasonably detailed breakdown of the manner in which that estimate and/or proposal is calculated.

3.4 For the avoidance of doubt, any construction works shall be carried out in accordance with the provisions of this Contract, subject to any changes required by the Authority in any Notice of Change.

4. ACCEPTANCE OR REJECTION OF CAPITAL EXPENDITURE ESTIMATE

4.1 The Authority may accept the estimate referred to in Paragraph 3.1 above, or request that it be changed, and following such request the Service Provider may

submit a different estimate and/or proposal (as the case may be), following which:

- 4.1.1** if the Authority accepts the Service Provider's estimate and proposal, then:
- (a) the Authority shall be liable to make payment in respect of any increased amount of Capital Expenditure as is set out in such estimate in the manner described in Paragraph 5.1 below to the extent that Paragraph 5.1 is applicable or is otherwise contained in the Service Provider's proposal;
 - (b) the Notice of Change shall come into effect once the amount of the Capital Expenditure has been agreed or determined as referred to in paragraph 4.1.1(a); and
 - (c) the Operating Fee shall be varied once the Notice of Change comes into effect;
 - (d) the Service Provider shall review, and the Authority shall have the right to audit actual costs incurred six (6) months after the completion of the Notice of Change to review expenditure with reference to the estimates provided pursuant to Paragraph 3.1 above and to the extent that the review and/or audit establishes that the actual costs incurred are less than specified in the Notice of Change, the Authority shall be entitled to either, at the Authority's option, set off against the next payment of the Operating Fee or claim as a debt due from the Service Provider.
- 4.1.2** if the Authority rejects the Service Provider's estimate and proposal, then the Authority may either:
- (a) elect to allow the Notice of Change to lapse; or
 - (b) elect to have the amount of the Capital Expenditure determined in accordance with Paragraph 5 (where applicable) or in accordance with Clause 77 (*Dispute Resolution*).

5. DETERMINATION OF CAPITAL EXPENDITURE

- 5.1** Where the Authority rejects the Service Provider's estimate of the amount of the relevant Capital Expenditure, the amount of such Capital Expenditure shall be determined in accordance with this Paragraph 5, to the extent that the same is applicable.
- 5.2** The Authority shall carry out a valuation of the change in accordance with the following:
- 5.2.1** such valuation, where appropriate, shall include an allowance for work;
 - 5.2.2** the valuation of additional or omitted work in respect of any relevant change shall be based on a fair valuation;
 - 5.2.3** any valuation of work under Paragraphs 5.2.1 and 5.2.2 above shall include allowance for any proper addition to or reduction of any preliminaries;
 - 5.2.4** if compliance with the instruction effecting a change in whole or in part substantially changes the conditions under which any other work is executed, then such work shall be treated as if it had been the subject of an instruction effecting a change which shall be valued in accordance with these provisions; and

5.2.5 to the extent that the valuation does not relate to the execution of additional work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a change cannot reasonably be effected in the valuation by the application of Paragraphs 5.2.1 and 5.2.2 above a fair valuation thereof shall be made, taking into account any savings or reduction in liabilities consequent on the change,

PROVIDED THAT no allowance shall be made under these provisions for any effect upon the Services, or for any other direct loss and/or expense for which the Service Provider would be reimbursed by payment under any other provision in the Contract.

5.3 If the Service Provider does not agree the valuation made pursuant to Paragraph 5.2 by the Authority the amount of the Capital Expenditure shall be decided in accordance with Clause 77 (*Dispute Resolution*).

6. IMPLEMENTATION OF CAPITAL EXPENDITURE CHANGES

6.1 Once:

6.1.1 the amount of the relevant Capital Expenditure has been agreed; and

6.1.2 such programme and the schedule of payments referred to in Paragraph 3.2 have been agreed or determined,

the Service Provider shall procure that all that is necessary is done in order to comply with the Notice of Change (unless the Authority notifies the Service Provider within seven (7) days of the date of agreement or determination of the estimate that the Notice of Change should lapse) and the Operating Fee shall be revised.

