



Ministry of  
**JUSTICE**

OFFICIAL SENSITIVE

Contract for the Provision of Learning and Skills at HMP Berwyn

## **SCHEDULE 13 – KEY PERFORMANCE INDICATORS**



## Contract for the Provision of Learning and Skills at HMP Berwyn

### 1. PERFORMANCE INDICATORS

- 1.1. The Key Performance Indicators that the Contractor shall meet (at a minimum) in providing the Services are set out in Annex A of this Schedule 13. Each Key Performance Indicator shall apply from the Services Commencement Date and shall be used to measure the performance of the Services by the Contractor.
- 1.2. If the level of performance of the Contractor during a Quarter is equal to or above the Target Performance Level in respect of a Key Performance Indicator it shall be deemed achieved for that Quarter and a Quarterly Performance Payment shall be payable in accordance with the provisions of Schedule 2 (Payment Mechanism).
- 1.3. If the level of performance of the Contractor during a Quarter is below the Target Performance Level in respect of a Key Performance Indicator it shall be deemed a fail for that Quarter and the Quarterly Performance Payment shall be reduced in accordance with the provisions of Schedule 2 (Payment Mechanism).
- 1.4. The Authority shall undertake a rolling review of the Key Performance Indicators based on a 2-year time period. Any revised KPI measures and/or Target Performance Levels shall be reviewed by the Authority and the Contractor through the Operational Management Group on a rolling basis each year to apply for the subsequent two years. Any changes will be signed off quarterly at the Contract Review Group meeting (in accordance with Schedule 12 (Governance)).
- 1.5. The Authority is keen to see continuous improvements in service standards and efficiency and this will be reflected in periodic performance reviews which shall be discussed at the Operational Management Group.

### 2. PERFORMANCE REPORTING

- 2.1. The Authority shall measure the Contractor's performance in the delivery of the Services against the Key Performance Indicators in accordance with the KPI Technical Notes.
- 2.2. The Contractor shall maintain a record of all data required to calculate the Key Performance Indicators for each Month.
- 2.3. The Contractor shall report performance of the delivery of the Services against the Key Performance Indicators (Annex A) in monthly performance reports ("**Performance Reports**") within 10 Working Days after the last day of the applicable month.



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- 2.4. Each Performance Report shall state the Contractor's performance against each of the relevant Key Performance Indicators and identify any occurrences of Reduced Performance (as defined in paragraph 3 (Reduced Performance) below) with the Contractor's assessment of the reasons for such occurrences.
- 2.5. The Performance Reports shall be in such format as agreed between the Parties from time to time and contain such information as the Authority reasonably requests from time to time.
- 2.6. In light of the Contractor's assessment of performance as stated in the relevant Performance Report, or following the Authority's own assessment in accordance with paragraph 2.1, the provisions of paragraph 5 (Improvement Notices and Improvement Plan) shall apply (as relevant) on the basis of such assessment.
- 2.7. Where the Authority considers it is reasonable, in light of the Contractor's assessment of performance against any of the Key Performance Indicators or of the occurrence of Reduced Performance as stated in the relevant Performance Report it may issue an Outstanding Issues Notice in accordance with paragraph 7.1 (Consultation) and the provisions of paragraph 7 (Consultation) shall apply.
- 2.8. If and to the extent that any Outstanding Issues are not resolved in accordance with paragraph 7, the Authority shall notify the Contractor of its final assessment of such performance, and the provisions of paragraph 5 (Improvement Notices and Improvement Plan) shall apply (as relevant) on the basis of such assessment.
- 2.9. The Contractor shall provide a report on delivery of the Specification to the monthly Operational Management Group. The Contractor and Authority representatives shall discuss the Contractor's performance, any relevant Performance Report, open Improvement Plans (as defined in 5.4 (Improvement Notice and Improvement Plan) below) and any problems or issues requiring decision or escalation. The Authority and Contractor shall agree and formally record the necessary actions arising from such meetings.
- 2.10. The Contractor shall also report on performance to the quarterly Contract Review Group including the last quarter and a forward look to the next quarter. The report shall also include any issues which need resolution in order to enable service delivery and service improvement.
- 2.11. The Authority may, following discussions with the Contractor, provide notice to the Contractor to add to, delete or amend any of the Key Performance Indicators. The Authority's final decision in relation to any such additions, deletions or amendments shall be binding on the Contractor.



