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HMP [ ]

Commercial and Contract Management Directorate

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**SCHEDULE 15:**

**PERFORMANCE MECHANISM**



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**PART 1: DEFINITIONS**

For the purpose of this **Schedule 15 (Performance Mechanism)**, unless the context otherwise requires:

- “Accredited Offending Behaviour Programme” or “Accredited OBPs”** has the meaning given to it in **Part 4 (Interventions) of Schedule 1 (Authority's Custodial Service Requirements)**;
- "Aggregate Quarterly Payment"** has the meaning given to it in **Schedule 14 (Payment Mechanism)**;
- “Adjusted Base Weighting” or “ABW”** means the weighting that is applied to Quarterly Sub-Domains in AAI Performance Quarters using the methodology at Table 3 of **Appendix 2 (Contract Delivery Indicators)**
- “Annual, Audit, or Inspection Sub-Domain” or “AAI Sub-Domain”** means a Sub-Domain that is not applied every Performance Quarter;
- “Annual, Audit or Inspection - Performance Quarter” or “AAI Performance Quarter”** means a Performance Quarter which includes a Performance Result from at least one Annual, Audit, or Inspection Sub-Domain;
- “Annual, Audit or Inspection Weighting” or “AAI Weighting”** means the weighting that is applied to AAI Sub-Domains as set out at column G of Table 1 of **Appendix 2 (Contract Delivery Indicators)** when the relevant AAI Sub-Domain has received a Performance Result;
- “Audit of Living Conditions”** means the audit carried out by the Authority from time to time to assess living conditions in the Prison;
- “Base Weighting”** means the weighting that is applied to Quarterly Sub-Domains in a Standard Performance Quarter as set out in column F of Table 1 of **Appendix 2 (Contract Delivery Indicators)**;

<b>"Bedding-In Period"</b>	means either:  (a) the period specified for each Sub-Domain in Table 5 of <b>Appendix 2 (Contract Delivery Indicators)</b> commencing on the Services Commencement Date plus the period from the end of the specified Month until the last Day of the Performance Quarter in which the specified Month period expires; or  (b) for New Sub-Domains a minimum of six (6) months from the date the Authority notifies the Contractor of the intention to introduce the New Sub-Domain to a Domain, provided that such Bedding-In Period shall only be applicable to the New Sub-Domain;
<b>"Consultation Nominees"</b>	means the individuals nominated and authorised by each Party from time to time to act on its behalf to resolve Outstanding Issues pursuant to <b>paragraph 13.2 (Consultation)</b> ;
<b>"Consultation Notice"</b>	has the meaning given to it in <b>paragraph 13.2 (Consultation)</b> ;
<b>"Contract Delivery Indicators"</b>	means the delivery indicators set out in <b>Appendix 2 (Contract Delivery Indicators)</b> that comprise Domains and Sub-Domains;
<b>"Contract Delivery Management Information"</b>	means the management information set out in <b>Appendix 1 (Contract Management Information Requirements)</b> ;
<b>"Control and Restraint"</b>	means the techniques that are used as a last resort to bring a violent or refractory Prisoner under control.
<b>"Domain"</b>	means a Contract Delivery Indicator that is comprised of Sub-Domains;
<b>"Home Detention Curfew" or "HDC"</b>	has the meaning given in PSI 2018/01 (as amended from time to time);



"Improvement Actions"	has the meaning given to it in <b>paragraph 11.4.2 (Improvement Notices and Improvement Plan)</b> ;
"Improvement Notice"	has the meaning given to it in <b>paragraph 11.1.1 (Improvement Notices and Improvement Plan)</b> ;
"Improvement Plan"	has the meaning given to it in <b>paragraph 11.4 (Improvement Notices and Improvement Plan)</b> ;
"Incident Reporting System Data Quality Audit"	means the audit carried out by the Authority from time to time to assess compliance with incident reporting requirements
"Minimum Score"	has the meaning given to it for each Sub-Domain in column H entitled 'Minimum Score' in Table 1 of <b>Appendix 2 (Contract Delivery Indicators)</b>
"Monthly Performance Report"	has the meaning given to it in <b>paragraph 7.1 (Monthly Performance Reporting)</b> ;
"New Sub-Domain"	means a Sub-Domain that either replaces one or more existing Sub-Domains in the Domain or is added to a Domain without removing any other Sub-Domains but New Sub-Domain shall not include any amendments to existing Sub-Domains;
"Offender Management in Custody" or "OMIC"	has the meaning given in the Policy Framework 'Manage the Custodial Sentence'
"Outstanding Issues"	has the meaning given to it in <b>paragraph 13.1 (Consultation)</b> ;
"Outstanding Issues Notice"	has the meaning given to it in <b>paragraph 13.1 (Consultation)</b> ;
"Performance Failure"	has the meaning given to it for each Sub-Domain in column C of Table 1 of <b>Appendix 2 (Contract Delivery Indicators)</b>



