



Dated

20[REDACTED]

(1) The Secretary of State for Justice

(2) [REDACTED]

**Prison Operating Contract – Call-Off Contract
HMP [REDACTED]**

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THIS CONTRACT is made on

20[]

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ acting as a part of the Crown (the "**Authority**", with such term including the Authority's successors in title and legal assigns); and
- (2) **[INSERT NAME]**, registered in **[INSERT PLACE OF INCORPORATION]** with company number **[NUMBER]**, whose registered office is at **[INSERT REGISTERED OFFICE]** (the "**Contractor**"),

each one a "**Party**" and together the "**Parties**".

BACKGROUND

- (A) The Authority has established a framework for certain custodial and property and facilities management services and the Contractor was appointed to the framework and executed the Framework Agreement (defined herein).
- (B) On **[INSERT DATE OF PUBLICATION OF MINI-INVITATION]** the Authority invited the Contractor along with other framework suppliers to tender for the Authority's custodial and property and facilities management services requirements in accordance with the Call-Off Procedure (as such term is defined in the Framework Agreement) for the Prison.
- (C) On **[INSERT DATE OF MINI-COMPETITION RESPONSE]** the Contractor submitted a response to the Authority's Mini-Competition (as such term is defined in the Framework Agreement) and was subsequently selected by the Authority to provide the Services (as defined herein).
- (D) The Authority now wishes to enter into a call-off contract for the provision of the Services (as defined herein) at HMP [].
- (E) The Prison under this Contract is a **[New Prison / Existing Prison]** (as defined herein).
- (F) The Prison under this Contract is a Category **[INSERT]** prison with a **[INSERT FUNCTION]** Prison Function and **[is] [is not]** a Resettlement Prison (each term as defined herein).
- (G) For the purposes of this Contract, there **[will] [will not]** be a Relevant Transfer at the Service Commencement Date (each term as defined herein).

PART I – PRELIMINARY**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this Contract and in the Background, unless the context otherwise requires:

"4Projects System"	means the online document management system hosted by 4Projects on behalf of the Authority providing online management, collaboration and control of documents relating to custodial property to which the Contractor has access for the purposes of this Contract (or any replacement of this system from time to time);
"ACSDP Approval Certificate"	has the meaning given to it in clause 24.2.1.1 (Approval of Annual Custodial Service Delivery Plan) ;
"ACSDP Notice of Non- Compliance"	has the meaning given to it in clause 24.2.1.2 (Approval of Annual Custodial Service Delivery Plan) ;
"ACSDP Reports"	has the meaning given to it in clause 24.3.1 (Updates to the Annual Custodial Service Delivery Plan) ;
"Adjoining Property"	means any land and/or property adjoining or in the neighbourhood of the Site and each and every part of such land and/or property including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;
"Affected Party"	has the meaning given to it in the definition of Force Majeure Event;
"Affiliate"	means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;
"Annual Custodial Service Delivery Plan"	has the meaning given to it in clause 24.1.1 (Delivery of Annual Custodial Service Delivery Plan) ;
"Annual Interventions Cost"	has the meaning given to it in Part 4 (Interventions) of Schedule 1 (Authority's Custodial Service Requirements) ;

"Annual Interventions Plan"	has the meaning given to it in Part 4 (Interventions) of Schedule 1 (Authority's Custodial Service Requirements) ;
"Annual Lifecycle Cost"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Annual Purposeful Activity Plan"	means a plan produced by the Contractor showing the Contractor's innovation and purposeful activities based on those set out in Schedule 7 (Contractor's Proposal) ;
"Annual Resourcing Plan"	means a plan produced by the Contractor complying with the requirements of clauses 36.11.2.1 and 36.11.2.2 (Sufficient Contractor's Staff) showing sufficient resourcing levels for delivering the Custodial Services over a Contract Year to ensure that the Prison is a safe, secure and decent environment;
"Annual ROTL Delivery Plan"	has the meaning given to it in Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements) ;
"APP Band Activation Notice"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"APP Band Deactivation Notice"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Applicable Contractor's Staff"	means any Contractor's Staff who: <ul style="list-style-type: none"> (a) at the Early Termination Date or Termination Date (as the case may be): <ul style="list-style-type: none"> (i) are employees of the Contractor or a Sub-Contractor; (ii) are then assigned to the Services (and if the Contractor is unsure as to whether Contractor's Staff are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Service); (iii) have not transferred (and are not in scope to

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transfer at a later date) to the Authority or a New Contractor by virtue of TUPE; and

- (b) are dismissed or given notice of dismissal by the Contractor or relevant Sub-Contractor within:
 - (i) 40 Business Days of the Early Termination Date or Termination Date (as the case may be); or
 - (ii) such longer period required by Legislation, their employment contract (as at the Early Termination Date or Termination Date (as the case may be) or an applicable collective agreement; and
- (c) have not resigned or given notice of resignation prior to the date of their dismissal by the Contractor or relevant Sub-Contractor; and
- (d) the Contractor can demonstrate to the satisfaction of the Authority:
 - (i) are surplus to the Contractor's or relevant Sub-Contractor's requirements after the Early Termination Date or Termination Date (as the case may be) notwithstanding its obligation to provide services to its other customers;
 - (ii) are genuinely being dismissed for reasons of redundancy; and
 - (iii) have been selected for redundancy by the Contractor or relevant Sub-Contractor on objective grounds other than the fact that the Contractor or relevant Sub-Contractor is entitled to reimbursement under this provision in respect of such employees;

"Approved Sub- means any Sub-Contract identified as such in **Schedule 7**

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Contract"	(Contractor's Proposal);
"Arbitration"	means an arbitration conducted under clause 70.14 (Arbitration) ;
"Arbitrator"	has the meaning given to it in clause 70.14 (Arbitration) ;
"Asbestos Register"	means the register of actual or potential asbestos at the Prison created pursuant to the Control of Asbestos Regulations 2012;
"Asbestos"	has the meaning given to it in the Control of Asbestos Regulations 2012;
"ASBO"	means an 'anti-social behaviour order' (as defined in the Crime and Disorder Act 1998);
"Assessment and Care in Custody Teamwork" or "ACCT"	means the procedures to be used when any Prisoner is identified as posing a risk of harm to himself or herself or being at risk of harm from others. These procedures are outlined in chapter 5 of PSI 64/2011 (Management of prisoners at risk of harm to self, to others and from others) (as amended from time to time);
"Asset and Contract Transfer Contract"	means the contract between the Authority and the Contractor (or such other parties which may be relevant with respect to the Legacy Contracts and Legacy Assets) in the form set out in Schedule 13 (Asset and Contract Transfer) dealing with the identification and transfer of Legacy Contracts and Legacy Assets;
"Asset Condition Schedule"	means the document maintained by the Contractor (which shall initially be based upon the Asset Management Records) identifying the standard of the Built Environment and M&E Assets;
"Asset Forward Maintenance Plan"	means the plan relating to the Built Environment and M&E Assets for the Site to be prepared by the Contractor pursuant to in paragraph 4.11 of Schedule 11 (Property and Facilities Management) , as referred to in clause 19.15 (Built Environment and M&E Assets Condition Verification) ;
"Asset Forward Replacement Plan"	means the plan to be prepared by the Contractor pursuant to in paragraph 4.12 of Schedule 11 (Property and Facilities Management) , as referred to in clause 19.15 (Built

Environment and M&E Assets Condition Verification);

"Asset Management Records" or "AMRs"	means the records scheduling the condition of the Prison and the Site (Built Environment and M&E Assets) maintained by the Authority prior to the Commencement Date;
"Asset Register"	means a register of assets (including the Assets) that are maintainable by the Contractor, including those contained within the Equipment Register and the Asset Condition Schedule;
"Assets"	means Authority Assets and/or Contractor Assets;
"Associated Person"	has the meaning given to it in section 44(4) of the Criminal Finances Act 2017;
"Audit Agents"	means: <ul style="list-style-type: none"> (a) the Authority's internal and external auditors; (b) the Authority's statutory or regulatory auditors; (c) HMIP; (d) the Independent Monitoring Board; (e) the Prison and Probation Ombudsman; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
"Authority Assets"	means the physical assets owned by the Authority or other Government department or other third party and which are made available by the Authority to the Contractor on the terms set out in clause 15.3 (Contractor's Use of Authority Assets) ;
"Authority Background IPR"	means: <ul style="list-style-type: none"> (a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in any of the Authority's

know-how, documentation, processes and procedures;

- (b) IPRs created by the Authority independently of this Contract; and/or
- (c) Crown Copyright which is not available to the Contractor otherwise than under this Contract;

but excluding IPRs owned by the Authority subsisting in the Authority Software;

"Authority Change" means a Change to the Services or the scope thereof or to the manner in which they are provided or to any of the terms of this Contract proposed by the Authority pursuant to **Schedule 16 (Change Protocol)**, and which is not required by a Change in Law;

"Authority Contamination" means Contamination which is present in or under the Site at or before the Commencement Date except for Contractor Contamination;

"Authority Damage" means any damage to the Prison the cost of which is the responsibility of the Authority pursuant to **clause 69.1 (Responsibility for Damage)**;

"Authority Data" means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Contractor by or on behalf of the Authority (including from Healthcare Providers or Social Care Service Providers); and/or
 - (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which the Authority and/or a

Relevant Organisation is the Data Controller;

"Authority Default"	means one of the following events: <ul style="list-style-type: none">(a) an expropriation, sequestration or requisition of a material part of the Contractor Assets by the Authority or other Relevant Authority;(b) a failure by the Authority to make payment of any amount of money exceeding an amount equivalent to the total of two (2) Months' of the Monthly Payment (Indexed) that is due and payable by the Authority under this Contract within thirty (30) Days after service of a formal written demand by the Contractor, where that amount fell due and payable two (2) (or more) Months prior to the date of service of the written demand;(c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of two (2) Months; or(d) a breach by the Authority of clause 72.1 (Restrictions on Transfer of this Contract by the Authority) occurs;
"Authority Education Contract"	means an Authority Third Party Contract for the supply of Education Services as may be amended or replaced from time to time;
"Authority Indemnified Party"	means the Authority and each and every person to whom the Authority sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract;
"Authority Policies"	means those policies of the Authority referred to in Schedule 4 (Authority Policies) , in the form in force on the Commencement Date;
"Authority Related Party"	means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Authority acting in the course of his or her

office or employment or appointment (as appropriate), but excluding in each case the Contractor, any Contractor Related Party (including for the avoidance of doubt the Education Providers), Prisoners, Healthcare Providers and Social Care Service Providers;

"Authority Software" means software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the Contractor for the purposes of providing the Services;

"Authority Supplier" has the meaning given to it in **Schedule 3 (Authority Third Party Contracts)**;

"Authority Third Party Contracts" has the meaning given to it in **Schedule 3 (Authority Third Party Contracts)**;

"Authority's Cabling Specification" means the cabling specification provided by the Authority as part of the Operating Manual;

"Authority's Custodial Requirements" means the requirements of the Authority in respect of the Services as set out in all Parts of **Schedule 1 (Authority's Custodial Service Requirements)**;

"Authority's ICT System" means any part of the ICT System owned by the Authority and/or licensed to the Authority by a third party and which interfaces with the Contractor's ICT System or which is provided by the Authority to the Contractor in connection with this Contract;

"Authority's Property and Facilities Management Requirements" means the requirements of the Authority in respect of the Property and Facilities Management Services set out in **Schedule 11 (Property and Facilities Management)** and sustainability set out in **Schedule 12 (Sustainability)**;

"Authority's Representative" means the representative appointed by the Authority from time to time pursuant to **clause 79.1 (Representatives of the Authority)**;

"Authority's Representative's Approval" means the prior written approval of the Authority's Representative;

"Authority's" means the requirements of the Authority in respect of the Authority's Custodial Requirements and the Authority's Property

Requirements"	and Facilities Management Requirements;
"Available Prisoner Place"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Base Case"	means the financial model agreed between the Parties on or before the Commencement Date (with file name [REDACTED] dated [REDACTED]) and contained in [REDACTED] for the purpose of, amongst other things, calculating the Contract Price, as may be updated from time to time (the version as at the Commencement Date being replicated in Appendix 1 (Base Case at the Commencement Date) of Schedule 14 (Payment Mechanism));
"Benchmarking Exercise"	means an exercise carried out under clause 28.1 (Benchmarking) ;
"Benchmarking Review Date"	means the date stated by the Authority in the notice to the Contractor under clause 28.1 (Benchmarking) specifying that it intends to undertake a Benchmarking Exercise;
"BREEAM"	means the 'Building Research Establishment Environmental Assessment Methodology' which certifies the sustainability of a building;
"Building"	means any building or other erection at the Site;
"Building Management System"	means a computer-based control system installed in buildings that controls and monitors the building's mechanical and electrical equipment such as ventilation, lighting, power systems, fire systems, and security systems;
"Built Environment and M&E Assets"	means any plant, building fabric, grounds, hard standings, security systems, street furniture, alarms, lighting and systems and like assets relating to the Prison and the Site;
"Built Environment and M&E Assets Condition Verification Report"	has the meaning given to it in clause 19.1.1 (Built Environment and M&E Assets Condition Verification) ;
"Business Day"	means a Day (other than a Saturday or Sunday) on which banks

are open for domestic business in the City of London;

"Capital Expenditure"	means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;
"Care and Separation Unit"	means areas of the Prison used in accordance with Prison Rules 45 or 53;
"Case Summary"	means a summary of each Party's position prepared for the purpose of any Mediation called by the Authority to seek to resolve a Dispute;
"Category"	has the meaning given to it in Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Services Requirements) ;
"CDM Regulations"	means the Construction (Design & Management) Regulations 2015 or any replacement or modification or them;
"Cell Certificate"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Cell Certificate Requirements"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Cell Certificate Schedule Summary Sheet"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Cell Certificate Schedule"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Central Government Body"	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the UK Office for National Statistics: <ul style="list-style-type: none"> (a) Government department; (b) non departmental public body or Welsh Government sponsored body (advisory, executive, or tribunal); (c) non ministerial department; or

- (d) executive agency;
- "Cessation of Suspension Notice" has the meaning given to it in **clause 36.8.4 (Suspension of Staff)**;
- "Change in Costs" in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor including, as relevant, the following:
- (a) the reasonable costs of complying with the requirements of **clauses 12 (Compensation Events), 58 (Changes in Law), 59 (Financial Adjustments), and/or 60.4 (Step-In without Contractor Breach)**, including the reasonable costs of preparation of design and estimates;
 - (b) the costs of continued employment of, or making redundant, staff who are no longer required (as calculated in accordance with **Schedule 18 (TUPE, Employees and Pensions)**);
 - (c) the costs of employing additional staff;
 - (d) reasonable professional fees;
 - (e) the costs to the Contractor of financing any Relevant Event (and the consequences of it) including commitment fees and capital costs, interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Contract Price;
 - (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
 - (g) operating costs, or life cycle, maintenance or

