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Prison Re-role and Services change
Annex 1 – Changes to the Contract

1. SECTION 1 – CHANGES TO THE BODY OF THE CONTRACT

1.1 The parties agree that the following amendments will be made to the Contract:

1.1.1 At clause 1.1 add the following new definitions:

1.1.1.1 **"Healthcare Centre"** means the area identified in the room lists as set out within Annex D of Part 3 (Healthcare) to Schedule D;"

1.1.1.2 **"Healthcare Transition Date"** means ██████████;"

1.1.1.3 **"NHSE"** means NHS England and/or its sub-contractor / provider or any employee, agent, servant, representative, contractor, sub-contractor or related party of the NHSE's sub-contractor/ provider;

1.1.1.4 **"NHSE Event"** means a breach, failure or other act, omission, misrepresentation or negligence by NHSE which either (a) affects the Contractor's ability to perform its obligations under the Contract or (b) causes the Contractor to incur costs to ensure that it can comply with its obligations under the Contract;

1.1.1.5 **"Prisoner Healthcare Enabling Services"** shall have the meaning given to that term in Schedule D , Part 3 (Healthcare and Care Support Service Specification) Annex C;

1.1.1.6 **"Prisoner Healthcare Services"** shall have the meaning given to that term in Schedule D, Part 3 (Healthcare and Care Support Service Specification) Annex B;

1.1.1.7 **"Transition Date"** means ██████████;

1.1.2 At clause 1.1 delete the following definitions:

1.1.2.1 **"Young Persons"**; and

1.1.2.2 **"Young Adult"**.

1.1.3 At clause 1.1 amend the following definitions as follows:

1.1.3.1 **"Prison"** shall be amended to read "means the buildings and structures and land enclosed within the boundary of the Land, and each and any of their component parts described in Schedule A, and existing on the Land, together with any extensions and alterations thereto existing from time to time within which the Contractor is to provide the Custodial Service;"

- 1.1.3.2 **"Prisoner"** shall be amended to read "means any person for the time being detained in legal custody as a result of a requirement, imposed by a court or otherwise, that he be so detained;"
- 1.1.3.3 **"Review Date"** shall be amended by adding "which falls on the 1st November each year" at the end of the definition; and
- 1.1.3.4 **"Standard Requirements"** shall be amended by deleting the reference to "Part 2 of Schedule D" and replacing it with "Part 1 of Schedule D".
- 1.1.4 At clause 1.2(e) delete the following "a Young Offender's Institute and";
- 1.1.5 Clause 4.1 shall be amended by adding "and 4A" after "Subject to Clauses 4.2, 4.6, 4.7";
- 1.1.6 Clause 4.2 shall be amended by adding the following new limb (g):
- "(g) Where Losses arise out of an NHSE Event the provisions for an NHSE Event as set out at 53A.1, 53A.2 and 53A.3 shall apply."
- 1.1.7 A new clause 4.10 shall be added as follows:
- "4.10** NHSE is not a party to this Contract and shall not have any rights under or in connection with it nor be entitled to enforce or influence its terms and conditions."
- 1.1.8 A new clause 4A shall be added as follows:
- "4A Exclusion of Liability for Healthcare Services**
- NHSE will be responsible for all clinical and non-clinical healthcare services. For the avoidance of doubt the Contractor is required to deliver the Prisoner Healthcare Enabling Services."
- 1.1.9 Not used
- 1.1.10 A new clause 9A shall be added as follows:
- "9A Changes to Healthcare Centre, healthcare provision and healthcare service delivery.**
- 9A1-** If changes are proposed by NHSE to the Healthcare Centre, healthcare provision and Prisoner Healthcare Services delivery the Contractor will make the Authority aware of these for discussion by both parties. If it is agreed that these changes are necessary the Contractor will formally write to the Authority asking for a Notice of Change to be raised."