6.2 The Authority shall make payment in respect of such works necessary to comply with the Notice of Change in accordance with the schedule of payments as so agreed or determined, subject to the Service Provider complying with Paragraph 3.4.

7. EMERGENCIES

7.1 In the case of emergency, the requirements set out in the Notice of Change shall come into immediate effect and the sums payable under the provisions of Schedule F (*Operating Fee*) shall be varied as set out in Paragraph 7.3 below.

7.2 The Service Provider shall confirm with the Authority's Named Representative whether an event constitutes an emergency before enacting Paragraph 7.3 below.

7.3 In the case of an emergency, or when the Authority elects as referred to in Paragraph 2.7.2 above:

7.3.1 the Authority shall set such provisional change to the amounts then payable under the provisions of Schedule F (*Operating Fee*) and allow such time for the implementation of the change, as it deems fair and reasonable

7.3.2 the sums payable under the provisions of Schedule F (*Operating Fee*) shall be deemed to be so changed on a provisional basis; and

7.3.3 this provisional change will be effective until such time as the sums payable under the provisions of Schedule F (*Operating Fee*) are varied (or not varied) as agreed by the Authority and the Service Provider or determined in accordance with Clause 77 (*Dispute Resolution*).

- 7.4 In the event that the provisional sums payable under the provisions of Schedule F (*Operating Fee*) set by the Authority are less than the applicable sums, as subsequently agreed by the Parties or determined pursuant to Clause 77 (*Dispute Resolution*) such that following such provisional change the instalments paid by the Authority are less than they should have been, an adjusting payment (an "**Adjusting Payment**") shall be made by the Authority to the Service Provider.
- 7.5 In the event that the provisional sums payable under the provisions of Schedule F (*Operating Fee*) set by the Authority are more than the applicable sums, as subsequently agreed by the Parties or determined pursuant to Clause 77 (*Dispute Resolution*) such that following such provisional change the instalments paid by the Authority are more than they should have been, an adjusting payment (an "**Adjusting Payment**") shall be made by the Service Provider to the Authority.
- 7.6 The Adjusting Payment shall be:
- 7.6.1 payable on or before the date falling thirty (30) days after the date of such agreement or determination
- 7.6.2 the difference between the amounts paid and the amounts which are finally agreed or determined, calculated over the period from the date the changes referred to in the Notice of Change became effective until the date upon which the applicable sums payable were agreed or determined pursuant to Clause 77 (*Dispute Resolution*).

8. SERVICE PROVIDER CHANGES

- 8.1 A change to the Contract proposed by the Service Provider shall be referred to in this Schedule as a "**Service Provider Change**".
- 8.2 The Service Provider may propose changes to the Services. Such proposals shall be made in accordance with this Paragraph 8.
- 8.3 No change to the Services shall be implemented by the Service Provider unless and until the Authority has given its written consent in the form of a Notice of Change.
- 8.4 The Authority shall be free to accept or reject any proposed change as it thinks fit and may require that there be a reduction in the then-applicable amount payable under the provisions of Schedule F (*Operating Fee*) if such change results in lower costs for the Service Provider in performing its obligations hereunder, so as to reflect the amount of any reduction in costs.
- 8.5 Procedure
- 8.5.1 Where the Service Provider wishes to propose a Service Provider Change, the Service Provider shall make a written application to the Authority using the Service Provider Change Request (Form A) set out at Annex A to this Schedule. The written application together with any relevant supporting documentation shall be submitted to the Authority's Named Representative and shall contain the following additional information relating to the Service Provider Change:
- a) The reasons why the Service Provider considers the change is necessary or desirable;
- b) Details of any one off cost/cost savings, and/or the cost impact of the change, by year, over the remainder of the Contract Term.

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- c) An assessment of the risks (if any) associated with such Service Provider Change
- d) Details of any impact including (but not limited to) upon service delivery, the current or future operation of the centre, or detainees; and
- e) Such other information as is reasonably required by the Authority for a sufficient understanding of the Service Provider Change proposal.

