



# Ministry of JUSTICE

## Notice of Change (NOC)

1. <b>Contract Detail</b>	Contract dated 1 <sup>st</sup> July 1998 between Her Majesty's Principal Secretary of State for Justice (the "Authority") and Pucklechurch Custodial Services Limited (the "Contractor") for the Design, Construction, Management and Financing of a Custodial Service at Pucklechurch, Bristol (the "Contract")	
2. <b>Issued by</b>	The Authority [REDACTED] Directorate)	MoJ Commercial and Contract Management (CCM)
3. <b>Operational Management Lead</b>	[REDACTED] Deputy Director Custodial Services Contract Management	
4. <b>Status</b>	Final	
5. <b>Date of issue of NOC:</b> 25 <sup>th</sup> August 2016	6. <b>NOC No:</b> [REDACTED]	
<p>7. <b>Title of NOC: Prison Re-role and Services change (the "NOC")</b></p> <p>Being more particularly the changes associated with:</p> <ul style="list-style-type: none"> <li>• The change to accommodate Category C adult male prisoners instead of young offenders; and</li> <li>• The transfer of provision of Prison healthcare services from the Contractor to NHS England.</li> </ul>		
<p>8. <b>NOC Originator:</b> The Authority through [REDACTED], (Deputy Director of MoJ Commercial and Contract Management (CCM) Directorate)</p>		
<p>9. <b>Documents to be changed</b> The Contract including Schedule D (Operational Requirements); Schedule E (Payment Mechanism) and Schedule F (Performance Measures).</p>		

10 **Details of Change**

1. **Introduction**

1.1. The Authority issued a letter to the Contractor dated 31<sup>st</sup> May 2013 which enclosed [REDACTED] [REDACTED] In accordance with the provisions of Clause 9.1 (Change to Services Required) of the Contract NOC [REDACTED] proposed changes to the Contract in relation to:

- the re-role of the Prison to accommodate Category C adult male prisoners instead of young offenders (the "Re-role"); and
- the transfer of Prison healthcare services from the Contractor to NHS England (the "Healthcare Transition").

1.2. The Contractor has subcontracted the provision of the Services detailed in the Contract to the Operating Sub-Contractor (as defined in the Contract). Accordingly, the Contractor provided the Operating Sub-Contractor with a copy of NOC [REDACTED] for its consideration and comment.

1.3. The Contractor (following consultation with the Operating Sub-Contractor), provided an estimate of the change to the Contract Price (pursuant to clause 9.1 of the Contract) arising from the proposed changes. The Authority rejected the estimate and elected to implement the changes detailed in NOC [REDACTED] Following implementation of NOC [REDACTED] the Authority entered into discussions with the Contractor and Operating Sub-Contractor in order to resolve the various commercial and contractual issues arising from the imposed NOC [REDACTED].

1.4. On the [REDACTED] a without prejudice settlement offer was submitted by the Operating Sub-Contractor to resolve the disputes arising from the imposition of NOC [REDACTED] Following a number of subsequent exchanges a letter was issued by the Authority dated [REDACTED] confirming the heads of terms of a settlement which were agreed in order to resolve the commercial matters in dispute arising from the changes set out by the Authority within NOC [REDACTED]

1.5. This NOC documents the position agreed between the parties and replaces the terms of NOC [REDACTED]

2. **Healthcare**

2.1. The Healthcare Transition came into effect on [REDACTED] (the "Healthcare Transition Date"). Prior to the Healthcare Transition Date the Contractor was responsible for the provision of the primary healthcare services (excluding mental health) at the Prison. Responsibility for provision of the healthcare services at the Prison was transferred from the Contractor to the NHS England on the Healthcare Transition Date.

2.2. Notwithstanding the Healthcare Transition the Contractor remains responsible for the facilitation of the healthcare services. All costs associated with facilitation of the healthcare services from the Healthcare Transition Date are deemed to be included within the updated Contract Price as amended by Annex 1 of this NOC.