"Performance Hub"	means the Authority's web-based corporate reporting service that provides staff from prisons, probation, the Authority and associated organisations with data collection, validation, collation and reporting;
"Performance Result"	means the actual performance by the Contractor against the relevant Sub-Domain in the Performance Quarter;
"Performance Target"	has the meaning given to it for each Sub-Domain in column I of Table 1 of <b>Appendix 2 (Contract Delivery Indicators)</b> as amended from time to time following the relevant processes in column C of Table 1 of <b>Appendix 2 (Contract Delivery Indicators)</b> ;
"Quarterly Sub-Domain"	means a Sub-Domain that applies every Performance Quarter;
"Prison Performance Tool" or "PPT"	means the framework as set out in the Performance Hub, as amended from time to time, used by the Authority to measure the Prison's performance and to compare the Prison's performance to other prisons;
"Prison Performance Measures" or "PPT Measures"	means the measures that comprise the Prison Performance Tool as provided in the data room at Mini-Competition stage and recorded in the Performance Hub, as amended from time to time;
"Rectification Actions"	has the meaning given to it in <b>paragraph 12.3 (Rectification)</b> ;
"Rectification Notice"	means a notice issued pursuant to <b>paragraph 12.1.6 (Rectification)</b> or <b>paragraph 13.2 (Rectification)</b> ;
"Rectification Plan"	has the meaning given to it in <b>paragraph 12.3 (Rectification)</b> ;
"Reduced Performance"	has the meaning given to it in <b>paragraph 4.1 (Reduced Performance)</b> ;



<b>"Required Standard"</b>	has the meaning given to it in <b>paragraph 2.1 (Introduction)</b> ;
<b>Risk Management Audit</b>	means the audit carried out by the Authority from time to time to assess risk management processes in the Prison;
<b>"Release on Temporary Licence" or "ROTL"</b>	has the meaning given to it in <b>Part 5 (Healthcare) of Schedule 1 (Authority's Custodial Service Requirements)</b> ;
<b>"Security Audit"</b>	means the audit carried out by the Authority from time to time to assess security processes within the Prison;
<b>"Standard Performance Quarter"</b>	means a Performance Quarter which does not include a Performance Result from an AAI Sub-Domain;
<b>"Sub-Domain"</b>	means a separately measured individual component of a Domain, as set out in Table 1 of <b>Appendix 2 (Contract Delivery Indicators)</b>
<b>"Sub-Domain Points"</b>	means the points that are awarded against Performance Failures in individual Sub-Domains
<b>"Tornado"</b>	means Contractor Staff who have undergone advanced Control and Restraint training, who are deployed to respond to major incidents
<b>"Weightings"</b>	means the Base Weighting and the AAI Weighting set out in columns F and G of Table 1 of <b>Appendix 2 (Contract Delivery Indicators)</b>

## **PART 2: MANAGEMENT INFORMATION REPORTING REQUIREMENTS**

### **1. Introduction**

- 1.1 The Contractor shall provide to the Authority the Contract Delivery Management Information in accordance with the timescales listed in the table within **Appendix 1 (Contract Management Information Requirements)**.



- 1.2 In addition the Contractor shall provide to the Authority all other management information required to be provided under this Contract together with any further management information deemed necessary by the Authority.
- 1.3 The Contractor shall provide a report of issues of concern and of matters which may become of ministerial interest or may have media interest immediately upon becoming aware of such matters or upon the Authority's request.

### **PART 3: AUTHORITY'S CONTRACT PERFORMANCE REPORTING REQUIREMENTS**

#### **2. Introduction**

- 2.1 The Contractor shall provide the Services to the standards set out in the Authority's Requirements and in compliance with the terms of this Contract including so as to meet the targets applicable to the Prison Performance Tool Measures and the Contract Delivery Indicators (the "**Required Standard**"), and the Parties are committed to working together to achieve continuous improvement in performance. The rights of the Authority under this Schedule are without prejudice to any other rights of the Authority under this Contract, which the Authority may exercise at any time.
- 2.2 The PPT Measures shall be construed and measured in accordance with the measurement methodology and definition requirements set out in the Performance Hub.