8.5.2 The Authority shall within a reasonable period of receiving the Service Provider's written application, provide a written response to the Service Provider, which shall either:

- a) Approve the Service Provider Change Request; or
- b) Request more information regarding the Service Provider Change; or
- c) Reject the Service Provider Change and provide reasons for the rejection, in which case the Service Provider Change shall not be effected and the decision of the Authority in this respect shall be final and binding.

8.5.3 Where the Authority accepts the Service Provider Change (such acceptance to be made in writing) the Contract shall be amended accordingly and the Service Provider shall implement such change.

8.5.4 In assessing what is a reasonable period for responding to the Service Provider's written application, regard shall be had to the number and complexity of the documents submitted by the Service Provider in support of the proposed Service Provider Change and any other Service Provider Changes which are being considered at the time of receipt.

8.5.5 Where the Authority accepts the Service Provider Change, the Contract shall be amended accordingly and the Service Provider shall implement the Service Provider Change.

8.5.6 Where the Authority requires more information regarding the Service Provider Change, the Authority's request for more information shall be limited to what is reasonable to enable it to understand fully the intent and the likely impact and costs of and risks associated with the proposed Service Provider Change. Upon receipt of the further information, the Authority shall respond in accordance with Paragraph 8.5.2.

8.5.7 Following the implementation of any Service Provider Change, the Service Provider shall ensure that all relevant documentation is revised accordingly and issued to the Authority.

8.5.8 Nothing done by the Authority in accordance with the Contract or this Schedule N (*Change Control*) shall in any respect relieve or absolve the Service Provider from its responsibility for its obligations under the Contract.

8.5.9 Where a Service Provider Change relates to a Specific Change in the Law, the provisions of Paragraph 12 below shall apply.

8.5.10 Where the Authority believes that a proposed Service Provider Change falls to be dealt with as part of the Service Improvement procedures set out in Schedule S (*Service Improvements and Cost Savings*), the Authority shall advise the Service Provider of its decision, which shall be binding. The proposed Service Provider Change shall then be dealt with accordingly.

9. SECURITY TECHNOLOGY CHANGE

- 9.1 When any Security Technology Change arises or comes to the attention of the Service Provider, the Service Provider shall as soon as reasonably practicable notify the Authority of such matter and shall provide to the Authority all information in its knowledge or possession necessary to enable the Authority to evaluate whether to approve the implementation of the Security Technology Change at the Removal Centre.
- 9.2 In the event that the Authority approves the implementation or if the Authority reasonably believes that a Security Technology Change has occurred or should occur, the Authority shall be entitled to a reduction of the Operating Fee equal to one hundred (100) per cent of the aggregate of the reduction in the costs of the Service Provider and the Sub-contractors which has resulted or would result from such Security Technology Change.
- 9.3 The Authority may, if it wishes, serve notice upon the Service Provider, whereupon:
- 9.3.1 the Service Provider shall provide the Authority with a quotation to reduce the Operating Fee;
- 9.3.2 the Service Provider shall provide all the information as the Authority may require for the Authority to ascertain the amount of reduction in costs which the Service Provider and the Sub-contractors will or should achieve as a result of the said Security Technology Change; and
- 9.3.3 the Service Provider and the Authority shall agree a reduction in the Operating Fee which shall fairly reflect one hundred (100) per cent of the savings of the Service Provider and the Sub-contractors (calculated on a consolidated basis) which results or will result from the said Security Technology Change.
- 9.4 In the event that any Security Technology Change which is yet to be put in place at the time of the notification requires any Capital Expenditure on the part of the Service Provider before it can be implemented, the provisions of Paragraph 3 (*Notice of Change Requiring Capital Expenditure*) shall apply in respect of such notification as though it were a Notice of Change.