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replacement costs;

- (h) Capital Expenditure;
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (j) Direct Losses, including reasonable legal expenses on an indemnity basis;

"Change in Law"

means the coming into effect after the Commencement Date of:

- (a) Legislation, other than any Legislation which on the Commencement Date has been published:
 - (i) in a draft bill as part of a Government departmental consultation paper;
 - (ii) in a bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union;
- (b) any Guidance;
- (c) any applicable judgment of a relevant court of law which changes a binding precedent; or
- (d) a change to the Authority Policies;

"Change Notice"

has the meaning given to it in **Schedule 16 (Change Protocol)**;

"Change of Control"

means:

- (a) a Contractor Change of Control; and/or
- (b) a Guarantor Change of Control;

"Change"

has the meaning given to it in **Schedule 16 (Change Protocol)**;

"Commencement"

means the date of this Contract;

Date "

"Commercial Conditions" means the Standard Commercial Property Conditions (Second Edition);

"Commercial Insurer" means a person providing commercial insurance in respect of the Prison;

"Commercially Sensitive Information" means the sub-set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of **Schedule 20 (Commercially Sensitive Information)** in each case for the period specified in column 2 of Parts 1 and 2 of **Schedule 20 (Commercially Sensitive Information)**;

"Comparable Supply" means the supply of services to another customer of the Contractor that are the same or similar to any of the Services;

"Compensation Event" means:

- (a) a material breach by the Authority of any of its obligations under this Contract; or
- (b) a postponement of the Services Commencement Date:
 - (i) pursuant to **paragraph 5.4 (Services Commencement)** of **Schedule 5 (Mobilisation)**; or
 - (ii) in the case of a New Prison, failure to grant a Lease as a direct result of the actions of the Authority or an Authority Related Party,

which shall be dealt with in the manner set out in **clause 12 (Compensation Events)**;

"Competition Operator Requirements" or "COR" means the suite of custodial requirements that have been developed specifically for the Framework Agreement (and any Call-Off Contract made under it (as such term is defined in the Framework Agreement), including this Contract), providing further detail on the Authority's output requirements within prisons (as set out in Appendix 1 to **Part 1 (Custodial Services)**)

of Schedule 1 (Authority's Custodial Service Requirements));**"Comptroller and Auditor General"**

means the head of the National Audit Office;

"Computer Aided Facilities Management System" or "CAFM"

means a system used to manage and schedule reactive and planned preventative maintenance tasks, ensuring that work requests and repairs took place in a timely and economical manner;

"Condition Precedent"

has the meaning given to it in **clause 1.10.1 (Condition Precedent)**;

"Confidential Information"

means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and sensitive personal data within the meaning of the DPA; and
- (b) Commercially Sensitive Information;

"Consents"

means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor's obligations under this Contract, whether required in order to comply with Legislation or as a result of the rights of any third party;

"Construction Contract"

means any contract entered into by the Authority and the Constructor for the construction of the Prison or any part of the Prison;

"Construction Contractor Good Industry Practice"

means the exercise of that degree of skill, care, diligence, prudence, foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced construction contractor to a customer like the Authority under the same or similar circumstances, such construction contractor seeking to comply with its contractual

	obligations in full and complying with applicable Legislation;
"Construction Phase Plan"	has the meaning given to it under the CDM Regulations;
"Construction Works"	has the meaning given to it in Schedule 11 (Property and Facilities Management) ;
"Constructor"	means the main contractor (excluding the Contractor) responsible for the total construction and completion process of a New Prison;
"Contamination"	means any and all pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);
"Continued Suspension Notice"	has the meaning given to it in clause 36.8.5 (Suspension of Staff) ;
"Contract Delivery Indicator"	has the meaning given to it in Schedule 15 (Performance Mechanism) ;
"Contract Delivery Management Information"	has the meaning given to it in Schedule 15 (Performance Mechanism) ;
"Contract"	means this contract (including its Schedules (and their Appendices and annexures (if any)) and the Controlled Documents);
"Contract Period"	means the period from the Commencement Date until and including the earlier to occur of the Termination Date and the Expiry Date;
"Contract Price"	means the fee payable by the Authority in consideration of the obligations performed by the Contractor under this Contract calculated in accordance with Schedule 14 (Payment Mechanism) ;
"Contract Review Meeting"	means the meetings described in paragraph 5.3 of Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Service Requirements) ;



"Contract Year"

means a period of twelve (12) Months commencing on 1 April, provided that:

- (a) the first Contract Year shall be the period commencing on the Services Commencement Date and ending on the immediately following 31 March; and
- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the Expiry Date or the Termination Date (as the case may be) and ending on the Expiry Date or Termination Date (as the case may be), whichever is earlier;

"Contractor Assets"

means all physical assets owned by the Contractor or any Sub-Contractor and used in connection with this Contract, including:

- (a) any equipment, hardware, cabling and other infrastructure;
- (b) any books and records (including Operating Procedures, the Operating Manual, the Prescribed Documentation operating and maintenance manuals, health and safety manuals and other know how); and
- (c) any spare parts, tools, consumables and other assets;

**"Contractor
Background IPRs"**

means:

- (a) Intellectual Property Rights owned by the Contractor before the Commencement Date, for example those subsisting in the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's know-how or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Contractor independently of this Contract,

which in each case is or will be used before or during the Contract Period for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the

Contractor subsisting in the Contractor Software;

**"Contractor Breakage
Costs"**

means Direct Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract, but only to the extent that:

- (a) the Direct Losses are incurred in connection with this Contract and in respect of the provision of the Services, including:
 - (i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Direct Losses being incurred;
 - (ii) the cost of demobilisation including the cost of any relocation of equipment used in connection with this Contract; and
 - (iii) Early Termination Redundancy Costs;
- (b) the Direct Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and
- (c) the Contractor and any relevant Sub-Contractor has used its reasonable endeavours to mitigate the Direct Losses; and
- (d) such Direct Losses are not comprised of loss of profits or costs associated with Contractor's Staff (whether relating to redundancy, redeployment or otherwise) other than the Early Termination Redundancy Costs recoverable under this provision;

**"Contractor Change of
Control"**

means, in relation to the Contractor, any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the capital of the Contractor (excluding normal daily trading of shares of the Contractor on any applicable stock exchange) which results in that body corporate being Controlled by a person who does not (or persons acting in concert who do not), at the Commencement Date, have such Control, or any other



arrangement or arrangements that have or may have or which result in the same effect;

"Contractor Change" means a change to the Services proposed by the Contractor in accordance with **Schedule 16 (Change Protocol)** which is not required by a Change in Law;

"Contractor Contamination" means:

- (a) Contamination which is first present in or under the Site after the Services Commencement Date; and/or
- (b) any Contamination of which the Contractor or any Sub-Contractor is aware or of which it or a Sub-Contractor ought reasonably to have been aware and which is exacerbated or disturbed by the Contractor or a Sub-Contractor or any person acting for or on behalf of the Contractor or such Sub-Contractor;

"Contractor Default" means any one or more of the following:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Services;
- (b) a Persistent Breach occurs;
- (c) an Insolvency Event occurs;
- (d) failure by the Contractor to comply in the performance of the Services with legal obligations in the fields of social or labour law;
- (e) failure to comply with **clause 72.3 (Restrictions on Transfer of this Contract by the Contractor)**;
- (f) the warranty given by the Contractor pursuant to **clause 5.1.8 (Contractor's Warranties)** is materially untrue;
- (g) the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by **clause 40.2**



(Promoting Tax Non-Compliance);

- (h) the Contractor fails to provide details of proposed mitigating factors as required by **clause 40.2 (Promoting Tax Non-Compliance)** which in the reasonable opinion of the Authority, are acceptable;
- (i) failure by the Contractor to provide a Parent Company Guarantee in favour of the Authority substantially in the form set out in **Schedule 23 (Parent Company Guarantee)** or, in circumstances where the Guarantor ceases to be the Contractor's ultimate Holding Company, the Contractor's new ultimate Holding Company does not execute a Parent Company Guarantee in the prescribed time where required to do so under **clause 3.2 (Parent Company Guarantee)**;
- (j) in circumstances where the Contractor is required to provide up to (and including) the Maximum Available Prisoner Places, a failure to provide any one (1) or more Available Prisoner Place for a continuous period exceeding thirty (30) Days at any time after the Services Commencement Date;
- (k) failure by the Contractor to submit, carry out or complete an acceptable Rectification Plan pursuant to **paragraph 13 (Rectification) of Schedule 15 (Performance Mechanism)**;
- (l) the accumulation of [] or more Performance Points in any Performance Quarter or the accumulation of [] or more Performance Points in any Contract Year;
- (m) a failure to provide any Required Insurances pursuant to **clause 68 (Insurance)**;
- (n) the Contractor committing a material breach of its obligations under this Contract (other than as a consequence of a breach by the Authority of its obligations under this Contract) which results in the criminal investigation, prosecution and conviction of the

Contractor or any Contractor Related Party or the Authority under the Health and Safety Regime (for the purposes of this paragraph (n) an "H&S Conviction") provided that an H&S Conviction of a Contractor Related Party or the Authority shall not constitute a Contractor Default if, within forty (40) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in this Contract of each relevant Contractor Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Contractor Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Contractor in accordance with **clause 72 (Sub-Contracting and Assignment)** provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of a Contractor Related Party under this paragraph (n), the Authority shall:

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Contract;
- (o) a Change of Control of the Contractor or Guarantor occurs without the Authority's prior written consent and the Authority in good faith and acting reasonably determines that the Change of Control has resulted, may result or may have resulted in a person who is an Unsuitable Third Party Controlling the Contractor or Guarantor;
- (p) the Contractor fails to notify the Authority of a Financial Distress Event in accordance with **clause 3.6 (Parent Company Guarantee and Financial Standing**

of the Contractor), the Authority fails to approve a Financial Distress Continuity Plan (or any updated Financial Distress Continuity Plan) or the Contractor, Guarantor, any Key Sub-Contractor or any other party listed under paragraph (a) of the definition of Financial Distress Event fails to comply with the terms of the agreed Financial Distress Continuity Plan in accordance with **clause 3.8 (Parent Company Guarantee and Financial Standing of the Contractor)**; and/or

- (q) the Contractor commits a material breach of the provisions of **Schedule 3 (Authority Third Party Contracts)** or **Schedule 18 (TUPE, Employees and Pensions)**;

"Contractor Related Party"

means:

- (a) an officer, servant or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant or agent of such a person;
- (b) any Sub-Contractor and any of their officers, servants or agents; and
- (c) any person on or at the Prison at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party);

"Contractor Software"

means software which is proprietary to the Contractor (or an Affiliate of the Contractor) and which is or will be used by the Contractor for the purposes of providing the Services, including any software specified as such in **Schedule 2 (Digital)**;

"Contractor Termination Notice"

has the meaning given to it in **clause 43.1.1 (Termination on Authority Default)**;

"Contractor's Group"

means the Contractor and any Affiliates of the Contractor (if any);

"Contractor's ICT System"

means any part of the ICT System (including Software, equipment, configuration and management utilities, calibration

and testing tools and related cabling) which is owned by the Contractor and/or licensed to the Contractor by a third party and which is operated by the Contractor or its Sub-Contractors in connection with the provision of the Services, but excluding the Authority's ICT Systems;

"Contractor's Proposals"

means the proposals of the Contractor for satisfying the Authority's requirements for the Services, as set out in **Schedule 7 (Contractor's Proposal)** and as amended pursuant to the provisions of this Contract, including:

- (a) the Contractor's proposals for the Services;
- (b) the Contractor's operational proposals for the providing the Services;
- (c) the Contractor's resourcing proposals; and
- (d) the Contractor's proposals for innovations and improvements,

but not including the Initial Operating Procedures, the Operating Procedures, or the Contractor's proposals for testing the Initial Operating Procedures or the Operating Procedures pursuant to **clause 13.4.2.3 (Testing of Operating Procedures)**;

"Contractor's Representative"

means a representative appointed by the Contractor from time to time pursuant to **clause 79.2 (Representatives of the Contractor)**;

"Contractor's Staff Information"

has the meaning given to it in **clause 13.5.1 (Contractor's Staff Information)**;

"Contractor's Staff"

means all persons used by the Contractor, including its employees, agents, any Sub-Contractors, or anyone acting on its or their behalf to provide the Services;

"Contracts Finder"

means the Government's publishing portal for public sector procurement opportunities;

"Control"

means possessing (i) an interest or interest in shares carrying in aggregate 30% or more of the voting rights that are generally exercisable at a general meeting or (ii) control over the right to

appoint or remove a majority of the directors or (iii) the right to receive 30% or more of the profits available for distribution and **"Controlled"** and **"Controlling"** shall be construed accordingly;

"Controlled Document"

means a document (which may be held on CD-Rom or in any other format) which is identified in this Contract as a "Controlled Document" and that may only be amended through the Document Change Procedure;

"Controller"

means the person or persons from time to time appointed in respect of the Prison by the Authority under section 85(1)(b) of the Criminal Justice Act 1991 (as amended by the Criminal Justice and Public Order Act 1994 and the Offender Management Act 2007);

"Conviction"

means, other than in relation to any minor road traffic offences, any prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023));

"COSHH"

means the Control of Substances Hazardous to Health Regulations 2002;

"Crown"

means Her Majesty's Government which shall be deemed to include any Government department, office or agency and any Secretary of State;

"Custodial Duties"

means "custodial duties" at the Prison as defined in section 86(3) of the Criminal Justice Act 1991;

"Custodial Service Provider"

means a person providing services to the Authority or the Secretary of State for Justice at the Prison, including (as the context so requires) the Contractor, Authority Suppliers, the Healthcare Provider or Social Care Service Provider;

"Custodial Services"

means the services required to satisfy the Authority's Custodial Requirements;

"Custodial Staff"

means the operational staff employed by the Contractor to work in the Prison;