#### **3. Prison Performance Tool**

- 3.1 The Authority shall measure the Contractor's performance in the delivery of the Service against the PPT Measures.
- 3.2 The Contractor shall report performance of the delivery of the Services to the Authority against the PPT Measures in a Monthly Performance Report in accordance with **paragraph 7 (Monthly Performance Reporting)**.
- 3.3 The Authority may use the PPT Measures to benchmark performance of the delivery of all or any part of the Services against performance by other prisons in respect of comparable services.
- 3.4 Without prejudice to its rights under **clause 28 (Benchmarking and Value Testing)** and **paragraph 10 (Contract Delivery Indicators Review)**, the Authority may, by providing





notice to the Contractor, add to, delete or amend any of the PPT Measures at any time so as to reflect any changes to the Prison Performance Tool from time to time.

4. **Reduced Performance**

4.1 Where the Contractor's performance falls below the Required Standard ("**Reduced Performance**"):

4.1.1 the Authority may issue an Improvement Notice in accordance with **paragraph 11 (Improvement Notices and Improvement Plan)**, regardless of whether or not such Reduced Performance occurs in relation to a Contract Delivery Indicator identified in **Appendix 2 (Contract Delivery Indicators)**;

4.1.2 where such instances of Reduced Performance occur in relation to the Contract Delivery Indicators, the Authority shall be entitled to a reduction in the Monthly Payment representing the reduced value of the Services received by the Authority in accordance with **paragraph 5 (Authority's Right to Make Deductions)**.

5. **Authority's Right to Make Deductions**

5.1 Other than in relation to Escapes, in respect of which specific payments are made by the Contractor to the Authority as set out in **paragraph 9.2 (Escapes) of Schedule 14 (Payment Mechanism)**, the Authority shall be entitled to make Performance Point Deductions by reference to Performance Points accruing where the Contract Delivery Indicators show performance above or below the associated targets (as relevant) in accordance with **paragraph 6 (Calculation of Performance Points)** and **paragraph 2.14 (Adjustment for Performance Point Deductions)** of **Schedule 14 (Payment Mechanism)**.

5.2 The application of payments for Escapes and the accrual of Performance Points, with any resultant application of Performance Point Deductions, as described in this **paragraph 5 (Authority's Right to Make Deductions)** shall be without prejudice to the Authority's other rights or remedies under this Contract. The Contractor acknowledges and agrees that the Deductions are not an estimate of the loss or damage that may be suffered by the Authority as a result of such deductions and nor are they onerous or a penalty.



6. **Calculation of Performance Points**

6.1 The Authority shall calculate Performance Points for the relevant Contract Delivery Indicators in accordance with this **paragraph 6 (Calculation of Performance Points)** and Appendix 2 (Contract Delivery Indicators).

6.2 Where the Sub-Domains show performance above or below the associated Performance Targets (as relevant), this shall contribute to the accruing of Performance Points in the relevant Domain in accordance with the methodology set out at Tables 2 and 3 of Appendix 2 (Contract Delivery Indicators).

6.3 Performance Points in respect of each Performance Quarter shall be the sum of the Performance Points calculated for each relevant Domain for that Performance Quarter in accordance with Tables 2, 3, and 4 of Appendix 2 (Contract Delivery Indicators).

6.4 Where a single incident causes the occurrence of more than one (1) Sub-Domain, the Authority shall only be entitled to apply Performance Points in respect of that incident by reference to the Sub-Domain and corresponding Domain which attracts the greatest number of Performance Points (and not in respect of each such Sub-Domain and corresponding Domain).

6.5 No Performance Points shall accrue in respect of a particular Sub-Domain and corresponding Domain if, and to the extent that, it is demonstrated to the reasonable satisfaction of the Authority that failure to meet the relevant Sub-Domain Performance Target is a direct result of the negligent act or omission of the Authority or a Compensation Event.

6.6 The Contractor shall comply with the provisions of **paragraph 2.14.1 (Performance Points to be Disregarded)** of **Schedule 14 (Payment Mechanism)** where the Contractor has accepted any Prisoners in accordance with **paragraph 7.4 (Emergency Prisoner Places)** of **Schedule 14 (Payment Mechanism)** and any Performance Points accruing in respect of those Prisoner Places only, shall be disregarded for the purposes set out in **paragraph 2.14.1 (Performance Points to be Disregarded)** of **Schedule 14 (Payment Mechanism)**.

7. **Monthly Performance Reporting**

7.1 The Contractor shall submit a monthly report (the "**Monthly Performance Report**") to the Authority no later than ten (10) Business Days after the end of the relevant Month. The



Authority shall provide the Contractor with the contact details of the appropriate recipient(s) from time to time.