10. PRINCIPLES FOR VARIATION OF PRICE

- 10.1 Any change to the amounts amount payable under the provisions of Schedule F (*Operating Fee*) shall be determined in accordance with the principles set out in Clause 40 (*Variation of Operating Fee*).
- 10.2 The Service Provider shall procure that the Sub-contractors shall, so far as they are reasonably able, mitigate any costs arising as a result of the implementation of a Change.

11. EXCLUSIONS TO CHANGE PROCEDURE

- 11.1 For the avoidance of doubt, it shall not be deemed a change to any obligation hereunder and there shall not be any variation of the amounts payable under the provisions of Schedule F (*Operating Fee*) pursuant to any provision of the Contract

if:

- 11.1.1 the provision of the Services changes in any way within the parameters set out in Schedule D (*Operating Specification*); or
- 11.1.2 the Authority requires any amendments to be made pursuant to Clause 36 (*Monitoring, Inspection and Access*).

12. CHANGES AS A RESULT OF CHANGES IN LEGISLATION

12.1 The Service Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the prices and rates payable in accordance with Schedule F (*Operating Fee*) as the result of:

- 12.1.1 a General Change in Law; or
- 12.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Date of Contract Award.

12.2 If a Specific Change in Law (other than one referred to in Paragraph 12.1.2 above) occurs or will occur during the Contract Term, the Service Provider shall notify the Authority of the likely effects of that change, including whether any change is required to the Services and/or the prices and rates payable under Schedule F (*Operating Fee*) of this Contract.

12.3 As soon as practicable after any notification in accordance with Paragraph 12.2 above, the parties shall discuss and agree the matters referred to in that Paragraph and any ways in which the Service Provider can mitigate the effect of the Specific Change of Law, including:

- 12.3.1 providing evidence that the Service Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
- 12.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Service Provider before it occurred;
- 12.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
- 12.3.4 demonstrating that any expenditure that has been avoided, has been taken into account in amending the prices and rates payable under Schedule F (*Operating Fee*).

12.4 Any increase in the prices and rates payable under Schedule F (*Operating Fee*) shall be implemented in accordance with the Change Control Procedure.

12.5 In the event of failure by the parties to agree, either party may refer the matter in accordance with Clause 77 (*Dispute Resolution*).

12.6 The Service Provider shall consult regularly with the Authority on the development of the Service Provider's policy in relation to Services to meet changes in Legislation and the Service Provider's obligations under the Contract, provided that the Service Provider alone shall be liable for the performance of the obligations of the Service Provider under the Contract and nothing done by the Authority shall in any respect relieve or absolve the Service Provider from its responsibility therefore.

13. PROCEDURE FOR SUB-CONTRACTING NOTICE OF CHANGE WORKS

- 13.1 Where the Service Provider intends to enter into any Sub-contract for the implementation of a Notice of Change it shall:
- a) agree with the Authority a list of Persons from which it shall obtain written quotations for the works required to implement the Notice of Change (the "**Third Party Work**"), such list to contain at least three (3) Persons;
 - b) account to the Authority on an open book basis in respect of the quotations actually received; and
 - c) include within its estimate for the Notice of Change an element for the management of the Third Party Work, such element to be accounted for separately to any other element of the Estimate and such element not to exceed seven (7) per cent of the total amount of the Third Party Work.

ANNEX A. SERVICE PROVIDER CHANGE REQUEST
(FORM A)

1. NOTICE No.:

2. DATE:

3. SUBJECT HEADING:

4. REASONS FOR CHANGE:

5. DOCUMENTS APPENDED:

6. DETAILS OF CHANGE (Including details of any relevant legislative change and details of any other reasons for change):

7. COST IMPACT (including details of profit/management fees as required under Schedule F (10). Cost impact shall also include details of the impact broken down by financial years for the remainder of the Contract Term, with details of RDEL and CDEL splits where appropriate).

8. RISK ASSESSMENT OF CHANGE

9. OTHER IMPACT:

10. AUTHORISED SIGNATURE (To be completed by the Service Provider):

Signed for

Date

For Authority Use Only

Received by Date

Received by Date

Received by Date