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- 2.12. The Authority shall, from time to time, validate the data supplied by the Contractor in accordance with this paragraph 2.

### 3. **REDUCED PERFORMANCE**

- 3.1. If the Authority considers (acting reasonably) that there is a Major Performance Shortfall, as more particularly described in paragraph 7.3 of Schedule 2, the Authority may issue an Improvement Notice in accordance with paragraph 5 (Improvement Notices and Improvement Plan).

### 4. **QUARTERLY PERFORMANCE PAYMENT**

- 4.1. Quarterly Performance Payments shall be calculated in accordance with paragraphs 7 and 8 of Schedule 2 (Payment Mechanism).

### 5. **IMPROVEMENT NOTICES AND IMPROVEMENT PLAN**

- 5.1. In the event of Reduced Performance the Authority may issue a notice (an **"Improvement Notice"**) bringing this to the attention of the Contractor.
- 5.2. The Authority may issue an Improvement Notice concerning any aspect of the provision of the Services whether or not there are related Key Performance Indicators.
- 5.3. An Improvement Notice shall state:
- (a) any area(s) of Reduced Performance or the nature of the occurrence of the Defaults; and
  - (b) any supporting information which the Authority considers to be relevant.
- 5.4. Within 20 Working Days of the date of issue of an Improvement Notice the Contractor shall deliver to the Authority a plan (**"Improvement Plan"**) in respect of the relevant failures stated in the Improvement Notice, which shall:
- (a) provide an explanation of the causes of the Reduced Performance
  - (b) identify the actions (the **"Improvement Actions"**) needed to remedy the Reduced Performance identified in the Improvement Notice and prevent its re-occurrence;
  - (c) set out:
    - (i) the Contractor's proposals for carrying out the Improvement Actions;



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- (ii) a programme for undertaking such actions; and
    - (iii) the date by which such actions will be completed;
  - (d) identify any actions or consents required from the Authority to facilitate the Contractor's remedial actions (where these activities do not form part of the Contractor's obligations under this Contract);
  - (e) not increase cost or risk to the Authority; and
  - (f) propose criteria for the purpose of auditing completion of the remedial actions and resolution of the poor performance (to include an appropriate period of time to monitor the stability of the resolution).
- 5.5. Following receipt of an Improvement Plan, the Authority may (acting reasonably):
- (a) agree it; or
  - (b) reject it and require the Contractor to submit a revised Improvement Plan within 5 Working Days of such rejection (or such other time as may be agreed by the Parties in writing).
- 5.6. Where the Contractor fails to submit an Improvement Plan in accordance with paragraph 5.4 and/or fails to submit a revised Improvement Plan in accordance with paragraph 5.5(b) (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 7.1 (Consultation) and the provisions of paragraph 7 (Consultation) shall apply.
- 5.7. The Contractor shall implement all the Improvement Actions by the date specified in the Improvement Plan at no cost to the Authority.
- 5.8. An Improvement Plan shall remain open until the Improvement Actions identified therein have been completed in accordance with the agreed Improvement Plan to the Authority's satisfaction, whereupon it shall be closed.
- 5.9. 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 or 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 issue an Outstanding Issues Notice in accordance with



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paragraph 7.1 (Consultation), in which case the provisions of paragraph 7 (Consultation) shall apply.

- 5.10. 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.
- 5.11. A report on progress against each open Improvement Plan shall be provided at each meeting of the Operational Management Group and the Contract Review Group described in Schedule 12 (Governance).
- 5.12. The Authority may request a meeting with the Contractor to discuss progress against any open Improvement Plan by giving not less than 2 Working Days' notice to the Contractor.