7.2 The Monthly Performance Report shall state:

7.2.1 the Contractor's performance against all of the PPT Measures; and

7.2.2 the Contractor's performance against all of the Contract Delivery Indicators, including all Sub-Domains,

and identify any occurrences of Reduced Performance with the Contractor's assessment of the reasons for such occurrences.

7.3 Where the Authority accepts the Contractor's assessment of performance as stated in the Monthly Performance Report, or following agreement as to such assessment in accordance with **paragraph 7.4 (Monthly Performance Reporting)**, the provisions of **paragraphs 6 (Calculation of Performance Points)** and **11 (Improvement Notices and Improvement Plan)** shall apply (as relevant) on the basis of such assessment.

7.4 Where the Authority does not agree with the Contractor's assessment of performance against any of the PPT Measures or Contract Delivery Indicators or of the occurrence of Reduced Performance as stated in the Monthly Performance Report:

7.4.1 it shall so notify the Contractor, stating its own provisional assessment of such performance; and

7.4.2 it may issue an Outstanding Issues Notice in accordance with **paragraph 13.1 (Consultation)** and the provisions of **paragraph 13 (Consultation)** shall apply.

7.5 If and to the extent that any Outstanding Issues are not resolved in accordance with **paragraph 13**, the Authority shall notify the Contractor of its final assessment of the performance relating to the Outstanding Issues, and the provisions of **paragraphs 6 (Calculation of Performance Points)** and **11 (Improvement Notices and Improvement Plan)** shall apply (as relevant) on the basis of such assessment.

## 8. **Bedding-In Period**

8.1 In respect of each Sub-Domain and New Sub-Domain there shall be a Bedding-In Period, during which the following provisions shall apply:



- 8.1.1 the Contractor shall, within ten (10) Business Days after the end of each Month (or such other time as may be agreed by the Parties in writing), submit a report to the Authority setting out in respect of the Month just ended a summary of the performance of the Services, identifying the Sub-Domain or New Sub-Domain and corresponding Domain and quantifying the Performance Points that would accrue and Performance Point Deductions that would be made if **paragraphs 8.1.3 and 8.1.4 (Bedding-In Period)** did not apply;
- 8.1.2 the Contractor shall, within ten (10) Business Days after the end of each Performance Quarter (or such other time as may be agreed by the Parties in writing), submit a report in respect of the Performance Quarter just ended a summary of the performance of the Services, identifying the Contract Delivery Indicators and quantifying the Performance Points that would accrue and Performance Point Deductions that would be made if **paragraphs 8.1.3 and 8.1.4 (Bedding-In Period)** did not apply;
- 8.1.3 no Performance Points shall accrue; and
- 8.1.4 no adjustment shall be made to any invoices in respect of any Performance Point Deductions pursuant to **paragraph 2.14 of Schedule 14 (Payment Mechanism)**.

## 9. Contractor's Obligations During Bedding-In Period

- 9.1 Notwithstanding the provisions of **paragraph 8.1 (Bedding-In Period)**, during the Bedding-In Period:
- 9.1.1 the Contractor shall not be relieved of any of its obligations under this Contract; and
- 9.1.2 if any Escapes occur, the Contractor shall not be relieved from the liability to make payment to the Authority pursuant to **paragraph 9 of Schedule 14 (Payment Mechanism)**.

## 10. Contract Delivery Indicators Review

- 10.1 The Contract Delivery Indicators and Performance Points shall be reviewed by the Authority and the Contractor, with a view to amending them if appropriate, at the end of a Bedding-In Period, and following the end of the Bedding-In Period at any time if requested by either



Party, but in any event, shall be reviewed at least once in every Contract Year except during the final Contract Year.

10.2 The Authority and the Contractor shall act reasonably in carrying out the reviews referred to in **paragraph 10.1 (Contract Delivery Indicators Review)**.

10.3 Subject to **paragraph 10.5 (Contract Delivery Indicators Review)**, the Authority and the Contractor may in respect of each matter which is the subject of a review pursuant to **paragraph 10.1 (Contract Delivery Indicators Review)** agree adjustments to the relevant Contract Delivery Indicator using the mechanisms set out in **Schedule 16 (Change Protocol)** to take effect in the Contract Year immediately following the review or earlier if agreed by the Parties.

10.4 Where no adjustments are agreed pursuant to **paragraph 10.3 (Contract Delivery Indicators Review)**, the status of any such matter shall continue to apply unchanged in the Contract Year immediately following the review.

