



HM Prison &  
Probation Service

# Prison Operator Competition Contract Summary

Prison Estate Transformation Programme

November 2018





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# Statement of Purpose

The PETP Operator Framework Competition Contract Summary describes the key requirements and policy intentions in the contractual documentation for the PETP Prison Operator Competition. It covers the Framework Agreement, Main Terms and Conditions and all associated Schedules.

Due to the nature of the competition, there will be two sets of contractual documentation, the first is the Framework Agreement, which contains the model call off terms and schedules, issued as part of the framework competition. The second set is the call-off contract for the first mini competition which comprises the main terms and schedules which have been updated to reflect the specific requirements for the first call off at Wellingborough, for example the Mobilisation schedule includes requirements associated with the sectional completion of the new prison.

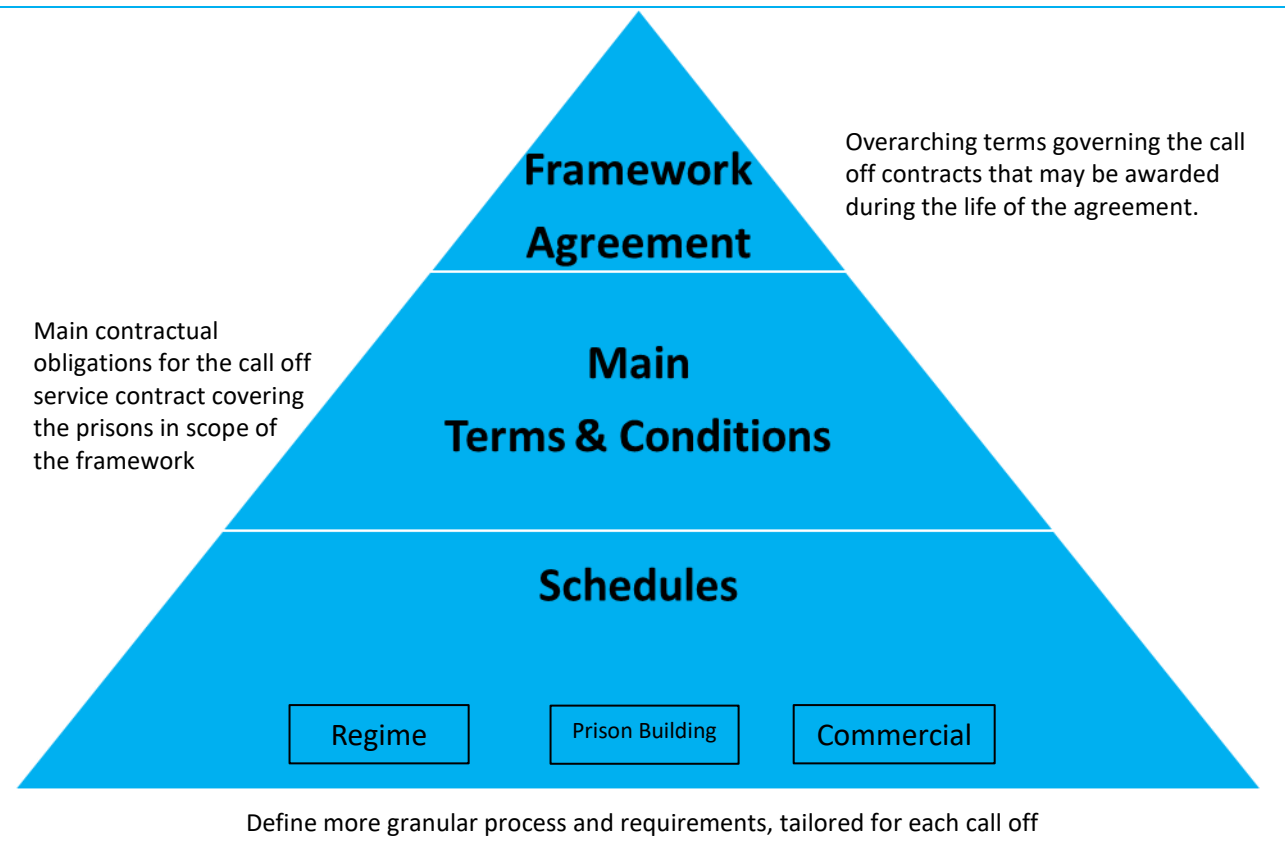
The Contract Summary is one of three key documents developed to underpin the Prison Operator Competition which should be read in conjunction. The others are:

- **Prison Operator Competition Services Brochure:** Provides a strategic overview of the competition, what we are seeking to achieve, how the competition will work, the support we will provide and further detail on the first call off at Wellingborough in respect of prison design, population, regime, key stakeholders and the wider context in which the prison will operate.
- **Prison Operator Competition: Model for Operational Delivery (MOD) for the New Resettlement Prison.** Sets out how the new prison could be operated, and was used to develop the HMPPS public sector comparator. The MOD provides more detailed information on the cohort strategy, prison design, population, needs analysis and an exemplar regime that would meet that need.

Together these documents explain the approach to the Prison Operator Competition and first call off and will support the delivery of an effective competition by ensuring bidders develop high quality value for money bids based on a sound understanding of what we require.

## Section 1: Framework Agreement

This document will set out the high level terms that operators will need to sign up to under the Framework Agreement. It sets out governance arrangements for the the subsequent call offs (also referred to as mini-competitions), the circumstances in which the call off contract may be varied and how we will manage the Framework Agreement and meetings with Framework Operators. The Framework Agreement will last for a maximum of 6 years. It will be used for the operation of Wellingborough, Glen Parva, and if decisions are taken to re-compete expiring contracts will be used for Parc, Altcourse, Lowdham Grange, Ashfield, Forest Bank and Rye Hill. There is the ability to add further prisons to the Framework Agreement as well as the right to terminate the framework after 4 years. The document also sets out the conditions that could trigger removal from the Framework Agreement or exclusion from a call off. The relationship between the Framework Agreement and the other contractual documentation is outlined in the visual below.



## Section 2: Call-off Terms and Conditions

This document builds on the Framework Agreement and details the overarching provisions which form the main service agreement for each call off. It includes clauses covering warranties, mobilisation, maintenance, custodial service, ICT, payment, relief, step-in and access and termination rights. The contract length for the first call off will be ten years with a 5 year break clause (and potential to re benchmark the services) as well as the potential to extend the contract for up to two years.

Many of the areas and clauses are also the subject of specific schedules which define more granular process and requirements, which are able to be tailored for each call off. Most of the clauses in the main terms are similar or the same to those contained in our existing prison operator contracts. Some content has been removed from the terms and conditions to the applicable schedule as they are too detailed to be part of the terms and conditions and better suited to a schedule. This is particularly relevant to mobilisation and maintenance provisions. Alongside this, the terms and conditions include change in law and termination provisions aligned with the wider cross government position, and detail on what is required (and when) as part of the Annual Custodial Service Delivery Plan (including for example, a purposeful activity plan).

## Section 3: Regime

This section contains the schedules which together form the basis of our requirements for custodial service delivery - whether it is provided directly by the prison operator or by other service providers. It also includes schedules for mobilisation and the contractor delivery proposals as well as schedules linked to the day to day operation of the prison such as the provision of Daily Reports.

### **Schedule 1 Part 1: Custodial Services**

This schedule sets out the general obligations in providing custodial services in accordance with the Prison Rules to provide the minimum standards and a regime that is safe, decent, secure and rehabilitative. The schedule also details the monitoring, reporting audit and governance arrangements that an operator must comply with.