3. **Commercial Agreement**

3.1. The dispute in relation to the adjustment to the Contract Price pursuant to NOC [REDACTED] related to the rates imposed for the Indexed Availability Fee, Indexed Costs Fee, Indexed Utility Fee, associated Indexation and the cost of the Mobilisation, Transition and Transformation Costs ("MTT Costs"). The Authority alleged that the Indexed Availability Fee, Indexed Costs Fee, Indexed Utility Fee and MTT Costs quoted did not represent value for money. The Authority requested additional cost information to support the Indexed Availability Fee, Indexed Cost Fee and Indexed Utility Fee together with a statement of account to verify the actual MTT costs incurred. The Contractor provided the requested information and accordingly the following adjusted charges were agreed:

3.2. **Adjusted Charges**

3.2.1. The Authority shall pay an additional sum of [REDACTED] in respect of the adjusted Indexed Availability Fee, Indexed Costs Fee and Indexed Utility Fee (as adjusted by Annex 1 of this NOC)

(the "Adjusted Charges Sum") covering the period from the Transition Date up to [REDACTED] and arising from the retrospective application of the agreed revised rates set out within this NOC. Details of the Adjusted Charges Sum are provided at Annex 2 of this NOC.

3.2.2. The MTT costs have been verified by the Authority and the Parties have agreed that the Authority is entitled to be reimbursed a sum of [REDACTED] which represents the difference between the amount paid to the Contractor and the actual cost arising from delivery of MTT (the "MTT Reimbursement") (details of the reimbursement due to the Authority are included at Annex 3 of this NOC).

3.2.3. Accordingly it has been agreed that the MTT Reimbursement shall be offset against the Adjusted Charges Sum.

3.2.4. The Contractor shall raise an invoice in the sum of [REDACTED] (calculated by subtracting the MTT Reimbursement from the Adjusted Charges Sum) upon execution of this NOC which shall be payable by the Authority 30 days following the receipt of such invoice.

### 3.3. Reconciliation of Rates

3.3.1. The Authority shall make a one off reconciliation payment of the aggregate of Indexed Availability Fee, Indexed Costs Fee and Indexed Utility Fee rates from [REDACTED] to the date of execution of this NOC within 30 days of receipt of an invoice from the Contractor.

3.3.2. As established in the settlement heads of terms dated [REDACTED] the Parties have agreed that the Indexed Utility Fee should have been indexed in accordance with paragraph 6(c) of Schedule E on the Review Date which falls on the [REDACTED] using the latest published fuel and power component of the RPI immediately prior to the date of calculation of the Indexed Utility Fee (being the RPI currently published in September each year).

3.3.3. The Parties have performed retrospective recalculations of U0 which "is the amount of the Indexed Utility Fee payable per Available Prisoner Place per day as set out in paragraph 5A of Schedule E, which are subject to the five-yearly adjustments" Notwithstanding any adjustments required as a consequence of other provisions contained within this NOC when the recalculated U0 was compared to Z0 in accordance with Clause 6 (c) of Schedule E the Parties agree that there was no adjustment required to the Indexed Utility Fee charged to the date of execution of this NOC as a result of the retrospective recalculations of U0.

3.3.4. The Authority agrees that it shall not require the Contractor to provide Additional Prisoners Places in accordance with Clause 40 at the rates specified in paragraph 7 (Variable Payment) of Schedule E and as adjusted in accordance with paragraph 8 (Indexation of Variable Payment) of Schedule E until such time as the rates have been adjusted in accordance with Clause 9 (Changes to Services Required) to reflect the change in population.

3.3.5. If the current Category C population mix in HMP Ashfield changes in significant numbers, the Contractor would update their Annual Interventions Plan and/or the Annual Interventions Costs mid-year in accordance with clause 7 (Changes) of Schedule D Part 2: Interventions.