## 6. RECTIFICATION

- 6.1. If an Outstanding Issues Notice (as defined in paragraph 7 (Consultation)) is issued where:

- (a) The Contractor fails to submit a revised Improvement Plan in accordance with paragraph 5.5(b) (Improvement Notices and Improvement Plan) or the revised Improvement Plan is in the Authority's reasonable opinion unacceptable; or
- (b) 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 5.9 (Improvement Notices and Improvement Plan); or
- (c) the Improvement Actions are not completed by the date specified or to the Authority's satisfaction in accordance with paragraph 5.11 (Improvement Notices and Improvement Plan),

and any of the Outstanding Issues are not resolved pursuant to paragraph 7 (Consultation), the Authority may at its sole discretion:

- (d) agree an extension to the Improvement Plan;
- (e) agree a revised Improvement Plan; or
- (f) issue a notice (a "**Rectification Notice**") in respect of such Outstanding Issues.



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- 6.2. Following receipt of a Rectification Notice, the Contractor shall within 10 Working 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 Outstanding Issues identified in the Outstanding Issues Notice 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.
- 6.3. On receipt of a Rectification Plan the Authority may:
- (a) agree it; or
  - (b) reject it and require the Contractor to submit a revised Rectification Plan within 5 Working Days of such rejection (or such other time as may be agreed by the Parties in writing).
- 6.4. If:
- (a) the Contractor fails to submit a Rectification Plan in accordance with paragraph 6.2 or fails to submit a revised Rectification Plan in accordance with paragraph 6.3(b) (Rectification); or
  - (b) the revised Rectification Plan is in the Authority’s reasonable opinion unacceptable; or
  - (c) within 20 Working 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, the Authority may in its sole discretion:
    - (i) agree an extension to the time for carrying out and completing the Rectification Plan;
    - (ii) agree a revised Rectification Plan; or
    - (iii) determine the Contractor’s Default to be a Material Breach, and apply the remedies available under clause H2 (Default).

## 7. CONSULTATION

- 7.1. Where either:





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- (a) the Contractor fails to submit an Improvement Plan in accordance with paragraph 5.4 and/or fails to submit revised Improvement Plan in accordance with paragraph 5.5(b) (Improvement Notices and Improvement Plan) or the revised Improvement Plan is in the Authority's reasonable opinion unacceptable; or
- (b) 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 5.9 (Improvement Notices and Improvement Plan); or
- (c) the Improvement Actions in an Improvement Plan are not completed by the date specified or to the Authority's satisfaction in accordance with paragraph 5.9 (Improvement Notices and Improvement Plan),

the Authority shall issue a notice (an "**Outstanding Issues Notice**") to the Contractor identifying the relevant issues (any of which shall constitute "**Outstanding Issues**") and the Parties shall in good faith attempt to resolve such Outstanding Issues.

- 7.2. If the Parties fail to reach agreement in resolving the Outstanding Issues within 10 Working 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 2 Working Days of the expiry of the 10 Working Day period, issue a notice (a "**Consultation Notice**") to the individuals nominated and authorised by each Party to act on its behalf to resolve Outstanding Issues (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.
- 7.3. Within 5 Working 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.
- 7.4. Within 10 Working Days of the date of the Consultation Notice, the Consultation Nominees shall meet and attempt in good faith to resolve the Outstanding Issues.
- 7.5. 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.





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- 7.6. Where and to the extent that the Consultation Nominees are unable to resolve the Outstanding Issues or any part of them within 20 Working Days of the date of the Consultation Notice for any reason, paragraphs 2.8 (Performance Reporting) and/or 6.1 (Rectification) (as relevant) shall apply.

### 8. **PERFORMANCE RECORDS**

- 8.1. The Contractor shall keep appropriate documents and records in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Contractor shall maintain accurate records of call histories for a minimum of 12 Months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Contractor shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.
- 8.2. In addition to the requirement in paragraph 8.1 to maintain appropriate documents and records, the Contractor shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Contractor both before and after the Service Commencement Date and the calculations of the amount of Quarterly Performance Payments for any specified period.
- 8.3. The Contractor shall ensure that the Performance Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

### 9. **PERFORMANCE VERIFICATION**

- 9.1. The Authority reserves the right to verify the Services and the Contractor's performance under this Agreement against the Key Performance Indicators