It also includes (as an appendix) the Competition Operator Requirements (COR) for delivery of custodial services in any prison type which all bidders will be required to comply with. The COR appendix is an interactive tool aligned to the evaluation response requirements for the framework and Wellingborough call off and will enable operators to distinguish between:

- Core Custodial Requirements – which apply to all prisons regardless of whether it is a Reception, Training or Resettlement Prison. These are based on the existing custodial specifications that were used in the previous prison competition. They cover the delivery of security, safety and decency – that would need to be delivered in any prison type.
- Functional Prison Requirements - that are specific to a prison function and are also drawn from the existing custodial specifications. These will not be used to evaluate the framework element of the competition but the requirements relevant to the function(s) of prison being competed will be used as requirements and the evaluation for each of the call offs.
- New Resettlement Prison Requirements – have been developed to set out what we require from the new Resettlement Prison based on the regime we envisage (and which is not possible in the current resettlement estate). They will be used for the first call off.
- Cross cutting thematic areas (i.e. security) that group all the requirements relating to each theme regardless of which specification they are contained in. The intention is to enable potential operators to understand the interconnected nature of the requirements and use these thematic areas (and requirements within) to underpin the evaluation at the framework level.

This schedule is also linked to the Authority Policies schedule which sets out the wider rules and policies that govern prisons.

## Schedule 1 Part 2: Education

This is a new schedule which reflects the changing landscape (funding, responsibility and procurement) for education provision since the previous prison competition, and makes clear its importance to the overall regime in any prison.

Previously, education provision was the responsibility of, and funded by, the Business, Innovation and Skills Department. Education is now funded by HMPPS and in this competition prison operators will have the ability to use the new Prison Education Framework (PEF) or procure their own provision, if they can demonstrate equal or better quality and value for money.

This schedule sets out the requirements for delivering education and library services in prisons – regardless of how it is sourced – including the delivery of the mandatory service delivery requirements in the PEF to ensure consistency of provision and opportunities across the prison estate as well as continuity of service for prisoners throughout their sentence. It also sets out the need for a teacher quality management plan, and delivery against the plan will form part of contract delivery indicators in the performance mechanism.

The education schedule should be read in conjunction with the Authority 3<sup>rd</sup> Party schedule (schedule 3) in respect of the requirements for using the PEF or making alternative arrangements.

## Schedule 1 Part 3: Industries

This schedule sets out the general requirements in delivering industries and prisoner work in a prison to ensure it achieves the right outcomes and is undertaken safely with the appropriate training of, and payment to, prisoners.

Industries and prisoner work plays an important part of any regime. While the ambition remains to increase the number of hours of worked by prisoners, it will be for bidders to decide how much, considering the needs of the cohort and type of prison and the totality of the regime, including other types of purposeful activity such as education.

Alongside this, the schedule sets out the ambition to increase the number of employment places directly relevant to local employment opportunities on release and for work in prison to support the delivery of goods and services in either the internal prison market or a prison operator's own market.



#### Schedule 1 Part 4: Interventions

This schedule sets out the requirements for delivering interventions and enables the Authority to agree and pay for interventions (such as offender behaviour programmes) in a prison based on the needs of the cohort over the lifetime of the contract (as needs and cohorts change).

It does this by requiring an operator in any prison type to produce and cost an Annual Interventions Plan (to be agreed by the Authority) based on a needs analysis and ensure that the cost does not include any costs related to the delivery of the core custodial service.

Although in the new Resettlement Prisons we do not anticipate delivery of longer, accredited offender behaviour programmes, (as these will in future be delivered in the training estate or in the community) it is likely that shorter programmes could still be delivered that meet the needs of the cohort.

#### Schedule 1 Part 5: Healthcare

This schedule sets out the requirements of the prison operator to work collaboratively with the healthcare provider to facilitate the efficient and timely delivery of healthcare provision.

This schedule has been developed in collaboration with NHS England and Public Health England to reflect the new commissioning arrangements and requirements, including the National Partnership Agreement (NPA).

The schedule outlines the responsibility of NHS England to commission a service which is equivalent to that which is available in the community and for the prison operator to provide the appropriate means and environment to enable NHS England to deliver the service. The prison operator will be required to sign a local partnership agreement with the healthcare provider (based on the NPA) to set out how they will collaborate to deliver the service and ensure the safety of healthcare staff.

The schedule also sets out the responsibilities of both parties for maintenance of the healthcare area and is clearer than previous competitions on the prison operator's responsibility to provide access to healthcare contractors to maintain the equipment they are responsible for.