"Daily Report"	means the daily report which shall be substantially in the form set out in Schedule 8 (Daily Report) and which is completed by the Contractor in accordance with clause 15.5 (Daily Report) ;
"Damage Funding"	has the meaning given to it in clause 69.7.1 (Programmed Maintenance Costs) ;
"Data Controller"	has the meaning given to the term 'controller' in the GDPR;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
"Data Protection Impact Assessment"	means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data;
"Data Protection Legislation"	means: a) the GDPR, the LED and any applicable national implementing Legislation as amended from time to time; b) the DPA to the extent that it relates to processing of personal data and privacy; and c) all applicable Legislation about the processing of personal data and privacy;
"Data Protection Officer"	has the meaning given to it in the GDPR;
"Data Subject Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation in relation to their Personal Data;
"Data Subject"	has the meaning given to it in the GDPR;
"Day"	means a calendar day, unless otherwise specified;
"Deductions"	means any or all (as the case may be) of Unavailability Deductions, Performance Point Deductions or Escape Deductions;
"Deputy Site Facilities"	means the deputy site facilities manager appointed pursuant to

Manager"	clause 8.9 (Site Facilities Manager);
"Direct Losses"	means all damages, losses, liabilities, fines, penalties, claims, compensation claims and awards, actions, costs, amounts paid in settlement and expenses (including the cost of legal or professional services, legal costs being on an indemnity basis, disbursements, costs of investigation (including forensic investigation), litigation, proceedings, settlement (including ex gratia payments), judgment, interest and penalties), demands and charges, cost of breach notification including notifications to the Data Subject, cost of complaints handling (including providing Data Subjects with credit reference checks, setting up contact centres (for example call centres) and making ex gratia payments), all whether arising under statute, contract, tort (including negligence) or otherwise at common law but excluding Indirect Losses;
"Directive"	means EC Council Directive 2001/23/EC;
"Director"	means the person appointed by the Contractor to carry out such functions as are conferred on him or her by the Criminal Justice Act 1991 or as may be conferred on him or her by the Prison Rules in respect of the Prison, and approved by the Authority under clause 34 (The Director) and section 85(1)(a) of the Criminal Justice Act 1991;
"Disclosed Data"	<p>means information relating to the delivery of the Services disclosed to the Contractor and its advisers before the Commencement Date, including:</p> <ul style="list-style-type: none">(a) during the Mini-Competition (as such term is defined in the Framework Agreement);(b) information provided via the relevant Authority online portal / electronic data room;(c) the results of any investigations and surveys carried out at the Site or any Buildings, whether carried out by or on behalf of the Contractor or the Authority (if any); and

	(d) Reports on Title (if any);
"Disclosure and Barring Service"	means the service established pursuant to the Protection of Freedoms Act 2012;
"Discriminatory Change in Law"	means a Change in Law, the terms of which apply expressly to: <ul style="list-style-type: none"> (a) the Services and not to similar services; and/or (b) service providers in the contracted-out prisons sector and not to other persons;
"Dispute Resolution Procedure"	means the procedure for the resolution of disputes set out in clause 70 (Dispute Resolution) ;
"Dispute"	means any disagreement between the Parties arising in relation to their respective rights or obligations under this Contract;
"Document Change Procedure"	has the meaning given to it in Schedule 16 (Change Protocol) ;
"Documents"	includes any written or printed work, photograph or any work produced by electronic means, including any tapes, disks, CD-ROMs or other recorded matter;
"DOTAS"	means the "Disclosure of Tax Avoidance Schemes" rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"Double Prison Cell"	means a Prison Cell designed for double occupancy with a floor area in excess of nine point eight square metres (9.8m ²) or, if a shower area is to be incorporated within the Prison Cell, a floor area in excess of eleven square metres (11m ²), such areas to include a toilet compartment or suitable modesty screening

	around a toilet;
"DPA "	means the Data Protection Act 2018;
"Early Termination Date"	means <i>[to insert the actual date that is [XX] years after the Services Commencement Date stated in this Contract]</i> ;
"Early Termination Redundancy Costs"	<p>means statutory redundancy payments paid to Applicable Contractor's Staff, each amount apportioned between the Contractor (or relevant Sub-Contractor) (on the one hand) and the Authority (on the other) based on the time spent by such employee on the Services as a proportion of the total Service Period and provided that such payments:</p> <p>a) are unavoidable, proven, reasonable and not capable of recovery;</p> <p>b) are reasonably mitigated by the Contractor or relevant Sub-Contractor;</p> <p>c) would not have been incurred had this Contract continued until the Expiry Date;</p> <p>d) relate directly to the early termination of the Contract on the Early Termination Date or Termination Date (as the case may be);</p>
"Education Provider"	means learning and skills providers or such other person appointed by the Contractor from time to time to provide the Education Services at the Prison;
"Education Services"	means the information, advice, learning and skills services commissioned by the Contractor and provided by the Education Provider in accordance with the requirements set out in Part 2 (Education) of Schedule 1 (Authority's Custodial Service Requirements) ;
"EEA "	means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;

"Emergency Services" means any organisation which ensures public safety and health by addressing different emergencies including the police, ambulance, fire rescue and medical services;

"Employee Liabilities" means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

(b) unfair, wrongful or constructive dismissal compensation;

(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

(d) compensation for less favourable treatment of part-time workers or fixed term employees;

(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;

(f) employment claims whether in tort, contract or statute or otherwise;

(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or Central Government Body in relation to such regulations;

"Equality and Human" means the statutory non departmental public body with this title

"Rights Commission"	and any successor organisation from time to time;
"Equality Duties"	has the meaning given to it in clause 29.5 (Equality Duties) ;
"Equality Impact Assessment" or "EIA"	means any required assessment made by the Contractor in accordance with guidance issued by the Authority that will permit the Authority to comply with its legal obligations in furnishing EIAs for any change in policy delivered by, or affected by the Services delivered by the Contractor;
"Equipment Refresh Plan"	means the Controlled Document with this title to be maintained by the Contractor and reviewed annually in accordance with clause 15.4.2 (Maintenance of Assets and Equipment Refresh Plan) which, for the avoidance of doubt, is in addition to the Asset Forward Maintenance Plan;
"Equipment Register"	means the Controlled Document with this title containing a register of equipment used by the Contractor to provide the Services, including the Authority Assets and the Contractor Assets, to be maintained by the Contractor in accordance with and in the form set out in, Schedule 10 (Equipment Register) ;
"Escape Deduction"	means the amount calculated in accordance with paragraph 9 (Escapes) of Schedule 14 (Payment Mechanism) ;
"Escape"	means: <ul style="list-style-type: none">(a) a Prisoner unlawfully gains his or her liberty by breaching the perimeter of the Prison (including the outside wall or boundary of the Prison); or(b) a Prisoner unlawfully gains his or her liberty while being escorted outside the Prison by the Contractor by passing beyond the control of the accompanying Prisoner Custody Officer;
"Existing Prison"	means a prison that is not a New Prison prior to the Commencement Date;
"Exit Day"	shall have the meaning as defined in the European Union (Withdrawal) Act 2018;

"Exit Plan"	means the Controlled Document with this title to be maintained by the Contractor in accordance with Schedule 24 (Handover and Exit Management) ;
"Expiry Date"	means <i>[to insert the actual date that is [XX] years after the Services Commencement Date stated in this Contract]</i> , subject to the provisions of clause 2.2 (Duration of Contract) ;
"Final Warning Notice"	has the meaning given to in clause 44.1.2 (Persistent Breach) ;
"Financial Distress Continuity Plan"	means a written plan in a form agreed in advance by the Authority that sets out how the Contractor or Guarantor (as applicable) will ensure the continued performance of its duties and obligations under this Contract in the event that a Financial Distress Event occurs;
"Financial Distress Event"	<p>means one or more of the following:</p> <p>(a) either:</p> <p>(i) the Contractor;</p> <p>(ii) the Guarantor;</p> <p>(iii) any Key Sub-Contractor; or</p> <p>(iv) any other party whom the Authority, in granting its consent for such party to become a Sub-Contractor pursuant to clause 72.3 (Restrictions on Transfer of this Contract by the Contractor), requires the Contractor to submit a completed FVRA Template (as such term is defined in the Framework Agreement) in respect of such party as a condition of the Authority's consent,</p> <p>is accorded (1) a 'Red' score on any of the criteria identified in the FVRA Template; or (2) a score that is worse than the score accorded to it within the Contractor's response to the Selection Questionnaire, in either case when such criteria are re-scored pursuant to each and any of the submissions of the FVRA Template by the</p>

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Contractor under the Framework Agreement;

- (b) the Contractor (or Guarantor (as applicable)) being affected by (or being likely to be affected by) an Insolvency Event;
- (c) the Contractor (or Guarantor (as applicable)) issuing a profit warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- (d) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the Contractor (or Guarantor (as applicable));
- (e) the Contractor (or Guarantor (as applicable)) committing a material breach of covenant to its lenders;
- (f) the commencement of any litigation against the Contractor (or Guarantor (as applicable)) with respect to financial indebtedness or obligations under a service contract which has or may have (in the opinion of the Authority (acting reasonably)) a material adverse effect on the Contractor's (or Guarantor's (as applicable)) financial position and/or the Contractor's (or Guarantor's (as applicable)) ability to perform obligations under this Contract; and/or
- (g) the cancellation or suspension of any financial indebtedness in respect of the Contractor (or Guarantor (as applicable));

"FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under or pursuant to the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Government department in relation to such Act (including the Cabinet Office's "Freedom of Information Code of Practice" dated 4 July 2018);

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"Force Majeure Event"

means the occurrence after the Commencement Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach by the Contractor or its Sub-Contractors; or
- (c) pressure waves caused by devices travelling at supersonic speeds,

which directly causes either Party (the "Affected Party") to be unable to comply with all or a material part of its obligations under this Contract;

"Force Majeure Termination Sum"

has the meaning given to it in **clause 45.2.1 (Compensation on Termination on Force Majeure)**;

"Framework Agreement"

means the framework agreement between the Authority and the Contractor entered into between the Authority and the Contractor dated [REDACTED];

"GDPR"

means the General Data Protection Regulation (Regulation (EU) 2016/679);

"General Anti-Abuse Rule"

means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"General Change in Law"

means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

"Good Industry Practice"

means the exercise of that degree of skill, care, diligence, prudence efficiency, foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator or provider of all or part of the Services seeking to comply with its contractual obligations and complying with applicable Legislation or that of any Sub-

	Contractor under the same or similar circumstances;
"Governor"	means a Crown servant appointed by the Authority under Section 88;
"Guarantor Change of Control"	means, in relation to the Guarantor, any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the capital of such Guarantor (excluding normal daily trading of shares of the Guarantor on any applicable stock exchange) which results in that body corporate being Controlled by a person who does not (or persons acting in concert who do not), at the Commencement Date, have such Control, or any other arrangement or arrangements that have or may have or which result in the same effect;
"Guarantor"	means the Contractor's guarantor under the Parent Company Guarantee;
"Guidance"	means any applicable guidance or directions with which the Contractor is bound to comply, which for the purposes of this Contract shall exclude the Authority Policies;
"Halifax Abuse Principle"	means the principle explained in the CJEU Case C-255/02 Halifax and others;
"Health and Safety File"	has the meaning given to it in the CDM Regulations;
"Health and Safety Regime"	means the Corporate Manslaughter and Corporate Homicide Act 2007, Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc Act 1974 (and associated regulations), the Regulatory Reform (Fire Safety) Order 2005, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
"Healthcare Provider"	has the meaning given to it in Part 5 (Healthcare) of Schedule 1 (Authority's Custodial Service Requirements) ;
"Healthcare Services"	has the meaning given to it in Part 5 (Healthcare) of Schedule 1 (Authority's Custodial Service Requirements) ;

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"Healthcare Unit"	means the area identified as such on the Site Plans;
"HMIP"	means 'HM Inspectorate of Prisons' and such successor organisation as may replace it from time to time;
"HMPPS Agency Instructions" or "AIs"	means such documents as may be issued by HMPPS to convey mandatory instructions to HMPPS HQ Staff (including, where appropriate, the group or regional structures) and as amended from time to time, and a reference to 'AI [number]' shall be to the relevant HMPPS Agency Instruction with that number, as amended or replaced from time to time;
"HMPPS HQ Staff"	means the staff employed directly by HMPPS based at headquarters or in group structures (i.e. usually those staff not based in a prison, court, probation office or approved premises);
"HMPPS Standards"	means the standards set out in the document entitled "National Standards for the Management of Offenders" as may be amended from time to time by HMPPS, including any replacement document;
"HMPPS"	means 'HM Prison & Probation Service' and such successor organisation as may replace it from time to time;
"HMRC"	means 'HM Revenue & Customs';
"Holding Company"	shall have the meaning given to it in section 1159 of the Companies Act 2006 and, for the purposes only of the membership requirement in subsections 1159(1)(b) and (c), a company (the "first company") shall be treated as a member of another company (the "second company") if the shares in the second company are registered in the name of (a) another person (or its nominee), where the shares are held by such other person (or its nominee) by way of security or in connection with the taking of security from the first company, or (b) a nominee for the first company;
"ICT Equipment"	means desktop and laptop computers, phones, tablets, printers, network routers and switches and related peripherals;
"ICT System"	means the computing environment (consisting of hardware, software, telecommunications and/or data networks, interfaces,

	devices, equipment, infrastructure, ducts, cabling and ancillary fixtures and fittings and power supplies) used by the Authority (or licensed to it by a third party) and/or the Contractor (or licensed to it by a third party) in connection with this Contract;
"ICT"	means 'information and communications technology';
"Indemnified Party"	has the meaning given to it in clause 66.4 (Notification of Claims) ;
"Indemnifying Party"	has the meaning given to it in clause 66.4 (Notification of Claims) ;
"Independent Monitoring Board"	means a group of independent members of the public appointed by any Relevant Authority to monitor the day to day life in the Prison and ensure that proper standards of care and decency are maintained;
"Indexed"	has the meaning given to it in clause 1.5 (Indexation) ;
"Indirect Losses"	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature, but excluding any of the same that relate to loss of revenue or other income committed from third parties;
"Information Commissioner's Office"	means the UK Information Commissioner's Office, or any successor or replacement body from time to time;
"Information Sharing Agreement"	means the protocol that supports appropriate, timely and legal information sharing between members and member organisations of the Local Partnership Agreement in relation to the care and well-being of Prisoners and produced in accordance with the National Partnership Agreement (as amended from time to time);
"Information"	has the meaning given to it under section 84 of the FOIA;
"Initial Custodial Service Delivery Plan" or "ICSDP"	has the meaning given to it in paragraph 7.1 (Initial Custodial Service Delivery Plan) of Schedule 5 (Mobilisation) ;
"Initial Operating"	means the Initial Operating Procedure provided by the Contractor in accordance with paragraph 8 (Initial Operating Procedures)