10.5 As part of the annual review of Contract Delivery Indicators in accordance with **paragraph 10.1 (Contract Delivery Indicators Review)**, the Authority shall also review the Sub-Domains. The Authority:

10.5.1 may amend any of the Sub-Domains, including changing the Performance Targets, Minimum Scores, Weightings or the description, methodology or measurement of a Sub-Domain;

10.5.2 remove the Sub-Domain and re-allocate its Weighting to other Sub-Domains within the same Domain;

10.5.3 introduce a New Sub-Domain and adjust the Weightings of the other Sub-Domains in the Domain to accommodate the New Sub-Domain; and/or

10.5.4 the Authority may replace the removed Sub-Domain with a New Sub-Domain within the same Domain,

and the Parties acknowledge and agree that such amendments to the Sub-Domains or introduction of a New Sub-Domain are classified as Operational Changes, under **Schedule 16 (Change Protocol)** and if paragraphs 10.5.1 or 10.5.2 apply these shall not be New Sub-Domains and shall not attract a Bedding-In Period. **[Note to Bidders – the Authority acknowledges the issues raised by bidders during Competitive Dialogue regarding the**



**flexibility for amending Sub-Domains. The Authority will retain the principle of contractual flexibility to change Sub-Domains but will review the parameters for amending individual Sub-Domains at each Call-Off and during the Call-Off tender process.]**

## 11. Improvement Notices and Improvement Plan

11.1 If at any time the Authority considers in its reasonable opinion that the performance of all or any part of the Services have fallen below the Required Standard, and in any event where the Monthly Performance Report shows (or the Authority, pursuant to **paragraph 7.4 (Monthly Performance Reporting)**, assesses) Reduced Performance, the Authority may bring this to the attention of the Contractor and:

11.1.1 issue a notice (an '**Improvement Notice**') in accordance with this **paragraph 11 (Improvement Notices and Improvement Plan)** to bring such matter to the Contractor's attention; or

11.1.2 in the case of any breach that is a Contractor Default, issue a Rectification Notice.

11.2 The Authority may issue an Improvement Notice concerning any aspect of the provision of the Services whether or not there are related Contract Delivery Indicators.

11.3 An Improvement Notice shall state:

11.3.1 any area of Reduced Performance; and

11.3.2 any other supporting information which the Authority considers to be relevant.

11.4 Within seven (7) Days, or such other timescale as specified by the Authority in the Improvement Notice, of the date of issue of an Improvement Notice the Contractor shall deliver to the Authority a plan (the "**Improvement Plan**") in respect of any areas of Reduced Performance stated in the Improvement Notice, which shall:

11.4.1 provide an explanation of the causes of the Reduced Performance;

11.4.2 identify the actions (the '**Improvement Actions**') needed to remedy the Reduced Performance identified in the Improvement Notice and prevent its re-occurrence;

11.4.3 set out:



- 11.4.3.1 the Contractor's proposals for carrying out the Improvement Actions;
- 11.4.3.2 a programme for undertaking such actions; and
- 11.4.3.3 the date by which such actions will be completed;
- 11.4.4 identify any actions or consents required from the Authority, any Authority Related Party and/or any Relevant Authority to facilitate the Contractor's remedial actions; and
- 11.4.5 specify proposed criteria for the purpose of auditing completion of the remedial actions and resolution of the Reduced Performance.
- 11.5 Following receipt of an Improvement Plan, the Authority may (acting reasonably):
  - 11.5.1 agree it; or
  - 11.5.2 reject it and require the Contractor to submit a revised Improvement Plan within seven (7) Days of such rejection (or such other time as may be agreed by the Parties in writing).
- 11.6 Where the Contractor fails to submit a revised Improvement Plan in accordance with **paragraph 11.5.2 (Improvement Notices and Improvement Plan)** or the revised Improvement Plan is in the Authority's reasonable opinion unacceptable, the Authority may issue an Outstanding Issues Notice in accordance with **paragraph 13.1 (Consultation)** and the provisions of **paragraph 13 (Consultation)** shall apply.
- 11.7 The Contractor shall implement all the Improvement Actions by the date specified in the Improvement Plan at no cost to the Authority.
- 11.8 An Improvement Plan shall remain open until the Improvement Actions identified therein have been completed to the Authority's satisfaction, whereupon it shall be closed.
- 11.9 Where the Improvement Actions are carried out and completed but do not succeed in remedying the Reduced Performance identified in the Improvement Notice or in preventing its re-occurrence, the Authority may either:



- 11.9.1 issue a further Improvement Notice pursuant to **paragraph 11.1 (Improvement Notices and Improvement Plan)** in respect of the same area(s) of poor performance;
- 11.9.2 issue an Outstanding Issues Notice in accordance with **paragraph 13.1 (Consultation)**, in which case the provisions of **paragraph 12.5.3(c) (Rectification)** shall apply; or
- 11.9.3 where the Reduced Performance is a Contractor Default, issue a Rectification Notice.
- 11.10 Each Improvement Plan shall be sequentially numbered from a central register maintained by the Authority. In the event that a further unconnected circumstance occurs which results in the issue of a separate Improvement Notice, a separate Improvement Plan shall be raised and recorded in the central register under a separate sequential number.
- 11.11 A report on progress against each open Improvement Plan shall be provided at each monthly Contract Review Meeting.
- 11.12 Where the Contractor fails to complete the Improvement Actions in an Improvement Plan by the date specified in it for their completion or to the Authority's satisfaction, the Authority may:
- 11.12.1 issue an Outstanding Issues Notice in respect of such Improvement Actions pursuant to **paragraph 13 (Consultation)**; or
- 11.12.2 where the Reduced Performance is a Contractor Default, issue a Rectification Notice.
12. **Rectification**
- 12.1 If an Outstanding Issues Notice is issued where:
- 12.1.1 the Contractor fails to submit a revised Improvement Plan in accordance with **paragraph 11.5.2 (Improvement Notices and Improvement Plan)** or the revised Improvement Plan is in the Authority's reasonable opinion unacceptable;
- 12.1.2 Improvement Actions are carried out and completed but do not succeed in remedying the Reduced Performance identified in the Improvement Notice or in



preventing its re-occurrence as described in **paragraph 11.9 (Improvement Notices and Improvement Plan)**; or

12.1.3 the Improvement Actions in an Improvement Plan are not completed by the date specified or to the Authority's satisfaction in accordance with **paragraph 11.12 (Improvement Notices and Improvement Plan)**,

and any of the Outstanding Issues are not resolved pursuant to **paragraph 13 (Consultation)**, the Authority may at its sole discretion:

12.1.4 agree an extension to the Improvement Plan;

12.1.5 agree a revised Improvement Plan; or

12.1.6 issue a Rectification Notice in respect of such Outstanding Issues.

12.2 The Authority may also issue a Rectification Notice in respect of Contractor Default pursuant to **paragraphs 11.1.2 (Improvement Notices and Improvement Plan), 11.9.3 (Improvement Notices and Improvement Plan) or 11.12.2 (Improvement Notices and Improvement Plan)**.

12.3 Following receipt of a Rectification Notice, the Contractor shall within fourteen (14) Days of the date of its issue (or such other time as may be agreed by the Parties in writing) provide a plan (a '**Rectification Plan**') which shall set out the Contractor's proposals for carrying out the actions necessary to ensure that the Reduced Performance or Contractor Default as identified in the Rectification Notice or the Outstanding Issues as identified in the Outstanding Issues Notice (as applicable) are rectified and do not re-occur ('**Rectification Actions**') and a programme for undertaking the Rectification Actions and the date by which they will be completed.

12.4 On receipt of a Rectification Plan the Authority may:

12.4.1 agree it; or

12.4.2 reject it and require the Contractor to submit a revised Rectification Plan within seven (7) Days of such rejection (or such other time as may be agreed by the Parties in writing).

12.5 If:



- 12.5.1 the Contractor fails to submit a revised Rectification Plan in accordance with **paragraph 12.4.2 (Rectification)**;
- 12.5.2 the revised Rectification Plan is in the Authority's reasonable opinion unacceptable; or
- 12.5.3 within twenty-eight (28) Days of a Rectification Plan (or a revised Rectification Plan) being agreed the Contractor fails to carry out and complete the Rectification Actions in accordance with the Rectification Plan programme, or in the Authority's reasonable opinion fails to make substantial progress with the Rectification Actions, or where the Rectification Actions are carried out and completed but do not succeed in remedying the Reduced Performance identified in the Outstanding Issues Notice or in preventing its re-occurrence,
- the Authority may in its sole discretion:
- (a) agree an extension to the time for carrying out and completing the Rectification Plan; or
  - (b) agree a revised Rectification Plan; or
  - (c) issue a Termination Notice on the ground of **paragraph (k) (failure to rectify)** of the definition of Contractor Default in accordance with **clause 44.2 (Termination on Contractor Default)**.