- 1.1.11 A new Clause 15.8 shall be added as follows:
- “15.8 – The Authority will provide free access to on-line PNOMIS training for administrators and front line staff as required and agreed between the Operating Subcontractor and the Controller.”
- 1.1.12 A new clause 17.5 shall be added as follows:
- “17.5 – The Contractor shall have no responsibility for the provision of maintenance, refit or replacement of non-fixed items required by healthcare and social care services provided by NHSE.”
- 1.1.13 Clause 29 shall be amended as following:
- 1.1.13.1 “29.3 – the following words shall be deleted:
- “(other than, in each case Prison Cells designated for multiple occupancy in the healthcare centre of the Prison)”
- 1.1.13.2 29.4(a) – the following words shall be deleted:
- “(other than, in each case Prison Cells designated for multiple occupancy in the healthcare centre of the Prison)”
- 1.1.13.3 29.5 – the following words shall be deleted:
- “other than, in each case Prison Cells designated for multiple occupancy in the healthcare centre of the Prison“
- 1.1.14 Clause 30.2 shall be amended by deleting “and the Young Offender Institution Rules 1988” at the end of the clause.
- 1.1.15 Clause 33 shall be amended as follows:
- 1.1.15.1 Clause 33.1 the following words shall be deleted:
- “and in particular the Contractor shall appoint one or more suitably qualified individuals to the position of prison medical officer”
- 1.1.15.2 Clause 33.3 – the following words shall be deleted:
- “(including for the purposes of this Clause 33.3, the medical officer or officers)
- 1.1.16 A new clause 53A NHSE Event shall be added as follows:
- “53A.1 – If an NHSE Event occurs then the Contractor shall make the Authority aware of this to enable both parties to meet and discuss the issues in good faith in order to reach an agreement as to whether a derogation or relief from contractual obligations (including but not limited to claims, demands or liability which the Authority may be entitled to impose in respect of the Contractor’s performance or non-performance under this Contract or any right of the Authority to terminate for

Contractor default) and/or whether any compensation should be granted to the Contractor. Examples of such events are, inter-alia:

- NHSE causing a Key and lock security incident attracting performance points and/or requiring a prison re-lock (i.e. a cost to be incurred);
- Failure of NHSE to supply required medical resource to attend court resulting in a failure to attend court on time;
- An NHSE doctor stating that a high number of prisoners are not fit for work, thereby preventing the Contractor from meeting its performance target for purposeful activity.

53A.2 – As soon as practicable after it became aware that an NHSE Event has adversely affected or is likely to adversely affect the ability of the Contractor to fulfil its contractual obligations and/or caused the Contractor to incur costs to ensure it complies with its contractual obligations the Contractor must, at local level initially, provide written details and supporting information about the NHSE Event including the actual date and duration of the NHSE Event.

53A.3 – Where the Contractor has provided the information as set out in Clause 24A.2. and where it is clear and demonstrable that there has been no act or failure to act on the part of the Contractor to fulfil its Prisoner Healthcare Enabling Services and the Authority is satisfied (acting reasonably) that a relief/derogation and/or financial reimbursement is appropriate then the Authority shall put this in writing within ten days of the Contractor providing the details referred to in Clause 53A.2.

53A.4 – The Authority shall not be entitled to exercise its rights to terminate the Contract under Clause 45.1 where it is clear and demonstrable that the Event of Default has been caused by or contributed to by an NHSE Event and where the requirements of 53A.1, 53A.2 and 53A.3 are fulfilled.

53A.5 – The Authority shall (acting reasonably) not apply performance points or make deductions from the Contract Price under Clause 41 (Implementation / Development Plans and Performance Measures) where the Contractor has met the provisions of sub-clauses 53A.1, 53A.2 and 53A.3 .

53A.6 – If an NHSE Event causes the Contractor to lose Available Prisoner Places then the Authority (acting reasonably) shall continue to make payment for those places only for the period of that those places are not available as a result of the NHSE Event as long as the provisions of 53A.2 and 53A.3 are fulfilled.

53A.7 – The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the NHSE Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

53A.8 – If the Parties cannot agree on the relief / derogation or financial reimbursement, or that a NHSE Event has occurred, or that the Contractor has not

completed the Prisoner Healthcare Enabling Services then the matter shall be resolved in accordance with Clause 73 (*Dispute Resolution*)."

1.1.17 Clause 60.5 shall be amended by deleting sub paragraph (c).

1.1.18 A new clause 73A shall be added as follows:

Subject to Clause 73 (Precedence of Terms), if there is any inconsistency between the provisions of the parts of Schedule D (Operational Requirements) then, Part 1 (Custodial Service Specification) and its Appendices shall take precedence over Part 2 (Interventions) and Part 3 (Healthcare and Care Support Services) (and their Appendices).

1.1.19 Throughout the Contract references to YOI & RC Pucklechurch shall be deleted and replaced with HMP Ashfield.

2. SECTION 2 – CHANGES TO SCHEDULE C

2.1 Schedule C Part B (Scope of Maintenance) add the following to paragraph 2 as a new sub-paragraph (viii):

"The Contractor shall have no responsibility for the provision or maintenance, refit or replacement of non-fixed items required by healthcare and social care services provided by NHSE."