Procedure"	and Operating Procedures) of Schedule 5 (Mobilisation);
"Initial Service Delivery Documents"	means: <ul style="list-style-type: none">(a) the Initial Custodial Service Delivery Plan; and(b) the Initial Operating Procedures;
"Insolvency Event"	means, in respect of the Contractor, where any of the following events occurs (or, in the reasonable opinion of the Authority, circumstances exist such that any of the following events is likely to occur) in relation to the Contractor and/or any Holding Company of the Contractor (including the Guarantor): <ul style="list-style-type: none">(a) an order is made for its winding-up or a petition or notice is presented or a meeting is convened for the purpose of considering a resolution for its winding-up or any such resolution is passed;(b) a receiver (including any administrative receiver) or similar person is appointed in respect of, or an encumbrancer takes possession of, the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or pursuant to any security interest or encumbrance of any kind over any of its undertaking, property or assets;(c) an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an administrator or any notice is given of an intention to appoint an administrator;(d) any distress, execution, injunction, sequestration, attachment or other similar legal process or enforcement is levied or applied for in respect of the whole or any part of any of its property, assets or undertaking which is not remedied within fourteen (14) Days of the same;(e) any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors generally (or any class of its

creditors) and/or its members is proposed, applied for, sanctioned or approved;

(f) it is unable to pay its debts for the purposes of the Insolvency Act 1986, or becomes insolvent under any applicable law; or

(g) an event analogous to any of the above occurs,

in each case, in any jurisdiction where it carries on business or has assets;

"Insured Losses"

means Losses for which the Contractor is required to maintain insurance (and whose value falls within the minimum required financial level of that insurance and disregarding any excess or deductibles that may apply to such insurance) pursuant to **clause 68 (Insurance)**;

"Intellectual Property Rights" or "IPR"

means:

(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction;

"Interventions"

has the meaning given to it in **paragraph 2.1 (Aims & Objectives of Interventions in Prisons)** of **Part 4 (Interventions)** of **Schedule 1 (Authority's Custodial Service Requirements)**;

"IPRs Claim"

means any claim against any Authority Indemnified Party of infringement or alleged infringement (including the defence of

such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Authority Indemnified Party of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Contractor, in either case in combination with any item not supplied or recommended by the Contractor to this Contract or for a purpose not reasonably to be inferred from the Authority's Requirements or the provisions of this Contract;

**"Joint Data
Controllers"**

means where two or more Data Controllers jointly determine the purposes and means of processing;

"Key Sub-Contractor"

any Sub-Contractor:

(a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or

(b) with a Sub-Contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Contract Price to be payable under this Contract (as calculated in accordance with **Schedule 14 (Payment Mechanism)**);

**"Latest Service
Element"**

means the costs of providing the Tested Service (as such costs are set out in or calculated from the Base Case as adjusted as a result of being Indexed or as a result of previous adjustments made pursuant to **clauses 28 (Benchmarking and Value Testing)** and/or **57 (Change to Service)**);

**"Law Enforcement
Purposes"**

has the meaning given to it in the DPA;

"Lease Declaration"

has the meaning given to it in **clause 7.4.2 (Exclusion of Security)**;

"Leases"

means any and all of the Leases relating to the Site to be granted by the Authority to the Contractor substantially in the form(s) set out in **Schedule 9 (Leases)** together with such amendments agreed between the Parties both acting reasonably;

"LED"

means the Law Enforcement Directive (Directive (EU)

2016/680);

"Legacy Assets"	means the assets belonging to the Authority or an Authority Related Party that are to be transferred to the Contractor or its Sub-Contractor pursuant to an Asset and Contract Transfer Contract for the purposes of this Contract;
"Legacy Contracts"	means the contracts, to which the Authority or an Authority Related Party is a party, that are to be transferred to the Contractor or its Sub-Contractor pursuant to an Asset and Contract Transfer Contract for the purposes of this Contract;
"Legal Proceedings"	has the meaning given to it in clause 5.2.1.1 (Contractor Undertakings) ;
"Legislation"	<p>means any one or more of the following:</p> <ul style="list-style-type: none">(a) any Act of Parliament, including the Offender Management Act 2007;(b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;(c) any exercise of the Royal Prerogative; and(d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972, <p>in each case in the United Kingdom;</p>
"Lifecycle Cost Programme" or "LCP"	means the Annual Lifecycle Cost as further set out in paragraph 15 (Lifecycle Cost Programme) of Schedule 14 (Payment Mechanism) ;
"Lifecycle Reserve Account"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Local Authority"	has the meaning given to 'local authority' in the Local Government Act 1972;
"Local Delivery Board"	means the strategic governance board meeting between the signatories of the National Partnership Agreement led by the Governor or Director and including providers of custody,

	healthcare, substance misuse and Local Authority leads for social care services;
"Local Partnership Agreement"	means the multi agency arrangements in place from time to time between regional commissioners and establishment based health providers and prison service staff. This local agreement shall mirror the ambitions of, and be produced in accordance with the National Partnership Agreement;
"Longstop Date"	has the meaning given to it in clause 1.10.2 (Condition Precedent) ;
"Losses"	means Direct Losses and Indirect Losses;
"Maintenance Services"	has the meaning given in Schedule 11 (Property and Facilities Maintenance) ;
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Mandatory Third Party Contracts"	has the meaning given to it in Schedule 3 (Authority Third Party Contracts) ;
"Market Costs"	means the charges made by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Tested Service;
"Maximum Available Prisoner Places"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Maximum Contract Price"	means, in respect of a Month, the Contract Price payable during that Month assuming that the Contractor had provided all of the Prisoner Places required in that Month and such Prisoner Places were Available Prisoner Places during that Month, before deductions but allowing for Indexation under Schedule 14 (Payment Mechanism) ;
"Mediation"	means a mediation conducted under clause 70.4 (Mediation) ;

"Mediator"	has the meaning given to it in clause 70.8 (Mediation) ;
"Mini-Competition"	has the meaning given to it in the Framework Agreement;
"Minimum Requirements"	means, in relation to a Prisoner Place, the requirements so described as set out in Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Service Requirements) ;
"Mobilisation" or "Mobilisation Period"	has the meaning given to it in Schedule 5 (Mobilisation) ;
"Mobilisation Assurance Plan"	means the Controlled Document with this title prepared by the Contractor in accordance with the requirements of paragraph 10 (The Mobilisation Assurance Plan) of Schedule 5 (Mobilisation) and the Mobilisation Strategy (as such term is defined in Schedule 5 (Mobilisation));
"Month"	means a calendar month;
"Monthly Payment"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Monthly Service Payment"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Montreal Protocol Substances"	means the substances listed in the Montreal Protocol;
"Montreal Protocol"	means Regulation (EC) 1005/2009 of 16 September 2009 on substances that deplete the ozone layer
"Multi Agency Public Protection Arrangements" or "MAPPA"	means those arrangements as established under the Criminal Justice and Court Services Act 2000 and as subsequently amended by the Criminal Justice Act 2003, which require the police, prison and probation services to establish, review and monitor arrangements for assessing and managing the risks posed by serious and violent offenders;
"Mutual Aid"	means a national plan for providing support arrangements between all prisons in England and Wales, including in the event of a serious incident requiring a reinforcement of staff trained to use control and restraint techniques;
"National Partnership"	has the meaning given to it in Part 5 (Healthcare) of Schedule 1

Agreement"	(Authority's Custodial Service Requirements);
"National Security Framework"	means the framework that provides information and guidance on the minimum requirements and assurances that must be in place to effectively manage security risks within prisons, available on the HMPPS intranet and in the electronic data room and amended from time to time;
"New Contractor"	means any person who has entered or who will enter into a new contract with the Authority for the provision of all or any part of the Services or any similar provision of such a service (and "New Contractor" shall include the Authority or any other Government department where such provision will be made by the Authority or such Government department);
"New Prison"	means a prison that has recently been constructed and has not previously been used as a functioning prison establishment;
"Non-Compliance Notice"	means a notice from the Authority to the Contractor stating that a Prison Cell does not comply with the Cell Certificate Requirements and specifying any outstanding matters that must be attended to before a Cell Certificate can be issued in respect of the relevant Prison Cell;
"Notice of Arbitration"	has the meaning given to it in clause 70.14.1 (Arbitration) ;
"Notice of Dispute"	has the meaning given to it in clause 70.2 (Notice of Dispute) ;
"Occasion of Tax Non-Compliance"	means: <ul style="list-style-type: none"> (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: <ul style="list-style-type: none"> (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

- (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
 - (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion;
- "Offender Assessment System (or OASys)"** means the Authority's risk management system, being:
- (a) the application developed jointly by the prison and probation service; and
 - (b) any successor(s) to such system as are applicable to the delivery of the Services (including without limitation the single national replacement system OASys-R to be delivered by the Authority's supply partner, HP Enterprise Solutions, to introduce greater consistency across probation and prison services);
- "Offender Management"** means the guidance and supervision provided to offenders to aid their rehabilitation and manage the risks they pose, particularly but not limited to the risks of harm to themselves, the public, known associates or other and the risk of reoffending;
- "Offender"** means any person who has been found guilty by a court and who has received a community sentence or a custodial sentence from a court;
- "Open Book Contract Management"** means the process for sharing and management of charges, costs, operational and performance data between the Contractor and the Authority in line with Government guidance and policy from time to time (including Procurement Policy Note 05/16);
- "Open Source"** means computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as

	open source;
"Operating Environment"	means the Authority's ICT System and the Sites;
"Operating Manual"	has the meaning given to it in clause 25.1 (Maintenance of Manual) ;
"Operating Procedure Test"	has the meaning given to it in clause 13.4 (Testing of Operating Procedures) ;
"Operating Procedures"	means operating procedures described as such in Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Service Requirements) , and "Operating Procedure" shall be construed accordingly;
"Operational Briefing Sheet"	has the meaning given to it in Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Service Requirements) ;
"Operational Data"	means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the operation of the Prison in each case that is used by or on behalf of the Contractor and/or its Sub-Contractors in connection with the provision of the Services or the performance of the Contractor's obligations under this Contract;
"Optional Authority Third Party Contracts"	has the meaning given to it in paragraph 3.2.1 of Schedule 3 (Authority Third Party Contracts) ;
"Order"	has the meaning given to it by clause 7.4.1 (Exclusion of Security) ;
"Outstanding Work"	has the meaning given to it in clause 54.4 (Maintenance Work) ;
"Parent Company Guarantee"	means the guarantee to be entered into in accordance with the terms of this Contract and detailed in Schedule 23 (Parent Company Guarantee) ;
"Performance Point Deduction"	means a deduction to the Contract Price made as a result of the occurrence of a Contract Delivery Indicator and in accordance with Schedule 14 (Payment Mechanism) ;

"Performance Point"	means a point accruing on the occurrence of a Contract Delivery Indicator as calculated in accordance with Appendix 2 (Contract Delivery Indicators) of Schedule 15 (Performance Mechanism) ;
"Performance Quarter"	<p>means each of the successive four (4) periods of three (3) Months during the Contract Year ending on 31 March, 30 June, 30 September and 31 December, provided that:</p> <p>(a) in the first Contract Year, if the number of Months is not divisible by three (3), the first Performance Quarter shall start on the Services Commencement Date and shall end on the next to occur of 31 March, 30 June, 30 September or 31 December; and</p> <p>(b) in the last Contract Year, if the number of Months is not divisible by three (3), the last Performance Quarter shall be the period commencing on the 1 April, 1 July, 1 October or 1 January immediately preceding the last Day of the Service Period and ending on the last Day of Service Period;</p>
"Permitted Level"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Persistent Breach"	means, pursuant to clause 44.1 (Persistent Breach) , a breach for which a Final Warning Notice has been issued, which has continued for more than fourteen (14) Days or recurred in two (2) or more Months within the six (6) Month period after the date on which such Final Warning Notice is served on the Contractor;
"Personal Data"	has the meaning given to it in the GDPR and for the purposes of the Contract, includes special categories of personal data (as referred to in Article 9(1) of the GDPR) and personal data relating to criminal convictions and offences (as referred to in Article 10 of the GDPR);
"Personal Data Breach"	has the meaning given to it in the GDPR;
"P-NOMIS"	means the primary, centralised, cross authority Prison management system used in public prisons, and from early 2012

	all private prisons (including the Prison) and includes all successor(s) to such system as are applicable to the delivery of the Services;
"Police Authority"	has the meaning given to it in section 101 of the Police Act 1996;
"Policy Frameworks" or "PF"	means the documents issued to convey mandatory actions to prison establishments as may be amended from time to time and references to 'Policy Framework [number]' shall be to the relevant Policy Framework with that number, as amended or replaced from time to time;
"PPT Measure"	has the meaning given to it in Schedule 15 (Performance Mechanism) ;
"Prescribed Documentation Security Officer"	has the meaning given to it in clause 64.9.6 (Security and Confidentiality of Prescribed Documentation) ;
"Prescribed Documentation"	has the meaning given to it in clause 64.8 (Prescribed Documentation) ;
"Prescribed Rate"	means two per cent (2%) above the base rate from time to time of The Bank of England;
"Prison Cell"	means a secure unit of accommodation for occupation by a Prisoner or Prisoners (including the Care and Separation Unit and the areas for occupation by a Prisoner or Prisoners in the Healthcare Unit of the Prison);
"Prison Function"	means the function of the Prison. The three core prison functions are 'Reception', 'Training' and 'Resettlement';
"Prison Industries"	means the work undertaken by Prisoners in workshops within the Prison to provide goods and services;
"Prison Population"	means the number of Prisoners occupying the Prison at any given time;
"Prison Rules"	means the Prison Rules 1999, Statutory Instrument 1999, no. 728 and, where applicable, the YOI Rules;
"Prison Service Instructions" or	means documents issued to convey mandatory actions to prison establishments as may be amended from time to time, and

"PSIs"	references to 'PSI [number]' shall be to the relevant PSI with that number, as amended or replaced from time to time;
"Prison Service Orders" or "PSOs"	means documents issued to convey mandatory actions to prison establishments as may be amended from time to time, and references to 'PSO [number]' shall be to the relevant PSO with that number, as amended or replaced from time to time;
"Prison Work"	means the work undertaken by Prisoners in prison to aid the running of the Prison, this could include, but is not limited to, cleaning or catering;
"Prison"	means the buildings and other facilities and equipment to be operated and maintained at the Site in accordance with this Contract;
"Prisoner Accommodation (Notification of Change) document"	means a prisoner accommodation (notification of change) document in the form specified by the Authority in PSO 1900 Annex E as at the Commencement Date;
"Prisoner Accommodation (Operational Availability) document"	means a prisoner accommodation (operational availability) document in the form specified by the Authority in PSO 1900 Annex E as at the Commencement Date;
"Prisoner Custody Officer" or "PCO"	means a person, as defined in section 89(1) of the Criminal Justice Act 1991 (as amended), in respect of whom a certificate is for the time being in force certifying that such person has been approved by the Authority for the purpose of performing Custodial Duties in accordance with clause 35 (Certification as Prisoner Custody Officers) ;
"Prisoner Escort Services"	has the same meaning as "prisoner escort arrangements" in section 80 of the Criminal Justice Act 1991 (as amended by section 93 of the Criminal Justice and Public Order Act 1994) and shall be in respect of the Prison;
"Prisoner Place"	means a unit of accommodation for occupation by a Prisoner in a Prison Cell (other than in a Prison Cell which is a Care and Separation Unit or is within the Healthcare Unit) at the Prison;
"Prisoner"	means, as the case may be:

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	(a) an Offender; or
	(b) a Remand Prisoner,
	who is accommodated at the Prison;
"Prisons and Probation Ombudsman"	means the independent individual for the time being appointed by the Justice Secretary to investigate complaints from Prisoners;
"Probation Instructions" or "PIs"	means documents issued to convey mandatory actions to probation staff as may be amended from time to time, and references to 'PI [number]' shall be to the relevant PSI with that number, as amended or replaced from time to time;
"Probation Provider"	means the National Probation Service and/or Community Rehabilitation Company (or other contractor) appointed by the Authority to provide Probation Services from time to time;
"Probation Services"	means the probation services commissioned by the Authority and provided by the Probation Provider from time to time;
"Proceedings"	has the meaning given to it in clause 83 (Governing Law and Jurisdiction) ;
"Process" or "Processing"	has the meaning given to it in the GDPR;
"Processor Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Contract;
"Processor"	takes the meaning given in the GDPR;
"Prohibited Act"	means: <ul style="list-style-type: none"> (a) directly or indirectly offering, giving or promising or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown; or

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- (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;
- (b) entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Authority;
- (c) committing any offence:
 - (i) under the Bribery Act 2010 or under the Prevention of Corruption Acts 1889-1916 (before they were revoked);
 - (ii) under Legislation creating offences in respect of fraudulent acts (including offences by the Contractor under Part 3 of the Criminal Finances Act 2017); or
 - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Crown;

"Prohibited Equality and Diversity Act"

means any act which results in a finding of any unlawful discrimination (whether in relation to race, gender, age, disability, religious belief, sexual orientation or otherwise) by any Relevant Authority against the Contractor or any of its Sub-Contractors or any of its or their agents or shareholders in relation to the Contract;

"Project Specific IPRs"

means:

- (a) Intellectual Property Rights in items created by the

Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema and the Operating Procedures;

- (b) Intellectual Property Rights arising as a result of the performance of the Contractor's obligations under this Contract; and/or
- (c) (to the extent not captured by **paragraphs (a) or (b)** above) Intellectual Property Rights arising as a result of any materials produced or developed by the Contractor in connection with any Works contemplated or completed pursuant to this Contract (including any drafts or incomplete iterations of such materials),

but shall not include the Contractor Background IPRs;

**"Property and
Facilities Management
Services"**

means the services required to satisfy the Authority's Property and Facilities Management Requirements;

"Protective Measures"

means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in **Schedule 2 (Digital)**;

**"Public Health
Infection Control
Manual"**

means the manual that advises healthcare workers, prison and detention centre staff about dealing with outbreaks, immunisations, infection control and prevention;

"Purposeful Activity"

means a Prisoner being engaged in an activity that is likely to benefit them and support their rehabilitation in line with the expectations of HMIP (including the expectations set out at <https://www.justiceinspectorates.gov.uk/hmiprisons/our-expectations/prison-expectations/purposeful-activity/>);

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"Qualifying Change in Law" means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law; or
- (c) a change to an Authority Policy;

which has a material impact on the Contractor's costs of providing the Services and which was not foreseeable at the Commencement Date;

"Quality Management Officer" has the meaning given to it in **clause 26.2 (Quality Management Officer)**;

"Quantum" means the HMPPS ICT system (which shall be deemed to include any replacement system or systems);

"Ramp-Up" or "Ramp-Up Period" means, in respect of any New Prison, the period starting with the Services Commencement Date and concluding at the point at which the Authority signs off the Availability of Prisoner Places up to the CNA Level (as such term is defined in **Schedule 14 (Payment Mechanism)**) of the Prison in accordance with **paragraph 5.1 of Schedule 14 (Payment Mechanism)**;

"Ramp-Up Time table" means, in respect of any New Prison, the timetable for the additional number of Available Prisoner Places to be provided by the Contractor during the Ramp-Up Period in accordance with **paragraph 14 (Ramp-Up Time table) of Schedule 14 (Payment Mechanism)**;

"Recipient" has the meaning given to it in **clause 40.1.2 (Value Added Tax)**;

"Recompetition Data" has the has given to it in **Schedule 24 (Handover and Exit Management)**;

"Rectification Period" has the meaning given to it in **Schedule 14 (Payment Mechanism)**;

"Rectification Plan" has the meaning given to it in **Schedule 15 (Performance Mechanism)**;

"Regime" means the time Prisoners spend outside of their Prison Cells or

engaged in Purposeful Activity, including, but not limited to, time spent in education, training, work, offending behaviour work or peer support roles as further set out in **paragraph 1.3 of Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Service Requirements)**;

"Relevant Amount" has, for the purpose of **clause 66.10 (Limitation of Liability under clause 66.1.1.5)** only, the meaning given to it in **clause 66.10.5 (Limitation of Liability under clause 66.1.1.5)**;

"Relevant Authority" means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Government of the United Kingdom or of the European Union;

"Relevant Event" means any:

- (a) Authority Change;
- (b) Qualifying Change in Law;
- (c) Compensation Event; or
- (d) matter in respect of which the Parties expressly agree in writing to, or there is express provision in this Contract for, an adjustment to the Contract Price in accordance with **clause 59 (Financial Adjustments)**;

"Relevant IPRs" means IPRs used to provide the Services or as otherwise provided and/or licensed by the Contractor (or to which the Contractor has provided access) to the Authority or a third party in the fulfilment of the Contractor's obligations under this Contract;

"Relevant Organisation" means any of the following (including their successor bodies from time to time):

- (a) relevant Probation Boards;
- (b) Police Forces;
- (c) Local Criminal Justice Board;
- (d) the Department for Education;

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- (e) Local Authorities;
- (f) the Department of Health and Social Care;
- (g) the Education and Skills Funding Agency;
- (h) Crime and Disorder Reduction Partnerships;
- (i) Drug and Alcohol Action Teams;
- (j) UK Visas and Immigration;
- (k) Local Safeguarding Children Boards;
- (l) other Custodial Service Providers; and
- (m) any non departmental public bodies, executive agencies or other arm's length bodies under the organisations referred to in limbs (a) to (l) (inclusive) above ;

"Relevant Person" means an Affiliate;

"Relevant Tax Authority" means HMRC, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

"Relevant Transfer" has the meaning given to it in **Schedule 18 (TUPE, Employees and Pensions)**;

"Relief Event" means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event) and earthquakes;
- (b) riot, acts of concerted indiscipline, public disorder and/or civil commotion, provided that the Contractor:
 - (i) has complied in all material respects with all procedures and protocols relating to safety and security at the Prison and incidents of riot during a reasonable period before, during and after the incident of riot, act of concerted indiscipline, public disorder and/or

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civil commotion; and

(ii) has not, and a Sub-Contractor has not, by its acts or omissions caused or contributed to such riot, acts of concerted indiscipline, public disorder and/or civil commotion:

(aa) unless such acts or omissions are in accordance with the correct provision of the Services in accordance with this Contract; or

(bb) except to the extent that the Contractor is acting on the written instruction of the Authority;

(c) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;

(d) any accidental loss or damage to the Site or any roads servicing it;

(e) any failure or shortage of power, fuel or transport;

(f) any blockade or embargo which does not constitute a Force Majeure Event;

(g) any:

(i) official or unofficial strike;

(ii) lockout;

(iii) go-slow; or

(iv) other dispute,

generally affecting the custodial service industry (which for the avoidance of doubt shall include contracted-out prisons) and/or the facilities management industry or a

significant sector of any of them;

- (h) in accordance with **clauses 8.2.2B.2 (Site Matters), 8.2.3.1 (Site Matters), 8.2.3.2 (Site Matters) or 8.2.4.1 (Site Matters)**, any matter referred to as such in those clauses;
- (i) in accordance with **clause 72.11 (Authority Third Party Contracts)**, a matter referred to as such in that clause,

unless any of the events listed in paragraphs (a) to (i) of this definition (inclusive) arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any Contractor Related Party;

"Remand Prisoner"

means any person who has been:

- (a) remanded in custody by a court pending a further court appearance; or
- (b) found guilty by a court, but has been remanded in custody pending sentencing;

"Repair Cost"

means the cost of any repair or replacement needed to ensure that following any incident of damage the Prison is returned to the standard required in accordance with this Contract;

"Replacement Services"

means any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of this Contract (in whole or part and for whatever reason), whether those services are provided (in whole or in part) by the Authority internally and/or by any New Contractor;

"Request for Information"

shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

"Required Action"

has the meaning given to it in **clause 60.3.1 (Action by Authority)**;

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"Required Condition Standard"	has the meaning given to it in clause 54.1 (Final Survey) ;
"Required Insurance"	has the meaning given to it in clause 68.1 (Insurance) ;
"Resettlement Cohort"	means the group of Prisoners in the final stage of their custodial sentence within the Prison, whose focus should be on integration back into the community through building, improving or maintaining family or other support links prior to release;
"Resettlement Prison"	means a prison holding the Resettlement Cohort;
"Resident Local Authority"	means the Local Authority with adult social services responsibilities wherein the Prison is located;
"Restricted Country"	means a country, territory or jurisdiction which is not covered by an adequacy determination by a competent authority with jurisdiction over the party who wishes to export the data outside of the EEA and/or the United Kingdom (in the case of the latter on and from the date on which the United Kingdom formally ceases to be a member of the European Union, in circumstances where the United Kingdom is not a member of the EEA);
"Restructuring Costs"	<p>means:</p> <ul style="list-style-type: none"> (a) the consultation costs; (b) the notice period and/or Payment In Lieu Of Notice (PILON) costs; and (c) the contractual redundancy costs in respect of Transferring Former Contractor Employees and Transferring Authority Employees (if any) and / or statutory redundancy costs in respect of other employees, <p>arising out of the implementation in the first Contract Year by the Contractor of its Mobilisation Assurance Plan;</p>
"Retention Fund Account"	has the meaning given to it in clause 54.5 (Retention Fund) ;
"Review Procedure"	means the procedure set out in Schedule 17 (Review Procedure) ;
"Riot"	shall be construed in accordance with sections 1 and 10 (Part 1)

	of the Public Order Act 1986 and as amended;
"RRAPP Band Activation Notice"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"RRAPP Band Deactivation Notice"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Section 88"	means section 88 of the Criminal Justice Act 1991 (as amended by section 101 of the Criminal Justice and Public Order Act 1994);
"Senior Employee"	has the meaning given to it in clause 36.15.3 (Contractor's Key Staff and Senior Managers) ;
"Service Delivery Documents"	means: <ul style="list-style-type: none"> (a) the Mobilisation Assurance Plan; (b) the Transformation Plan (where relevant); (c) the Equipment Refresh Plan; (d) Asset Forward Maintenance Plan; (e) Asset Forward Replacement Plan; and (f) the Annual Custodial Service Delivery Plan;
"Service Period"	means the service period for the Services at the Prison and means the period from the Services Commencement Date until and including the earlier to occur of the Termination Date and the Expiry Date;
"Services Commencement Date"	means the date on which the Contractor commences provision of the Services in accordance with the terms of this Contract, which shall be [REDACTED];
"Services Media"	means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus;

"Services"	means together the Custodial Services and Property and Facilities Management Services;
"Single Prison Cell"	means a Prison Cell designed for single occupancy with a floor area in excess of six point eight square metres (6.8m ²) or, if a shower area is to be incorporated within the Prison Cell, a floor area in excess of eight point five square metres (8.5m ²), such areas to include a toilet compartment or suitable modesty screening around a toilet;
"Site Facilities Manager"	means the site facilities manager appointed pursuant to clause 8.9 (Site Facilities Manager) ;
"Site Plans"	means the plans set out in Schedule 9 (Lease) ;
"Site"	means the area edged red on the Site Plans together with the Buildings and the Services Media for all utilities and services serving the Buildings;
"SME"	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
"SME Management and Charges Information Reporting Template"	means the reporting template produced included within procurement policy note 01/18 (Supply Chain Visibility) (available at https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility) as may be updated from time to time;
"SME Management and Charges Information Reports"	means the reports contemplated within procurement policy note 01/18 (Supply Chain Visibility) (available at https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility) as may be updated from time to time;
"Social Care Service Provider"	means the Resident Local Authority with responsibility for adult social care services where the prison is located and, where relevant, the organisation commissioned by the that Local Authority to provide the Social Care Services and support

services within the Prison as the Local Authority's agent;

"Social Care Services" means the identification of people who may have care and support needs, their assessment, determination of eligibility for services and the provision of advice and information and/or care and support services provided as part of an individual care and support plan;

"Software" means Contractor Software and Third Party Software;

"Specific Change in Law" means any Change in Law which specifically refers to the provision of services the same as or similar to the Services;

"Specified Purpose" means the purpose of considering any issues concerning data protection, governance and financial reporting and/or the provision of any guarantees, collateral warranties, bonds or other forms of security under or in connection with this Contract;

"Statutory Certificates" means, in respect of the Prison:

- (a) asbestos register / management plan;
- (b) COSHH register indexes;
- (c) registers relating to portable appliance testing (PAT);
- (d) automatic heat and smoke detector test records;
- (e) air hygiene risk assessment / LEV report records;
- (f) fire alarm system test records;
- (g) emergency generator test log;
- (h) emergency lighting test records;
- (i) fire extinguisher inspection sheets;
- (j) fixed wiring test records;
- (k) gas system service / test records;
- (l) insurance inspections;

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- (m) legionella testing records (L8);
- (n) water hygiene risk assessments;
- (o) water hygiene test reports;
- (p) lift maintenance and test results;
- (q) lighting protection system and earthing test results;
- (r) pressure vessel inspection records; and
- (s) smoke ventilation and sprinkler test records,

insofar as the Authority is required by Legislation to ensure that such certificates are current and valid;