### 13. Consultation

#### 13.1 Where either:

- 13.1.1 the Monthly Performance Report is not agreed pursuant to **paragraph 7.4 (Monthly Performance Reporting)**; or
- 13.1.2 the Contractor fails to submit a revised Improvement Plan in accordance with **paragraph 11.5.2 (Improvement Notices and Improvement Plan)** or the revised Improvement Plan is in the Authority's reasonable opinion unacceptable; or
- 13.1.3 Improvement Actions are carried out and completed but do not succeed in remedying the Reduced Performance identified in the Improvement Notice or in



preventing its re-occurrence as described in **paragraph 11.9 (Improvement Notices and Improvement Plan)**; or

- 13.1.4 the Improvement Actions in an Improvement Plan are not completed by the date specified or to the Authority's satisfaction in accordance with **paragraph 11.12 (Improvement Notices and Improvement Plan)**,

the Authority may pursuant to **paragraph 7.4.2 (Monthly Performance Reporting)**, **paragraph 11.6 (Improvement Notices and Improvement Plan)**, **paragraph 11.9 (Improvement Notices and Improvement Plan)** or **paragraph 11.12 (Improvement Notices and Improvement Plan)** (as the case may be) issue a notice (an "**Outstanding Issues Notice**") to the Contractor identifying any issues relating to the Monthly Performance Report requiring agreement, any circumstances that apply under **paragraph 11.6 (Improvement Notices and Improvement Plan)** (including, where relevant, the aspects in which the revised Improvement Plan is unacceptable), any circumstances that apply under **paragraph 11.9 (Improvement Notices and Improvement Plan)** or any uncompleted Improvement Actions (any of which shall constitute "**Outstanding Issues**") and the Parties shall in good faith attempt to resolve such Outstanding Issues.

- 13.2 If the Parties fail to reach agreement in resolving the Outstanding Issues within fourteen (14) Days of the date of the Outstanding Issues Notice (or such other time as may be agreed by the Parties in writing), the Contractor shall within two (2) Days of the expiry of the fourteen (14) Day period, issue a notice (a "**Consultation Notice**") to the Consultation Nominees to which a copy of the Outstanding Issues Notice shall be annexed, and shall at the same time provide the Authority with a copy of the Consultation Notice. If the Contractor fails to do so within the specified time, the Authority may issue a Consultation Notice containing the required information, providing a copy to the Contractor.
- 13.3 Within seven (7) Days of the date of issue of the Consultation Notice (or such other time as may be agreed by the Parties in writing), each Party may produce a concise and unambiguous statement (no more than 4 A4 sheets) of any matters it considers relevant to the Outstanding Issues, which shall be considered by the Consultation Nominees.



- 13.4 Within fourteen (14) Days of the date of the Consultation Notice, the Consultation Nominees shall meet and attempt in good faith to resolve the Outstanding Issues.
- 13.5 Where the Consultation Nominees are able to resolve the Outstanding Issues or any part of them, they shall produce a statement of such resolution and any agreed actions, and the Parties shall carry out and complete such actions.
- 13.6 Where and to the extent that the Consultation Nominees are unable to resolve the Outstanding Issues or any part of them within twenty-eight (28) Days of the date of the Consultation Notice for any reason, **paragraphs 7.5 (Monthly Performance Reporting)** and/or **12.1 (Rectification)** (as relevant) shall apply.

**Appendix 1 - Contract Management Information Requirements**

<b>Plan or report</b>	<b>Frequency</b>	<b>Date required</b>
Business Continuity & Disaster Recovery Plan	Once	Within three (3) Months of Services Commencement Date
Built Environment and M&E Assets Condition Verification Report	Annually	Report to be issued no later than thirty (30) Days prior to Services Commencement Date
Asset Forward Maintenance Plan, Asset Forward Replacement Plan and Equipment Refresh Plan	Annually	On or before the date which is three (3) Months after the Services Commencement Date and on or before 1 April in each subsequent Contract Year
Equipment Register	Every six (6) months	Thirty (30) Days before Services Commencement Date, then not less than once every six (6) Months
Facilities management Monthly status report provided in accordance with <b>clause 8.9.1.5 (Site Facilities Manager)</b>	Monthly	As required
Initial Custodial Services Delivery Plan	Once	One (1) Month following Commencement Date
Annual Custodial Services Delivery Plan (including all of the Operating Procedures, the staff handbook, the public relations procedures, the Contractor's key priorities, the Annual Purposeful Activities Plan, the Annual Interventions Plan, the Annual Interventions Costs, the Annual ROTL Delivery Plan, the minimum number of Work Places, the Annual Resourcing Plan, the Sustainability Plan and the then current Exit Plan)	Annually	On or before the date which is three (3) Months after the Services Commencement Date and on or before 1 April in each subsequent Contract Year