The schedule requires the prison operator to contribute data and other prison information to the healthcare procurement process including contract award (although the final decision will sit with the health commissioner).

## Schedule 1 Part 6: Social Care

This is a new schedule that reflect the changes in social care arrangements for those in custody which now fall under the remit of the Local Authority following the introduction of the 2014 Care Act.

In previous competitions, health and social care requirements were brought together in one schedule as at the time Health and Social care was the responsibility of one body. Given the change in responsibility, we have, in consultation with Health, and Social Care Commissioners, developed a new schedule that separates out the requirements.

The new schedule has also been influenced by reviews into current social care delivery in prisons and joint working between local authorities and prison operators as well as an attempt to mitigate a reported lack of understanding about the responsibilities under the new legislation.

While the content and requirements are similar to the healthcare schedule (e.g. providing access to and security for, social care providers), there are differences, in part reflecting that social care does not fall under the NPA and a separate agreement locally is required to develop a memorandum of understanding for the local delivery arrangements. Further, there is an eligibility criterion for social care that determines the level of support provided by the Local Authority. If this is not met the social care needs are the responsibility of the prison operator.

An additional requirement is for the prison operator to nominate a lead for adult social care who is responsible for liaising with the Local Authority and social care providers. As with healthcare, the schedule requires the prison operator to contribute to the health/social care procurement process including contract award (although the final decision will sit with the social care commissioner).

## Schedule 2: Digital

This schedule sets out the Information Communications and Technological requirements and reflects the fact that the digital landscape has changed considerably since the previous prison competition.

While the aim to ensure the prison operates as part of the overall prison service and network remains, the way this can be done is different. The prison operator has greater flexibility in what systems they adopt, how they access information and how data is exchanged with the Authority. The schedule thus reflects the opportunities and requirements in the current and future landscape covering infrastructure, networks, end-user-compute and IA/security including cyber security.

Digital is an integral enabler of the regime, particularly in a new Resettlement Prison which is why the is contained in the 'regime' section of the contract. It is expected that

specific details relating to how digital solutions are used for the delivery of the service will be reflected in bidders' proposals.

### Schedule 3: Authority Third Party Contracts

This schedule sets out the requirements for how the prison operator can access and use Authority provided contracts or the requirements they need to adhere to if they source their own. These include:

Mandated Authority 3<sup>rd</sup> Party Contract(s) (where the prison operator is mandated to use the Authority contract)

- Retail

Optional 3<sup>rd</sup> Party Contract (where the operator will be able (and expected to) access the Authority contract unless they can demonstrate achieving equivalent or better value for money by sourcing their own provision which will be evaluated at each call off).

- Education
- Food
- Utilities (although for Wellingborough this is a mandated contract for the first contract year following Service Commencement).
- Uniform

Contracts which the operator must source themselves, but adhere to specific requirements

- Control and Restraint (C&R)
- Mattresses (inc. pillows)
- Prison TETRA Radio

The Schedule sets out the general requirements governing access and use of the Authority 3<sup>rd</sup> Party contracts such as payment, dispute and facilitating the 3<sup>rd</sup> party contractor to deliver the service/goods. It also specifies requirements unique to each contract such as ordering and deliveries where applicable. The schedule also sets out the requirements if sourcing an alternative 3<sup>rd</sup> party supplier for the optional contracts.

## Schedule 4: Authority Policies

This schedule sets out the different rules, regulations and guidelines that apply to prison operators and how these can change over the lifetime of contract and reflects the changing policy landscape following the introduction of the Deregulation agenda.

Custodial Service Specifications (CSS), Prison Service Instructions (PSIs) and Prison Service Orders (PSOs) will be cancelled and replaced by the Policy Frameworks over time. These aim to be less prescriptive and mandate only the minimum necessary for a safe, decent and lawful system.

As these changes will occur during and after competition, the Authority will use the following method to reflect and communicate these changes to bidders.