2.2 Schedule C Appendix A – Services Elements (Plumbing)

The word "Baths" is deleted

3. SECTION 3 – CHANGES TO SCHEDULE D (OPERATIONAL REQUIREMENTS)

3.1 Schedule D Part 1 (Custodial Services Specification), Appendix 1A (Custodial Services Specifications), Appendix 1B (Annual Custodial Services Specifications), Appendix 1C (Testing of Operational Procedures) and Appendix 2 (Education Requirements) shall be deleted in their entirety and replaced with the document at Annex 5 from the Transition Date.

3.2 Schedule D Part 2 (Interventions), Appendix A (Interventions Plan) and Appendix B (Needs Analysis) shall be deleted in their entirety and replaced with the document at Annex 6 effective from the Transition Date:

3.3 Schedule D Part 3 (Healthcare) shall be deleted in its entirety and replaced with the document at Annex 7 effective from the Healthcare Transition Date:

4. **SECTION 4 - CHANGES TO SCHEDULE E (PAYMENT)**

The amendments imposed by NOC [REDACTED] are deleted in their entirety and the following drafting shall be added:

4.1 At the end of paragraph 4 of Schedule E (Indexed Availability Fee) add:

"From the Transition Date to [REDACTED]:

- the Indexed Availability Fee shall be [REDACTED] and at each Review Date I_0 (as defined in paragraph 6a of Schedule E (Payment Mechanism)) shall be determined accordingly; and
- RPI_B (as defined in Paragraph 6a of Schedule E (Payment Mechanism)) shall be the level of RPI published for the month of [REDACTED] (the index being [REDACTED]).

From [REDACTED]:

- the Indexed Availability Fee shall be [REDACTED] and adjusted as applicable on each Review Date in accordance with paragraph 6a of Schedule E (Payment Mechanism) with the first review taking place on the [REDACTED]; and
- RPI_B (as defined in Paragraph 6a of Schedule E (Payment Mechanism)) shall be the level of RPI published for the month of [REDACTED] the index being [REDACTED]."

4.2 At the end of Paragraph 5 of Schedule E (Indexed Costs Fee) add:

"From the Transition Date to [REDACTED]:

- the Indexed Costs Fee shall be [REDACTED] and at the each Review Date I_3 (as defined in paragraph 6b of Schedule E (Payment Mechanism)) shall be determined accordingly; and
- RPI_B (as defined in paragraph 6b of Schedule E (Payment Mechanism)) shall be hereafter the level of RPI published for the month of [REDACTED] (the index being [REDACTED]) and for subsequent Review Dates the level of RPI_C at the last Review Date.

From [REDACTED]:

- the Indexed Costs Fee shall be [REDACTED] and adjusted as applicable on each Review Date in accordance with paragraph 6b of Schedule E (Payment Mechanism) with the first review taking place on the [REDACTED]; and
- RPI_B (as defined in paragraph 6b of Schedule E (Payment Mechanism)) shall be hereafter the level of RPI published for the month of [REDACTED] (the index being [REDACTED]) and for subsequent Review Dates the level of RPI_C at the last Review Date.

From [REDACTED]:

- The Indexed Costs Fee shall be [REDACTED] in accordance with [REDACTED]."

4.3 At the end of paragraph 5A. Indexed Utility Fee add:

"From the Transition Date to 31st December 2015 the Indexed Utility Fee shall be [REDACTED] as adjusted by annual indexation.

From [REDACTED] the Indexed Utility Fee shall be [REDACTED] and adjusted as applicable on each Performance Year in accordance with paragraph 6c of Schedule E (Payment Mechanism) with the first review taking place on the [REDACTED]."