Equality and diversity compliance report provided in accordance with <b>clause 29.9.2 (Equality and Diversity Reports)</b>	Annually	Twelve (12) Months after the Commencement Date of the Contract and on each twelve (12) Month anniversary of such date
Completed Equality Analysis provided in accordance with <b>clause 29.9.3 (Equality and Diversity Reports)</b> and PSI 20/2016 (Implementation of Equality Analysis)	As required	As required
Annual Resourcing Plan Profile Report	Monthly	No later than one (1) Business Day before the Controller/Director Meeting scheduled for the Month after the end of each Month to which the report relates
Contractor's Staff Information	As required	At least three (3) Months prior to the Services Commencement Date and then within five (5) Business Days of any change to the identity of the individuals in these roles
Apprentices employed report provided in accordance with <b>clause 36.16.1 (Apprenticeships and Skills)</b>	As required	As required
Contract Review Meeting Director's Report (including, but not limited to Health and Safety and Fire Report, exception report on the ACSDP, audit report, exception report on any audit, exception report against any action plans arising from the Controller/Director Meeting, equality and diversity report in accordance with <b>clause 29.9.1 (Equality and Diversity Reports)</b> )	Monthly (becoming Quarterly)	At least ten (10) Business Days prior to any Contract Review Meeting

Copies of all substantiated complaints	Monthly	No later than one (1) Business Day prior to any Controller/Director meeting
Security Report	Monthly	No later than one (1) Business Day prior to any Controller/Director meeting
Action plans arising from self audit and from any audit by an Audit Agent or the Authority including measuring quality of prison life survey and any other external HMPPS audit or recognised stakeholder audit, including Care Quality Commission and Ofsted, actions of which the Contractor is required to address	Monthly/as available, for each Contract Review Meeting	As required
Self-audit programme	Annually	Not more than three (3) Months from the Service Commencement Date
Self-audit programme progress report	Monthly	No later than one (1) Business Day before the Controller/Director Meeting scheduled for the Month after the end of each Month to which the report relates
Stability Audit Return	Weekly	No later than two (2) Business Days after the end of each week. Report will be required immediately, if risk to stability increases to medium or high level.
Cell Certification Schedule and Cell Certificate Schedule Summary Sheet	As required	On or before the Services Commencement Date and then as and when required to enable any proposed changes to be authorised prior to any changes being made and to ensure that cell certificates are kept up to date.
Operational Briefing Sheet	On each Day during the Custodial Service Period	On each Day during the Custodial Service Period
Daily Report	By nine (9) a.m.	On each Day during the Custodial Service Period

	on each Day during the Custodial Service Period/monthly summary	
Statutory Certificates	As required	Prior to Services Commencement Date, then as and when required
Report on items referred to in <b>clause 64.3.2 (Maintenance of Records)</b>	As required	As and when required
Health and safety report provided in accordance with <b>paragraph 6.9.2 (Consultation and Communication) of Schedule 11 (Property and Facilities Management)</b>	Monthly	Within fifteen (15) Business Days after the end of the relevant Month
Safer Custody Report	Monthly	No later than one (1) Business Day before the Controller/Director Meeting scheduled for the Month after the end of each Month to which the report relates
HMPPS Performance Hub report provided in accordance with <b>paragraph 12.9 of Schedule 2 (Digital)</b>	Monthly	No later than ten (10) Business Days after the end of the relevant Month
Monthly Performance Report (PPT Measures and	Monthly	No later than ten (10) Business Days after the end of the relevant Month



CDIs)		
Monthly waste report to be generated against <b>Appendix 1 (Waste Data Collection Template) of Schedule 12 (Sustainability)</b>	Monthly	Within fifteen (15) Business Days after the end of the relevant Month
Key plant and equipment audit report	Annually	As required
Monthly Usage Report	Monthly	Within fifteen (15) Business Days after the end of the relevant Month
Green Government Commitments and FReM report	Monthly/quarterly, as agreed	From the Services Commencement Date
Perambulation report provided in accordance with <b>paragraph 4.7.4 (Groundworks) of Schedule 11 (Property and Facilities Management)</b>	Twice annually	As required
Re-competition Data	Annually	Within thirty (30) Days of the end of each Contract Year
Ad hoc datasets – for example staffing data or other datasets requested by the Authority	On request	As required

**Appendix 2 - Contract Delivery Indicators**

The Contract Delivery Indicators are set out overleaf.

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