- A list of all PSI/PSO cancelled and a list of all published Policy Frameworks will be provided in the data room.
- This will be updated regularly throughout the competition and any changes to the schedules or Competition Operator Requirements as a result of cancelled or new policies will be communicated to bidders.
- Following conclusion of the Framework element of the competition, successful bidders will have access to the HMPPS intranet where they will be notified of any cancelled policies and introduction of new Policy Frameworks.
- The COR tool will be updated to reflect any changes and recirculated to the operator prior to any call-off competition and the same process as outlined above will be followed during any subsequent call offs.

## Schedule 5: Mobilisation

This schedule sets out the detailed requirements governing how the prison operator will be expected to mobilise the prison from contract award to full operation, consolidating the majority of requirements relating to mobilisation into one place.

The schedule sets out, where applicable, the requirements for existing and new prisons (the former having the more traditional Mobilisation, Transition and Transformation (MTT), with the latter having preparation for service and ramp up stages).

This includes governance arrangements – with a checkpoint meeting (led by PETP) put in place to manage all mobilisation activity supported by a separate stability meeting that will inform decisions on the ramp up of prisoner places in new prisons. We will set out clear principles for ramp up, against which progress will be monitored and overseen at the stability meetings.

The schedule includes as an appendix, the Prison Operator Competition Mobilisation Strategy which provides more detail on the governance, expectations and support we

during service preparation and ramp up including through an Authority Package of Support.

Alongside the Mobilisation Strategy, we have developed a Mobilisation Assurance Plan, which bidders will be asked to use to develop their overarching mobilisation approach at each call off and which the successful bidder will be expected to develop further and be held to account to post contract award.

The Wellingborough mobilisation schedule also contains provisions for handling the sectional completion of the prison with our Construction partner, Kier and we expect the successful bidder to work closely and collaboratively with Kier and the Authority to ensure a smooth transition.

### **Schedule 6: Contractor Key Personnel**

This schedule sets out the named roles and individuals that the prison operator is required to have in place following contract award and seek consent from the Authority if there are any changes over the lifetime of the contract. These relate to requirements in the main terms and conditions (e.g. appointment of the Prison Director) or schedules (e.g. sustainability officer) and include new roles for a named person responsible for managing Offender Management in Custody as well as roles for managing information and data locally.

### **Schedule 7: Contractor proposals**

This schedule is populated following the call off competition and is used to set out the content of how the successful bidder's solution will be provided to meet the Authority's requirements and which the successful bidder will be held to account to. The schedule also outlines the Authority's obligations under the Contractor's Proposals.

### **Schedule 8: Daily Report**

This schedule is used to assess and record the daily availability of prisoner places including instances where prisoners are doubled up and under what circumstances. It is provided to the prison controller by the prison operator and used to determine the payment. The main terms and conditions of the call off contract include an obligation on the Contractor to prepare and provide the Authority with the Daily Report.

## Section 4: Prison Building

This section contains the schedules which bring together all the relevant information about the building, site, equipment within and the requirements for maintaining it over the lifetime of the contract.

### **Schedule 9: Leases**

This schedule sets out the full, standalone lease(s) and conditions of the lease (rights, obligations, local circumstances, liabilities, inherited issues) for the relevant prison in each call off. The schedule includes the Right of Title and site plans for the relevant prison in each call off. It is anticipated that for Wellingborough there will be two leases aligned with the sectional completion of the prison which be developed and granted sequentially and included as part of the final contractual documentation. Further details on this will be provided during the competition

### **Schedule 10: Equipment register**

This schedule is used to document out all the equipment for use in contract and who owns and is responsible for it. It includes two lists, one for the prison operator's equipment and the other for Authority equipment with the aim to provide clarity about who is responsible for replacing what during the life of the contract. The schedule also reflects the requirements contained in the Health and Social Care schedules for the prison operator to keep a list of health and social care assets. It will be completed by the Authority and successful bidder and finalised prior to service commencement.

### **Schedule 11: Property and Facilities Management**

This schedule sets out the requirements on the prison operator to provide a comprehensive maintenance service for the prison and the site throughout the life of the contract, to meet the overarching requirement to return it and the assets within to the same condition that they were received (subject to due fair wear and tear).