4.4 In addition the following changes shall be made to paragraph 6(c):

4.4.1 Delete:

"Index_n is the latest published fuel and power component of the RPI immediately prior to the date of calculation of the Indexed Utility Fee"

And insert:

"Index_n shall be the level of the fuel and power component of the RPI published for the month of September preceding each Review Date which falls on the [REDACTED] each year;"

"Index₀ (as defined in paragraph 6c of Schedule E (Payment Mechanism)) shall be hereafter the fuel and power component of the RPI published for [REDACTED] being [REDACTED];

insert the word "calendar" between the words "preceding" and "year"

4.5 At Paragraph 9 (Formula for Daily Payment) of Contract Schedule E the following formula for the calculation of annual performance points shall be deleted effective from [REDACTED]:

"Section c - The amount of the invoice for the last month of each Performance Year will be reduced to reflect Performance Points Incurred (if any) above the yearly Baseline total for that Performance Year. The amount of the reduction will be the lesser of

(i) $[P_y - C_y - B_y] Q_y / 12] \times 0.0001$
And (ii) $0.05 \times Q_y$

Where:

P_y is the cumulative number of Performance Points incurred during the Performance Year, up to and including the last day of the Performance Year;

C_y is the Credit Points earned as set out in Schedule F of the Custodial Services Agreement ; and

B_y is the Baseline Total for the entire Performance Year as set out in Schedule F of the Custodial Services Agreement; and

Q_y is the aggregate of $(A \times C) + V$ for the period starting on the first day of the Performance Year and ending on the last day of the last month of the relevant Performance Year."

4.6 At Paragraph 11 (Escort Fee) of Schedule E the following paragraph relating to the Escort Fee shall be deleted effective from [REDACTED]:

"The annual fee for the provision of the Prisoner Escort Service referred to in Clause 36.2 for any Performance Year shall be [REDACTED] payable monthly in arrears at the same time as payment of the Contract Price in accordance with Clauses 38.3 and 38.4. That annual fee shall be varied on Actual Opening Date and then at the beginning of each Performance Year by the percentage change in the level of the sum of the Indexed Availability Fee and the Indexed Costs Fee occurring on the Review Date coinciding with the beginning of the relevant Performance Year pursuant to paragraph 6."

4.7 Section 12 of Schedule E (Payment Mechanism) introduced by NOC [REDACTED] shall be deleted in its entirety and replaced with the following Section 12 (Intervention Costs). However for the avoidance of doubt, any programme of Interventions provided for young offenders ceased prior to the Transition Date.

"Section 12 Interventions Costs

12.1 The following Interventions provisions shall be applicable from the Transition Date to [REDACTED]:

- a) Sections 4 (Annual Interventions Cost), 5 (Review and Approval) and 6 (Delivery and Payment) set out within Part 2 of Schedule D (Interventions)
- b) margin, overheads and mark up during this period shall be applicable as follows:
 - (i) Operating Sub-contractors third party provider shall be entitled to receive a management fee of [REDACTED] applied to agreed costs; and
 - (ii) Operating Sub-contractor margin and overhead of [REDACTED]

12.2 The following Interventions provisions shall be applicable from [REDACTED]:

- a) The Annual Interventions Cost shall be agreed each year and payment made in accordance with the provisions of Schedule D Part 2 (Interventions) enclosed at Annex 2 of [REDACTED].
- b) In the event that the agreed programme of Interventions fulfilled by the Contractor during the Interventions Year differs from the agreed Annual Interventions Plan or the provisions set out within Part 2 (Interventions) of Schedule D (Operational Requirements), the parties shall undertake a reconciliation exercise and jointly agree a revised Interventions Price in accordance with Clause 9 for the Interventions Year during which the change arose.
- c) the Parties agree that margin, overheads and mark up from the [REDACTED] shall be applicable as follows:
 - (i) Operating Sub-contractors third party provider shall be entitled to receive a management fee of [REDACTED] (mark-up calculation) applied to agreed costs"; and

- (ii) Operating Sub-contractor (Serco) shall be entitled to receive a margin and overhead of [REDACTED] (margin calculation) applied to the total value of 12.2(c)(i) above.

5. SECTION 5- CHANGES TO SCHEDULE F (PERFORMANCE MEASURE)

The amendments imposed by NOC [REDACTED] are deleted in their entirety and the following drafting shall be added:

- 5.1 Schedule F (1) (Performance Measures) at Annex 8 shall be applicable from the Transition [REDACTED].

For the first six months following the Transition Date, no amounts pursuant to the accrual of Performance Points shall be deductible from the Contract Price in accordance with paragraph 9 (Formula for Daily Payment) of Schedule E (Payment Mechanism).

- 5.2 Schedule F (2) (Performance Measures) at Annex 9 shall be applicable from the [REDACTED]

For the period from [REDACTED] no amounts pursuant to the accrual of Performance Points shall be deductible from the Contract Price in accordance with paragraph 9 (Formula for Daily Payment) of Schedule E (Payment Mechanism).