"Step-Out Date "	has the meaning given to it in clause 60.7.1 (Step-Out) ;
"Step-Out Notice"	has the meaning given to it in clause 60.7.1 (Step-Out) ;
"Sub-Contract"	means a contract between the Contractor and a Sub-Contractor (or between a Sub-Contractor and its Sub-Contractor);
"Sub-Contractor"	means any person engaged by the Contractor or any Sub-Contractor from time to time to procure the provision of the Services or deliver any other aspect of the Contractor's obligations under this Contract. References to Sub-Contractors means sub-contractors of any tier of the Contractor;
"Subject Access Request"	means a request by a Prisoner, the Contractor or the Authority for a copy of his or her Personal Data;
"Sub-processor"	means any third Party appointed to process Personal Data on behalf of that Processor related to this Contract;
"Subsidiary"	shall have the meaning given to it in section 1159 of the Companies Act 2006 and, for the purposes only of the membership requirement in subsections 1159(1)(b) and (c), a company (the "first company") shall be treated as a member of another company (the "second company") if the shares in the second company are registered in the name of (a) another person (or its nominee), where the shares are held by such other person (or its nominee) by way of security or in connection with the

	taking of security from the first company, or (b) a nominee for the first company;
"Successor Body"	means a body that the Authority assigns, novates or otherwise disposes of its rights, obligations or liabilities to, which is not a Central Government Body;
"Suitable Third Party"	means any person other than the Authority or the Contractor who is not an Unsuitable Third Party;
"Supplier"	has the meaning given to it in clause 40.1.2 (Value Added Tax) ;
"Suspended Member of Staff"	has the meaning given to it in clause 36.8.1 (Suspension of Staff) ;
"Sustainability Plan"	has the meaning given to it in Schedule 12 (Sustainability) ;
"Sustainability Reporting Requirements"	means the completion and delivery of reports by the Contractor which shall be substantially in the form set out in Schedule 12 (Sustainability) , containing all sustainability data to be measured and collected by the Contractor and including information as required by the Authority;
"Sustainability Requirements"	means the delivery by the Contractor of the requirements relating to sustainability set out in Schedule 12 (Sustainability) ;
"Tax"	means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the Commencement Date and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;
"Termination Date"	means the date of early termination of this Contract in accordance with Part X (Expiry and Termination) of this Contract;
"Termination Notice"	means a notice of termination issued in accordance with this Contract;
"Termination Sum"	means any compensation payable by either Party to the other Party on termination of this Contract under Part X (Expiry and Termination) of this Contract;
"Tested Service"	means all or any part of the Services excluding the Building

maintenance services provided by the Contractor in order to comply with its obligations under **clause 19 (Maintenance of the Prison)**;

"Third Party"	means a person or group (other than the Authority and the Contractor), that provides goods and or delivers works or services in the Prison on behalf of the Contractor, Authority or Relevant Organisation;
"Third Party Claim"	has the meaning given to it in clause 66.4 (Notification of Claims) ;
"Third Party IPR"	means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
"Third Party Software"	means software which is proprietary to any third party (other than an Affiliate of the Contractor) or any Open Source Software which in any case is, will be or is proposed to be used by the Contractor for the purposes of providing the Services, including any software specified as such in Schedule 2 (Digital) ;
"Title Matters"	means the matters referred to as "Title Matters" in the Leases;
"Transferring Authority Employees"	has the meaning given to it in Schedule 18 (TUPE, Employees and Pensions) ;
"Transferring Contractor Employees"	has the meaning given to it in Schedule 18 (TUPE, Employees and Pensions) ;
"Transferring Former Contractor Employees"	has the meaning given to it in Schedule 18 (TUPE, Employees and Pensions) ;
"Transformation Plan"	has the meaning given to it in Schedule 5 (Mobilisation) ;
"TUPE Surcharge"	has the meaning given to it in Schedule 18 (TUPE, Employees and Pensions) ;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI No 246) as amended from time to time;
"Unavailability"	means any amount not paid to the Contractor as a result of any

"Deduction"	Prisoner Place not being an Available Prisoner Place;
"Unavailable Prisoner Place"	has the meaning given to it in Schedule 14 (Payment Mechanism) ;
"Uninsured Losses"	means Losses which are not Insured Losses (and for the avoidance of doubt, any deductibles and excesses of loss shall not be treated as an uninsured loss (which are dealt with in accordance with clause 68.13 (Insurance));
"Unsuitable Third Party"	<p>means any person:</p> <p>whose activities do or could, in the reasonable opinion of the Authority, pose a threat to national security, provided that the Authority's opinion shall be deemed to be reasonable if personally confirmed to the Contractor by a director of the Authority (or equivalent grade) or above:</p> <p>(a) whose activities are, in the reasonable opinion of the Authority, incompatible with any operations or activities carried out by the Authority for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions; and/or</p> <p>(b) who is, in the reasonable opinion of the Authority, inappropriate because the Authority has received specific information from the Crown, the Serious Fraud Office or the Crown Prosecution Service about the unsuitability of the proposed new third party to act in relation to the Contract;</p>
"Value Testing Exercise"	means an exercise carried out pursuant to clause 28.3 (Value Testing Option) ;
"Value Testing Service"	has the meaning given to it in clause 28.3.1 (Value Testing Option) ;
"VAT"	means any value added taxes;
"VCSE"	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

- "Works"** means the works associated with or ancillary to the operation of the Prison and the provision of the Property and Facilities Management Services including any equivalent works falling within the scope of the works described in **Schedule 11 (Property and Facilities Management)** and/or meeting the obligations of **clause 10 (Duties Under CDM Regulations)**;
- "Year"** means a calendar year unless otherwise specified; and
- "YOI Rules"** means the Young Offender Institution Rules 2000, as amended.

1.2 Interpretation

In this Contract, except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference in this Contract to any clause, sub-clause, paragraph or Schedule is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph or schedule of this Contract;
- 1.2.4 save where otherwise provided in this Contract, any reference to this Contract or to any other Document shall include any permitted variation, amendment, or supplement to such Document;
- 1.2.5 any reference to any enactment, order, regulation, code or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.6 any reference in this Agreement which immediately before Exit Day is a reference to (as it has effect from time to time):
 - 1.2.6.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day, as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and



- 1.2.6.2 any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
- 1.2.7 any references to Documents being "in the agreed form" means such Documents have been initialled by or on behalf of each of the Parties for the purpose of identification;
- 1.2.8 any reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in **Clause 1.1 (Definitions)** shall be interpreted in accordance with the Framework Agreement;
- 1.2.10 any obligation under the Framework Agreement which is expressly stated to apply to this Contract shall apply as though such obligation were directly incorporated in this Contract;
- 1.2.11 headings are for convenience of reference only;
- 1.2.12 words preceding "**include**", "**including**", "**included**", "**for example**" and "**in particular**" and words of similar effect shall be construed without limitation by the words which follow those words;
- 1.2.13 any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.2.14 subject to any express provisions of this Contract to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense.

1.3 In entering into this Contract the Authority is acting as part of the Crown.

1.4 **Schedules**

The Schedules to this Contract and their Appendices (and/or annexures (if applicable)) form part of this Contract.

1.5 **Indexation**

In this Contract, except where otherwise provided, references to amounts expressed to be "**Indexed**" or "**subject to indexation**" are references to such amounts as indexed in accordance with the calculations set out in **Schedule 14 (Payment Mechanism)**.

1.6 Precedence of Documentation

- 1.6.1 In the event of and only to the extent of any inconsistency or conflict between this Contract and the provisions of the Framework Agreement, the inconsistency or conflict shall be resolved in accordance with the following descending order of precedence:
- 1.6.1.1 the main body of this Contract (which shall be deemed to include the recitals and **clauses 1 (Interpretation) to 88 (Further Assurance)** (inclusive));
 - 1.6.1.2 the Schedules of this Contract; and
 - 1.6.1.3 the Framework Agreement (excluding Framework Schedule 3 (Model Call-Off Contract)).
- 1.6.2 If there is any inconsistency or conflict between the provisions of the main body of this Contract and the Schedules and/or any Appendices to the Schedules, the inconsistency or conflict shall be resolved in accordance with the following descending order of precedence:
- 1.6.2.1 the main body of this Contract (which shall be deemed to include the recitals and **clauses 1 (Interpretation) to 88 (Further Assurance)** (inclusive));
 - 1.6.2.2 the Authority's Requirements;
 - 1.6.2.3 any other Schedules and their Appendices (other than **Schedule 7 (Contractor's Proposal)**); and
 - 1.6.2.4 **Schedule 7 (Contractor's Proposal)**.
- 1.6.3 In the event of any inconsistency or conflict between the Authority's Requirements and **Schedule 7 (Contractor's Proposal)** or any documents produced in accordance with the provisions of this Contract (including the Initial Service Delivery Documents and the Service Delivery Documents), the Authority's Requirements shall take precedence.
- 1.6.4 In the event of any inconsistency or conflict between **Schedule 4 (Authority Policies)** and the other Schedules or any documents produced in accordance with the provisions of this Contract (including the Initial Service Delivery Documents and the Service Delivery Documents), **Schedule 4 (Authority Policies)** shall take precedence, save that where there is any inconsistency or conflict between

the Authority's Requirements and **Schedule 4 (Authority Policies)**, such part of the Authority's Requirements shall take precedence.

- 1.6.5 Any derogation from the Authority Policies which the Authority has approved in accordance with the provisions of **Schedule 16 (Change Protocol)** shall take precedence over the Authority Policies. For the avoidance of doubt, any request for such a derogation by the Contractor shall constitute a Contractor Change.
- 1.6.6 In the event of any inconsistency or conflict between **Schedule 7 (Contractor's Proposal)** and the Initial Service Delivery Documents or the Service Delivery Documents, **Schedule 7 (Contractor's Proposal)** shall take precedence.
- 1.6.7 In the event of any inconsistency or conflict between the provisions of this Contract (excluding the Controlled Documents) and any Controlled Document, the provisions of this Contract (excluding the Controlled Documents) shall take precedence.
- 1.6.8 Notwithstanding **clause 1.6.2 (Interpretation)**, in the event of any inconsistency or conflict between the provisions of **Schedule 25 (Data Protection)** and any limitation of liability provisions and any other provision set out in this Contract in relation to Personal Data, the provisions of **Schedule 25 (Data Protection)** and any limitation of liability provisions shall prevail.

1.7 **Responsibility for Related Parties**

Subject to the provisions of this Contract, the Contractor shall be responsible for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the Authority shall be responsible for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority. The Contractor shall be responsible for the selection of and pricing by any Contractor Related Party.

1.8 **Approval**

None of the following:

- 1.8.1 the giving of any approval or consent;
- 1.8.2 the examination, acknowledgement and/or knowledge of the provisions of any agreement or document; or
- 1.8.3 the review of any document or course of action, or the failure to do so,

by or on behalf of the Authority shall, unless otherwise expressly stated in this Contract,

relieve the Contractor of any of its obligations under this Contract or of any duty which it may have pursuant to this Contract to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.9 Succession

References to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Authority) shall include their successors and assignees.

1.10 Condition Precedent

1.10.1 No Party shall be bound by its obligations and duties under this Contract other than those under **clauses 61 (Information and Confidentiality), 62 (Public Relations and Publicity), 63 (Advertisements), 70 (Dispute Resolution), 80 (Notices) and 83 (Governing Law and Jurisdiction)**, until the following (the "**Condition Precedent**") have occurred:

1.10.1.1 the Contractor has procured the execution of the Parent Company Guarantee in accordance with **clause 3.1 (Parent Company Guarantee and Financial Standing of the Contractor)**; and (if applicable);

1.10.1.2 where the proposed Guarantor is incorporated outside of the United Kingdom, the Contractor has procured a legal opinion in accordance with **clause 3.1 (Parent Company Guarantee and Financial Standing of the Contractor)**; and (if applicable)

1.10.1.3 where the Contractor is incorporated outside of the United Kingdom, the Contractor has procured a legal opinion in accordance with **clause 3.4 (Parent Company Guarantee and Financial Standing of the Contractor)**.

1.10.2 If the Condition Precedent has not been satisfied before the date which falls two (2) Business Days following the Commencement Date (the "**Longstop Date**") then either:

1.10.2.1 this Contract shall terminate on the Longstop Date; or

1.10.2.2 the Parties may waive the Condition Precedent in accordance with



clause 1.10.3.

- 1.10.3 If all of the Parties serve written notice on each other stating that any or all of the Condition Precedent is waived absolutely (which notice must include a reference to this clause and be signed by the managing director of the Party giving notice) then the Condition Precedent shall be waived with effect from the date of service of the last of such notices and (without prejudice to **clause 1.10.1**) the date on and from which the Parties shall be bound by their respective obligations and duties under this Contract shall be the next Day following the date of service of the last of such notices.

2. DURATION OF CONTRACT

- 2.1 This Contract and the rights and obligations of the Parties shall take effect on the Commencement Date and (subject to **clause 2.3 (Duration of Contract)**) and the other provisions for earlier termination set out in this Contract) shall continue until the Expiry Date.
- 2.2 Subject to the terms of this Contract, the Contractor shall provide the Services on and from the Services Commencement Date and at all times during the Service Period. Mobilisation shall commence from the Commencement Date in accordance with the provisions of **Schedule 5 (Mobilisation)**.
- 2.3 Not less than six (6) Months prior to the Early Termination Date, the Authority may serve a written notice upon the Contractor the effect of which shall be to terminate this Contract on the Early Termination Date.
- 2.4 Where the Contract is terminated pursuant to **clause 2.3 (Duration of Contract)**, the Authority shall pay the Contractor an amount equal to the Early Termination Redundancy Costs if and to the extent that such costs have not been recovered through the Contract Price as at the Early Termination Date. Save for the foregoing, no compensation shall be payable by the Authority to the Contractor where this Contract is terminated pursuant to such clause.
- 2.5 On termination pursuant to **clause 2.3 (Duration of Contract)**, the Contractor shall, if so required by the Authority, transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 24 (Handover and Exit Management)**.

3. PARENT COMPANY GUARANTEE AND FINANCIAL STANDING

- 3.1 The Contractor shall procure the execution on the Commencement Date of a Parent Company Guarantee in favour of the Authority in the form set out in **Schedule 23 (Parent Company Guarantee)** to secure the due performance by the Contractor of its obligations to the Authority. If the Contractor's proposed Guarantor is incorporated outside of the United

Kingdom, the Contractor shall at its own cost, on or before the execution Commencement Date, have procured a legal opinion as to the enforceability of the Parent Company Guarantee in a form acceptable to the Authority from an independent legal adviser qualified to practise in the jurisdiction in which such Guarantor is established and has its own office. Any provision of this Contract stated as being applicable to the Guarantor shall apply to the Guarantor irrespective of whether the Guarantor was incorporated within or outside of the United Kingdom.