The requirements cover reactive maintenance including vandalism, groundworks, asset forward maintenance and replacement, minor and major maintenance as well as any construction works undertaken. Cleaning services, including cleaning undertaken by Prisoners is also covered as are the requirements for maintenance during mobilisation, which for Wellingborough will need to take into account sectional completion. An Appendix sets out the standards for maintaining the prison.

Effective maintenance will be measured as part of the Performance Mechanism and the Payment Mechanism includes a requirement to profile the anticipated maintenance lifecycle costs over the life of the contract. Further details on these can be found in the summaries of schedule 14 and 15.

## Schedule 12: Sustainability

This schedule covers the sustainability requirements that an operator needs to adhere to in running the prison including the detailed reporting and audit provisions to ensure the prison is operated in line with MoJ and wider Government sustainability policies and targets.

The prison operators approach to sustainability should be developed and complement its approach to providing maintenance and the schedule sets out the key areas that need to be factored into the creation of a sustainability plan. This then forms part of the Annual Custodial Service Delivery Plan.

Other key requirements in the sustainability schedule include increasing the proportion of energy from renewable sources, naming a Sustainability Officer (reflected in the key personnel schedule) and outlining key substances that are forbidden (Chlorofluorocarbons (CFCs) and the actions to be taken if these are found to be present at the site or in equipment that needs replacing.

## Schedule 13: Assets and Contract Transfer

This schedule sets out the form of contract to be entered into between the incumbent operator and the new prison operator to transfer the relevant assets and contracts in a timely and efficient manner to the new operator (under the scenario that a new or existing prison changes operator at the end of one contract and the start of another). The form of contract will also be used to transfer relevant assets and contracts from the prison operator to any further prison operator at the end of the contract.

## Section 5: Commercial

This section contains the schedules which together enable the effective commercial management and administration of the contract. It includes the key schedules related to payment, performance and change as well as the more administratively focused schedules that provide the rules in respect of reviewing documentation, listing project documentation, issuing notices and holding the Parent Company Guarantee. This section also includes the schedule for Exit Management and Data Protection.

### **Schedule 14: Payment Mechanism**

This schedule sets out how we will pay the prison operator for delivery of the service.

The payment mechanism is based on the availability of prisoner places, in which availability is subject to compliance to the Authority's minimum requirements, as set out in schedule 1 part 1.

To provide flexibility for changes to prison population trends, there is provision to crowd the prison up to a specified percentage through switching on additional prisoner places. Similarly, the available prisoner places are also able to be reduced. Both measures will function in bands of prisoner places, with band sizes defined to optimise operational flexibility, include sufficient periods of (de)mobilisation, and costs that will be provided to the Contractor.

A new mechanism has been introduced that enables an immediate reduction in the number of available prisoner places where the Authority deems there to be an urgent necessity to do so. This mechanism allows payments and places to be reduced without affecting the element of the payment made to the prison operator for staffing.

Where there are legitimate operational reasons for doing so, for example, if a prisoner is vulnerable, the prison operator will be able to 'double up' prisoners, up to a permitted level of 5%. Any doubling up beyond this level will result in a deduction to the monthly payment to the prison operator.

This schedule also sets out the provision of payments during the mobilisation period. Preparation for Service costs will be reimbursed to the Operator on a cost incurred basis, subject to a retention of 5%, which will be paid to the Contractor when the preparation for service is complete. During the ramp-up period where the Contractor has started to take prisoners, the Authority will pay for prisoner places on an availability basis aligned with the ramp-up timetable.

On maintenance, the Contractor will be required to profile its lifecycle costs over the life of the contract and the Authority will pay these costs according to this profile,



rather than in equal instalments over the ten-year period. Monies will be held in a ring-fenced account, and any surplus funds at contract end will be shared between the Authority and the Contractor.

On utilities, the schedule allows for adjustments to be made (by the Authority to the Contractor or by the Contractor to the Authority) depending on whether utilities unit costs end up being above or below agreed estimates.

Other adjustments in this schedule include quarterly deductions for accrued Performance Points as defined in Schedule 15 Performance Mechanism. Payments from the Contractor to the Authority for escapes, are also set out in this schedule.