3.3.6. In accordance with Clauses 9 and 39 the Authority agrees to pay reasonable Equity Management, Lenders Handling and Equity / Lenders advisors fees that have reasonably been incurred by the Contractor in relation to the finalisation of [REDACTED]

## 4. Full and Final Settlement

4.1. The parties agree that this NOC addresses any and all disputes arising from the introduction of NOC [REDACTED] and the provision of services thereunder. The Adjusted Charges detailed at section 10 (3.2) and the Reconciliation Rates detailed at section 10 (3.3) address all financial claims and

neither party shall be entitled to claim any further payments or deductions from the other in relation to Service provision up to the date of this NOC.

**5. Amendments to the Contract**

- 5.1. The agreed amendments to the Contract in relation to the Re-Role and Healthcare Transition are as set out in Annex 1.
- 5.2. Previous Notices of Change
- 5.2.1. The Parties agree that for the purposes of interpreting the Contract, the notices of change marked as "NOC Ceases" within Annex 4 of this NOC shall cease to have any effect in relation to the operation and interpretation of the Contract.

11.	<p><b>Reasons for Change/Outcome expected</b></p> <p>NOC ■■■ set out imposed requirements to facilitate the Authority making best use of the prison estate. Whilst the content of NOC ■■■ was in dispute the Contractor provided Custodial Services for Category C adult males instead of young offenders and ceased to provide the healthcare services which were transferred to NHS England.</p> <p>The NOC ■■■ changes have been further discussed between the Parties and this NOC contains the agreed changes to the Contract arising from the Prison Re-role and Healthcare Transition as more fully described within the proceeding Section 10.</p>
12.	<p><b>Statement of Cost of Change</b></p> <p>The Authority shall make one off reconciliation payments to the Contractor in accordance with this NOC. In addition the Indexation of the Availability Fee, Indexed Costs Fee and the Indexed Utility Fee shall be amended pursuant to the changes to Schedule E (Payment).</p>
13.	<p><b>Schedule of Payments</b></p> <p>The one off reconciliation payments described in this NOC are payable within 30 days of receipt by the Authority of an invoice. Otherwise existing contractual payment provisions apply.</p>
14.	<p><b>Indexation/Inflation</b></p> <p>Indexation shall apply as stated in the Contract and as adjusted by this NOC.</p>
15.	<p><b>Timetable for Implementation</b></p> <p>Immediate on execution.</p>
16.	<p><b>Impact of Change (including any Quality implication)</b></p> <p>Please refer to the various provisions set out within Section 10 above.</p>
17.	<p><b>Proposed / Draft / Final Changes to the Agreement or other contractual documents</b></p> <p>Changes to the Contract arising from the Re-role of the Prison and Healthcare Transition are set out within Annex 1 of this NOC.</p>
18.	<p><b>Date for Implementation/Expiry of Validity of NOC</b></p> <p>This NOC shall be deemed implemented immediately upon execution and shall remain valid until such time as may be amended in accordance with Clause 9 of the Contract</p>

*Ministry of Justice Procurement Directorate use only*

Date NOC submitted:	Date NOC evaluated:
Date Further Information Requested:	Date Further Information Received: (including modified NOC)
Date Modified NOC Evaluated:	<i>Where change affects the fabric of the building ;</i> Date Capacity Directorate Project Sponsor approved:

**19. Decision: Approve**

*(This form may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument for authorising a Notice of Change).*

<p>Signature: [Redacted]</p> <p>Name: [Redacted]</p> <p>Date: [Redacted]</p> <p>For Ministry of Justice Operational Lead <i>Director/Deputy Director Contracted Custodial Services</i>  <i>Custodial Manager</i>  <i>Head of High Security Prisons</i>  <i>Commissioning and Commercial Director/Deputy Director</i></p>	<p>Signature: [Redacted]</p> <p>Name: [Redacted]</p> <p>Date: [Redacted]</p> <p>Contractor authorised signatory</p>	<p>Signature: [Redacted]</p> <p>Name: [Redacted]</p> <p>Date: [Redacted]</p> <p>For Ministry of Justice Head of Commercial and Contract Management Directorate</p>
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