- 3.2 The Contractor shall notify the Authority forthwith in writing if at any time the Guarantor ceases to be its ultimate Holding Company. In such circumstances, the Contractor shall at its own cost, within thirty (30) Days of a request by the Authority, procure that a replacement Parent Company Guarantee in the form set out in **Schedule 23 (Parent Company Guarantee)** is executed by the Contractor's new ultimate Holding Company together with, where the new Holding Company is incorporated outside of the United Kingdom, a legal opinion as to the enforceability of the Parent Company Guarantee in a form acceptable to the Authority from an independent legal adviser qualified to practise in the jurisdiction in which such Holding Company is established and has its own office.
- 3.3 If the Authority makes a demand under the Parent Company Guarantee such that the Guarantor requires access to the Prison and/or Site in order to comply with the Parent Company Guarantee, the Contractor shall grant a licence to the Guarantor in accordance with the terms set out in paragraph 6 of the Parent Company Guarantee.
- 3.4 Where the Contractor is incorporated outside of the United Kingdom, the Contractor shall at its own cost, on or before the Commencement Date, have procured a legal opinion as to its capacity and ability to enter into this Contract and meet its obligations in full in a form acceptable to the Authority from an independent legal adviser qualified to practise in the jurisdiction in which the Contractor is established and has its own office.
- 3.5 The Contractor warrants to the Authority on a continuing basis that neither it nor the Guarantor, any Key Sub-Contractor nor any other party listed under paragraph (a) of the definition of Financial Distress Event is subject to a Financial Distress Event.
- 3.6 If the Contractor becomes aware the warranty given by it under **clause 3.5 (Parent Company Guarantee and Financial Standing)** has been breached, is incorrect or is misleading, it shall immediately notify the Authority in writing of the relevant breach, error or inaccuracy in sufficient detail so as to allow the Authority to make an accurate assessment of the disclosed issue(s).
- 3.7 Following the Commencement Date, the Contractor shall submit a completed FVRA Template (as such term is defined in the Framework Agreement) to the Authority within five (5) Days of any adverse change in respect of any of the criteria that attract a Red, Amber or

Green score within the FVRA Template such that any party listed under paragraph (a) of the definition of Financial Distress Event's score moves either from a Green to an Amber or Red score or from an Amber to a Red score.

3.8 Without prejudice to the generality of **clause 3.6 (Parent Company Guarantee and Financial Standing)** and the Authority's continued right to terminate the engagement of the Contractor under this Contract under **clause 44 (Termination on Contractor Default)**, where a Party becomes aware of an actual or potential breach of the warranty provided by the Contractor under **clause 3.5 (Parent Company Guarantee and Financial Standing)**:

3.8.1 that Party shall notify the other Party in writing of the actual or potential breach as soon as reasonably practicable and in any event within five (5) Days of becoming aware of the same (referred to in this **clause 3.6 (Parent Company Guarantee and Financial Standing)** as the "initial notification");

3.8.2 at the Authority's option and written request provided within two (2) Business Days of a notification under **clause 3.8.1 (Parent Company Guarantee and Financial Standing)**, the Parties shall meet as soon as reasonably practicable after the date of issue of the initial notification (and in any event within seven (7) Days of the Authority's request) to review the effect of the Financial Distress Event upon the continued performance of the Contractor's duties and obligations under and in connection with this Contract or (as applicable) those of the Guarantor, any Key Sub-Contractor or any other party listed under paragraph (a) of the definition of Financial Distress Event; and

3.8.3 where the Authority reasonably believes (taking into account the discussions and any representations made at any meeting held pursuant to **clause 3.8.2 (Parent Company Guarantee and Financial Standing)**) that the Financial Distress Event could impact upon the continued performance of any party listed under paragraph (a) of the definition of Financial Distress Event's duties and obligations under and in connection with this Contract:

3.8.3.1 the Authority shall notify the Contractor or the Contractor and the Guarantor (as applicable) of this in writing;

3.8.3.2 the Contractor shall (or shall procure the Guarantor, any Key Sub-Contractor or any other party listed under paragraph (a) of the definition of Financial Distress Event shall) submit to the Authority for its approval, a draft (or, as the context permits, revised) Financial Distress Continuity Plan no later than three (3) Business Days after the date of such notification;

- 3.8.3.3 the Contractor shall (or shall procure the Guarantor, any Key Sub-Contractor, or any other party listed under paragraph (a) of the definition of Financial Distress Event shall) provide such financial information relating to the Contractor, the Guarantor or other organisation the subject of the FVRA Template (as applicable) as the Authority may reasonably require;
- 3.8.3.4 if the Authority:
- (a) does not approve the draft Financial Distress Continuity Plan (at its discretion acting reasonably), it shall inform the Contractor or the Contractor and the Guarantor (as applicable) of its reasons and the Contractor shall inform any Key Sub-Contractor or any other party listed under paragraph (a) of the definition of Financial Distress Event (as applicable) and the Contractor or the Guarantor (as applicable) shall take those reasons into account and procure that such other parties listed under paragraph (a) of the definition of Financial Distress Event take those reasons into account in the preparation of a further draft Financial Distress Continuity Plan, which shall be resubmitted to the Authority within three (3) Business Days of the rejection of the first or subsequent (as the case may be) draft(s) of the Financial Distress Continuity Plan; or
 - (b) considers that the draft Financial Distress Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Continuity Plan or escalate any issues with the draft Financial Distress Continuity Plan for dispute resolution pursuant to **clause 70 (Dispute Resolution)**;
- 3.8.3.5 the process referred to in **clauses 3.8.3.2 to 3.8.3.4 (Parent Company Guarantee and Financial Standing)** (inclusive) shall be repeated until such time as the Financial Distress Continuity Plan is approved by the Authority (subject always to the provisions of **clause 70 (Dispute Resolution)**);
- 3.8.3.6 following the written approval of the Financial Distress Continuity Plan by the Authority, the Contractor shall (or shall procure the Guarantor, Key Sub-Contractor or other party listed under paragraph (a) of the definition of Financial Distress Event shall (as

applicable));

- (a) on a regular basis (but no less than Monthly), review the Financial Distress Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance of the relevant parties' duties and obligations under and in connection this Contract (provided that where the Financial Distress Continuity Plan is not adequate or up to date in accordance with the requirements of this **clause 3.8.3.6(a) (Parent Company Guarantee and Financial Standing)**, the Contractor shall submit or procure the submission of an updated Financial Distress Continuity Plan for the relevant parties to the Authority for its approval, and the provisions of **clause 3.8.3.4 (Parent Company Guarantee and Financial Standing)** shall apply to the review and approval process for the updated Financial Distress Continuity Plan); and
- (b) comply with (and procure the Guarantor, any Key Sub-Contractor or any other party listed under paragraph (a) of the definition of Financial Distress Event complies with (as applicable)) the approved Financial Distress Continuity Plan (including any revised Financial Distress Continuity Plan) at all times; and

3.8.3.7 where the Contractor or Guarantor (as applicable) reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the relevant parties, the Authority may confirm to the Contractor or the Guarantor (as applicable) that the Contractor or the Guarantor, any Key Sub-Contractor or any other party listed under paragraph (a) of the definition of Financial Distress Event (as applicable) is no longer required to provide updates and/or further revisions of the relevant Financial Distress Continuity Plan for the purposes of this **clause 3.8.3 (Parent Company Guarantee and Financial Standing)**.

3.9 Where the Contractor (or Guarantor, any Key Sub-Contractor or any other party listed under paragraph (a) of the definition of Financial Distress Event) is listed for trading on any applicable stock exchange, the notification timescales contained in clause 3.8 shall be amended (to the extent required) to mirror any notification timescales applicable to the relevant party to notify the relevant stock exchange of the relevant Financial Distress Event.

- 3.10 Any dispute under this **clause 3 (Parent Company Guarantee and Financial Standing)** may be referred by either Party for determination under **clause 70 (Dispute Resolution)**.

3.11 **Resolution Information**

[Note to Bidders: The wording of this clause remains subject to further amendment by the Authority to reflect the procurement policy note expected to be published by Cabinet Office on such resolution information. A similar amendment will also be made at clause 8.12 in respect of business continuity and disaster recovery plans]

- 3.11.1 The Contractor shall provide to the Authority in writing the following information on an annual basis within five (5) Days of the expiry of each Contract Year:

3.11.1.1 details of the Contractor's Group structure, including which organisations within the Contractor's Group (if any) provide services to the Contractor; and

3.11.1.2 details of all public sector contracts (including the wider public sector) including financial characteristics of those contracts held by the Contractor and the Contractor's Group.

4. **CO-OPERATION**

4.1 **Authority Obligations**

The Authority undertakes to the Contractor that it shall not and no Authority Related Party shall wilfully impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority, the Authority Related Parties and of the Contractor and to the use of the Prison, to provide the Services and any other operations or activities carried out by the Authority or any Authority Related Party on or at the Site for the purposes contemplated by this Contract or any other of the Authority's, and/or a Relevant Organisation's statutory duties or functions).

4.2 **Co-operation**

Without prejudice to each Party's own obligations to comply with the Contract, and subject to other co-operation clauses in this Contract, each Party agrees to co-operate at its own expense (but without being compelled to incur material expenditure) with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other's obligations under this Contract.

5. **GENERAL WARRANTIES AND INDEMNITIES**

5.1 Contractor Warranties

The Contractor warrants and represents to the Authority that on the Commencement Date:

- 5.1.1 it is properly constituted and incorporated under the laws of England and Wales (or if incorporated outside of the England and Wales, under the laws of the relevant jurisdiction) and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 5.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;
- 5.1.3 this Contract is executed by its duly authorised representative;
- 5.1.4 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has taken place;
- 5.1.5 it has all necessary consents and regulatory approvals to enter into this Contract;
- 5.1.6 the obligations expressed to be assumed by the Contractor under this Contract are legal, valid, binding and enforceable to the extent permitted by Legislation;
- 5.1.7 it has all necessary rights in and to the Contractor's ICT System, the Third Party IPRs, the Contractor Background IPRs and any other materials made available by the Contractor (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Contractor's obligations under this Contractor and/or the receipt of the Services (or any part of them) by the Authority;
- 5.1.8 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- 5.1.9 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 5.1.10 the execution, delivery and performance by it of the obligations in this Contract does not contravene any provision of:
 - 5.1.10.1 any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
 - 5.1.10.2 the Articles of Association of the Contractor;

- 5.1.10.3 any order or decree of any court or arbitrator which is binding on the Contractor; or
- 5.1.10.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.1.11 no action, suit, proceeding or claim is presently being assessed and no litigation, arbitration, mediation, regulatory investigations, or administrative proceedings are presently in progress before any court, administrative body, arbitration or mediation tribunal or Relevant Authority or, to the best of the knowledge of the Contractor, is pending or threatened against it or any of its Affiliates or any of its or its Affiliates' assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 5.1.12 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 5.1.13 all written statements and representations in any written submissions made by the Contractor as part of the procurement process, including without limitation its responses to the Mini-Competition (as such term is defined in the Framework Agreement) and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Contractor has otherwise disclosed to the Authority in writing prior to the Commencement Date; and
- 5.1.14 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, manager, trustee or similar officer in relation to any of the Contractor's assets or revenues,

and the Authority relies upon such warranties and representations.

5.2 Contractor Undertakings

The Contractor undertakes with the Authority that for so long as this Contract remains in full force:

- 5.2.1 it shall:
 - 5.2.1.1 upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court,



arbitrator or Relevant Authority ("**Legal Proceedings**") may be threatened or pending and immediately after the commencement of such Legal Proceedings; or

- 5.2.1.2 in respect of Legal Proceedings which are against a Sub-Contractor, within twenty (20) Business Days after becoming aware that such Legal Proceedings may be threatened or pending or within twenty (20) Business Days after the commencement of such Legal Proceedings (whichever is the earlier),

give the Authority notice of such Legal Proceedings which would adversely affect, to an extent which is material in the context of the Services, the Contractor's ability to perform its obligations under this Contract;

- 5.2.2 it shall not, without the prior written consent of the Authority, (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract;
- 5.2.3 it shall not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom (or if incorporated outside of the United Kingdom, shall not cease to be resident of the country of its incorporation or transfer in whole or in part its undertaking, business or trade outside that country); and
- 5.2.4 it shall not undertake the performance of its obligations under this Contract for the provision of the Services otherwise than through itself or a Sub-Contractor.

5.3 Status of Warranties

- 5.3.1 All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.
- 5.3.2 The representations and warranties set out in **clause 5.1 (Contractor Warranties)** shall be deemed to be repeated by the Contractor on the Services Commencement Date by reference to the facts then existing.
- 5.3.3 Each of the representations and warranties set out in **clause 5.1 (Contractor Warranties)** shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.



5.3.4 The Contractor acknowledges and agrees that:

5.3.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Authority into entering into this Contract; and

5.3.4.2 the Authority has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained in this Contract.

5.3.5 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Contractor.

6. **AUTHORITY WARRANTIES**

6.1 **No Warranty by Authority**

Subject to **clause 6.3 (Fraudulent Statements)**, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

6.2 **No Liability to Contractor**

Subject to **clause 6.3 (Fraudulent Statements)**, neither the Authority nor an Authority Related Party shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

6.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or

6.2.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Contract.

6.3 **Fraudulent Statements**

Nothing in this **clause 6 (Authority Warranties)** shall exclude any liability which the Authority or an Authority Related Party would otherwise have to the Contractor in respect of any statements made fraudulently before the Commencement Date.

6.4 **Rights and Remedies**

The provisions of this **clause 6 (Authority Warranties)** are without prejudice to the Contractor's express rights and remedies under or pursuant to this Contract.