### **Schedule 15: Performance Mechanism**

This schedule retains the existing routes for addressing performance issues in existing prison operator contracts, moving from Improvement Notices and Outstanding Issues through to Rectification. The schedule allows for a quicker route to rectification in the event of contractor default.

Contract Delivery Indicators (CDIs) will continue to form a key part of the Performance Mechanism but we are taking a new approach; introducing greater flexibility by having performance measures called sub-domains that feed into an overall domain score. The domains, and the methodology of sub-domains aggregating to a final score, are based on those used in the Prison Performance Tool. Performance on the domain score will affect the performance points accumulated, which in turn could lead to deductions in the aggregate quarterly payment.

The aim is to ensure greater flexibility to amend sub-domains in response to the evolving operational environment over the life of the contract without changing the maximum liability under the domain score. This should lead to a more relevant set of CDIs throughout the life of the contract.

### **Schedule 16: Change Control**

This schedule sets out how we will make changes to the contract which will largely follow the process in our existing prison operator contracts. Changes will follow a set protocol involving the preparation and assessment of estimates with obligations on the Authority and the Contractor to complete stages within specified timescales. The schedule includes provision for a share of savings between the Authority and Contractor arising from Contractor changes. Alongside this, we are reviewing our own internal process to manage change in contracts to ensure that it is about to meet the timeframes set out in the contract.

### **Schedule 17: Review Procedure**

This schedule sets out the requirements and procedure for any item, document or course of action that is required to be reviewed, approved or otherwise processed by the Authority. It is primarily used to process documents such as Annual Custodial Service Delivery Plan and sets out the parameters by which the Authority can reject or make objections to the documents, including but not limited to the documents resulting in impacting adversely other service providers.

### **Schedule 18: TUPE**

This schedule sets out the requirements in respect of the transfer staff at the beginning and end of the prison operator contract (as applicable) and how the provisions in respect of how any associated TUPE cost will be dealt including redundancies that are made by the prison operator, including as a result of the Authority making a change to the service.

Although the first call off at Wellingborough only requires provisions for the end of the contract to transfer staff to another provider (public or private), other prisons in the framework agreement will need provision to transfer staff at the beginning of the new contract.

### **Schedule 19: Required Insurances**

This schedule sets out the type and level of insurances that we require the prison operator to hold during the lifetime of the contract, what should be included in the relevant cover and what is excluded. It also covers insurances required in the event of any works being carried out. The Maximum Deductible Threshold and (for Works) Limit of Liability will be discussed with bidders during the dialogue process in the competition.

### **Schedule 20: Commercially Sensitive Information**

This schedule provides the mechanism for the prison operator to list any information that it holds that it proposes should not be disclosable under the Freedom of Information Act (subject to Authority agreement). The schedule will be populated following once the successful bidder is known and directly informs what is redacted from the published contract.

### **Schedule 21: Collateral Warranty & Sub-Contractors**

This schedule ensures the Authority has assurance and right of redress for any sub-contractors who carry out works in the prison either before or after the commencement of services.

### **Schedule 22: Notices**

This schedule sets out how any notices required in the contract life are sent, managed and processed. This primarily involves things such as contractual improvement notices and the schedule sets out how notices can also be managed via email.

### **Schedule 23: Parent Company Guarantee**

This schedule details the Parent Company Guarantee in the event that this is applicable to the successful bidder. It will be populated once the successful bidder is known.

### **Schedule 24: Exit Management**

This schedule contains the terms and conditions for managing the prison operator's exit from the contract during or at the end of the contract. This includes general obligations to hold information on the custodial service, supply chain and assets and provide these on exit and as part of the re-tender if applicable. The schedule sets out when an exit management plan is required and what it should contain and the handback obligations including re-competition data.

### **Schedule 25: Data Protection**

This schedule details the Data Protection requirements that the prison operator will be subject to. It sets out the different roles the prison operator will be required to undertake (processor, controller, joint controller) and the requirements in these circumstances including that of its sub contractors. A revised schedule will be published during the competition setting out process maps which detail the data protection arrangements.