6.5 Contractor's Due Diligence

Without prejudice to **clause 6.1 (No Warranty by Authority)** and **6.2 (No Liability to Contractor)**, and further to the due diligence and non-reliance provisions set out in the Framework Agreement, the Contractor acknowledges that:

6.5.1 the Authority has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Contract;

6.5.2 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to:

6.5.2.1 the Authority's Requirements;

6.5.2.2 the operating processes and procedures and the working methods of the Authority;

6.5.2.3 the Site;

6.5.2.4 the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and

6.5.2.5 the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract;

6.5.3 it has advised the Authority in writing of:

6.5.3.1 each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;

6.5.3.2 the actions needed to remedy each such unsuitable aspect; and

6.5.3.3 a timetable for and, to the extent that such costs are to be payable to the Contractor, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Contract, including the Authority Requirements where applicable; and

6.5.4 it has gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it, including the quality of existing structures. **[Note to Bidders: This clause (and the provisions of clause 19) to be reviewed for each Call-Off Contract to ensure there are adequate**

systems and processes in place to ensure the Contractor is in a position whereby it can complete adequate due diligence for asset verification and that for any new Buildings or Works it can verify that any Works reflect the designs provided to bidders as part of the Disclosed Data]

6.6 No Relief

Subject to **clause 6.3 (Fraudulent Statements)**, the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

PART II - NATURE OF LAND INTEREST

7. NATURE OF LAND INTEREST

7.1 Occupation prior to Grant of Leases

On and from the Commencement Date the Contractor shall be entitled to access the Site for the purpose only of implementation of the Mobilisation Assurance Plan (including the Transformation Plan). This right of the Contractor to enter and remain upon the Site shall be as licensee only and shall be subject to any limitations as are notified to the Contractor by the Authority in writing from time to time in respect of New Prisons. In relation to any such access:

7.1.1 the Contractor shall:

- 7.1.1.1 not cause any damage or disrepair to the Site nor make any alterations to it;
- 7.1.1.2 comply at all times with the operating instructions and direction of the Authority and its staff at the Site (and where applicable any building contractor or other person having control of the Site);
- 7.1.1.3 not cause any disturbance or disrupt the operation of the Site;
- 7.1.1.4 immediately vacate the Site if so required by the Authority (or where applicable by any building contractor or other person having control of the Site);
- 7.1.1.5 otherwise comply with the provisions of [clauses 6.1.2 to 6.1.6 (inclusive), 6.3, 9.1, 12.1.1 and 13] of the Lease; and [Note to

Bidders: These references will be updated to reflect the final form of the Lease for the relevant Call Off Agreement]

7.1.2 this **clause 7.1 (Occupation prior to Grant of Leases)** shall not be deemed to operate as a demise of the Site or give the Contractor any greater right in the Site than that of a licensee for the purposes only of implementation of the Mobilisation Assurance Plan (including the Transformation Plan).

7.2 **Grant of Leases**

7.2.1 On the Services Commencement Date, the Authority shall grant to the Contractor, and the Contractor shall accept, the Leases in accordance (including as to timing) with this **clause 7 (Nature of Land Interest)**.

7.2.2 The term of the Leases shall commence on the date specified in the Lease.

7.2.3 Part 1 of the Commercial Conditions form part of this Contract so far as they are applicable to the letting of the Site and are consistent with the provisions of this Contract. Part 2 of the Commercial Conditions do not form part of this Contract.

7.2.4 Subject to **clause 7.2.6 (Grant of Leases)**, the Authority has deduced title to the Site to the Contractor in accordance with Commercial Condition 6.1 and (except as referred to in **clause 7.2.6 (Grant of Leases)**) the Contractor is not entitled to raise any requisition or objection to the title.

7.2.5 The Site is let subject to and, to the extent that the Authority is able to grant them, with the benefit of the Title Matters.

7.2.6 The Contractor is to be treated as accepting the grant of the Leases with full knowledge of the Title Matters and the matters referred to in **clause 7.3 (General Matters)** and will not raise any requisition or objection to them except in relation to any new title entries that have been registered after the date and time of the official copy entries referred to in schedule 3 of the Leases and prior to the date of completion of the Leases and which are revealed by the Contractor's Land Registry search carried out immediately prior to completion of the Leases.

7.3 **General Matters**

In addition to the provisions of **clause 7.2.5 (Grant of Leases)**, the Site is let subject to:

7.3.1 the matters contained or referred to in Commercial Condition 3.1.2;

- 7.3.2 any registered local land charges and any matter capable of being registered as a local land charge even if not so registered at the Commencement Date;
- 7.3.3 any notice, order or proposal given or made by any Relevant Authority, statutory undertaker or other competent body or person;
- 7.3.4 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Site and to any orders or regulations made under that or any other legislation;
- 7.3.5 all rates, charges and other outgoings which affect or are charged on the Site;
- 7.3.6 any unregistered interest that overrides the disposition effected pursuant to this Contract under Schedules 1, 3 or 12 of the Land Registration Act 2002;
- 7.3.7 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Site; and
- 7.3.8 all matters which either are revealed or would reasonably be expected to be revealed by inspection or by the searches and enquiries usually made by a prudent purchaser.

7.4 Exclusion of Security

Without prejudice or limitation to the provisions of Section 84 of the Criminal Justice Act 1991 (as inserted by Section 96 of the Criminal Justice and Public Order Act 1994) the Contractor confirms that before it became contractually bound to enter into the tenancy created by the Leases pursuant to this Contract:

- 7.4.1 the Authority served on the Contractor prior to the Commencement Date a notice in relation to the tenancy created by the Leases (the "Lease Notice") in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "Order");
- 7.4.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Lease Notice made a statutory declaration (the "Lease Declaration") prior to the Commencement Date and within the time period specified within the Lease Notice in a form complying with the requirements of Schedule 2 of the Order;
- 7.4.3 where the Lease Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Lease Declaration on the Contractor's behalf; and

- 7.4.4 the Authority and Contractor agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Leases.

7.5 Delivery of Engrossments

At least ten (10) Business Days before the date each Lease is to be entered into, the Authority's Representative shall deliver an engrossment of the counterpart Leases to the Contractor. The Contractor shall execute and deliver the counterpart Leases as a deed to the Authority's Representative within a further five (5) Business Days after receipt. The Authority shall execute the original Lease as a deed and send the original Leases to the Contractor following completion of the Lease.

7.6 Registration

The Contractor shall apply for, and use reasonable endeavours to procure, registration of the Leases at the Land Registry as soon as reasonably practicable after the Leases are completed. The Authority shall use all reasonable endeavours to assist the Contractor in responding to any proper requisitions raised by the Land Registry of such documents that are in the Authority's possession relating to the freehold reversion as the Land Registry may request.

7.7 Provision of Copies

The Contractor shall provide to the Authority two (2) copies of the Leases upon request.

7.8 No Compensation

The Contractor shall not be entitled to any compensation in respect of any variation of the terms of the Leases or the unexpired part of its interest as tenant on determination of the Leases in accordance with this **clause 7 (Nature of Land Interest)**.

7.9 Compliance with the Title Matters

The Contractor shall procure that:

- 7.9.1 the provision of the Services by or on behalf of the Contractor shall be carried out in a manner that complies with and does not result in any breach of the Title Matters; and
- 7.9.2 in providing the Services, there shall be no action or omission to act by the Contractor or any Contractor Related Party, which shall give rise to a right for any person to obtain title to or any right or interest over the Site or any part of it (except in accordance with the provisions of this Contract).



7.10 **Compliance with Leases**

Each Party shall comply with its respective obligations under the Leases.

8. **THE SITE**

8.1 **Access**

If, at any time, the Contractor requires access to the Site or any interest in any land which does not form part of the Site or any additional rights beyond those which the Contractor has in relation to any part of the Site, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Contractor and the Authority will provide reasonable assistance to the Contractor in this regard.

8.2 **Site Matters**

8.2.1 Subject to the other provisions of this Contract, the condition of the Buildings and maintenance requirements in respect of the Site shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract), the Contractor shall be deemed to have:

8.2.1.1 inspected and examined the Buildings and the standard of maintenance of the Site;

8.2.1.2 satisfied itself as to the nature of the Site and the risk of injury or damage to property at the Site;

8.2.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Site);

8.2.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority), with access to or use of, or rights in respect of the Site, with particular regard to the owners of any land adjacent to the Site; and

8.2.1.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference whether public or private, being caused to any third parties.

8.2.2 The Contractor accepts full responsibility for all matters referred to in this **clause**

8.2 (Site Matters) and the Contractor shall:

- 8.2.2.1 subject to **clause 6.3 (Fraudulent Statements)** and **clause 8.2.2A** and **8.2.4 (Site Matters)**, not be entitled to make any claim against the Authority of any nature whatsoever on any grounds including the fact that incorrect or insufficient information on any matter relating to the Buildings, the standard of maintenance of the Site, the presence of Contamination in or under the Site as at the Services Commencement Date was given to it by any person; and
- 8.2.2.2 subject to **clause 8.2.4 (Site Matters)** and **clause 8.7 (Asbestos)**, be responsible for, and hold the Authority harmless from, cleaning up or otherwise dealing with Contractor Contamination at the Site in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).
- 8.2.2A Subject to **clause 8.2.2B (Site Matters)**, the Authority shall be responsible for and hold the Contractor harmless from cleaning up or otherwise dealing with Authority Contamination and the Authority shall have the right to access the Properties to carry out such surveys, investigations, works and/or monitoring as is required in order to comply with this **clause 8 (Site Matters)**. The Authority shall be responsible for any action required in order to comply with any applicable Legislation or any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor) in so far as it relates to such Authority Contamination.
- 8.2.2B Where the Authority is responsible for Authority Contamination then the following provisions shall apply:
 - 8.2.2B.1 where any Authority Contamination is identified on or before the Services Commencement Date it shall be deemed to be a Compensation Event and any work which is required or instructed to be done in consequence of it shall, without double counting, be deemed to be an Authority Change;
 - 8.2.2B.2 where any Authority Contamination is identified after the Services Commencement Date it shall be deemed to be a Relief Event and no Deductions may be made which would otherwise arise as a result of such matter arising and any work or changes to the works or Services required or instructed to be done in consequence of it shall be deemed to be an Authority Change; and

8.2.2B.3 the Authority shall indemnify and keep indemnified in full the Contractor in respect of all Direct Losses incurred by the Contractor arising from such Authority Contamination and the Contractor shall in carrying out any works referred to in **clauses 8.2.2B.1 (Site Matters) and 8.2.2B.2 (Site Matters)** do so in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.2.3 To the extent that any part or parts of the Site suffer from or are affected by Contractor Contamination which arises from a source off Site (whether or not on adjacent land) except where the source is on land owned by the Authority where **clause 8.2.4 (Site Matters)** shall apply, the Contractor shall be responsible for cleaning up or otherwise dealing with such Contractor Contamination and for preventing the recurrence of such Contractor Contamination on the Site and the following provisions shall apply:

8.2.3.1 where any such matter arises on or before the Services Commencement Date, it shall be deemed to be a Relief Event for a reasonable period (to be agreed between the Parties acting reasonably) for the purposes of this Contract;

8.2.3.2 where any such matter arises after the Services Commencement Date it shall be deemed to be a Relief Event and no Deductions may be made which would otherwise arise as a result of such matter arising for a reasonable period (to be agreed between the Parties acting reasonably) but any work or change to the Services required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute an Authority Change;

8.2.3.3 on or after the Services Commencement Date, the Contractor shall:

(a) clean up, or otherwise deal with such Contractor Contamination, and take steps reasonably necessary to prevent the recurrence of the same, all in accordance with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor); and

(b) except where **clause 8.2.3.4 (Site Matters)** applies, indemnify and keep indemnified the Authority, its employees, agents and

contractors against Direct Losses incurred by the Authority, its employees, agents and contractors arising from such Contractor Contamination;

8.2.3.4 the Authority shall, but only to the extent that the Contractor is able to demonstrate to the Authority that it does not have the right to take action against third parties in its own name to recover the Direct Losses suffered or incurred by the Contractor in cleaning up or otherwise dealing with such Contractor Contamination, at the Authority's option either take such action against third parties in its own name as the Contractor may (acting reasonably) direct or permit the Contractor to take such action in the name of the Authority at the Contractor's own expense in which case:

- (a) the Authority shall assist and co-operate with the Contractor in respect of such action and shall not, unless the Contractor has failed to resolve such action within a reasonable period, take any action to settle or prosecute such action;
- (b) the Contractor shall give reasonable security to the Authority for any cost or liability arising out of the conduct of such action by the Contractor;
- (c) the Contractor shall not settle such actions without the prior written approval of the Authority; and
- (d) the Contractor shall indemnify and keep indemnified in full the Authority in respect of all costs properly and reasonably incurred by the Authority in respect of such action; and

8.2.3.5 where the Authority takes action under **clause 8.2.3.4 (Site Matters)** (or where it is otherwise obliged to take action against third parties in respect of such Direct Losses), the Authority shall be liable to the Contractor for all Direct Losses suffered or incurred by the Contractor as a result of its obligations under this **clause 8.2.3 (Site Matters)**, provided that the Contractor's entitlement in respect of any matter to which this **clause 8.2.3.5 (Site Matters)** applies shall be limited to the amount recovered by or in the name of the Authority from the relevant third party in respect of the Direct Losses referred to in **clause 8.2.3.4 (Site Matters)**.

8.2.4 To the extent that any part or parts of the Site suffer from or are affected by

Contractor Contamination arising from a source off Site (whether or not on adjacent land) which is on land owned by the Authority, the Contractor shall be responsible for cleaning up or otherwise dealing with such Contractor Contamination and for preventing the recurrence of such Contractor Contamination on the Site; and

8.2.4.1 where any such matter arises it shall be a Relief Event and no Deductions may be made which would otherwise arise as a result of such matter arising and the Authority shall, without double counting, instruct any changes to the Services required in consequence of it as a Change in accordance with **Schedule 16 (Change Protocol)**; and

8.2.4.2 the Authority shall further hold the Contractor harmless from cleaning up or otherwise dealing with such Contractor Contamination and shall indemnify and keep indemnified in full the Contractor in respect of all Direct Losses incurred by the Contractor arising from such Contractor Contamination,

and the Contractor shall in carrying out any changes ensure that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.3 Consents

8.3.1 Subject to **clause 8.3.2 (Consents)**, the Contractor shall:

8.3.1.1 obtain and maintain all Consents which may be required for the performance of the Services;

8.3.1.2 use all reasonable endeavours to assist the Authority to obtain all Consents that, as a matter of law, the Contractor is not eligible to obtain;

8.3.1.3 be responsible for implementing each Consent (which it is required to obtain pursuant to this **clause 8.3 (Consents)**) within the period of its validity in accordance with its terms;

8.3.1.4 promptly supply, free of charge, to the Authority's Representative a copy of any application for a Consent (with two (2) copies of all accompanying drawings and other documents) and a copy of any

Consent or other response obtained;

8.3.1.5 comply with the conditions attached to any Consents and procure that no such Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Services;

8.3.1.6 not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not), without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before, on or after the Commencement Date) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this **clause 8.3 (Consents)**, references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.

8.3.2 The Authority shall use its reasonable endeavours to assist the Contractor to obtain Consents required for the performance of this Contract where the Contractor would otherwise be unable to obtain such Consents.

8.4 No Warranty

Except as otherwise expressly provided in this Contract, the Contractor shall take the Site in its state and condition in all respects as at the Commencement Date and nothing in this Contract or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Site or any part of it for any purpose.

8.5 Third Party Rights

The Contractor shall observe and comply with any third party rights (including public rights) insofar as such rights affect the Site which may exist from time to time in respect of land comprising and adjoining the Site.

8.6 Fire Folder

8.6.1 The Contractor shall maintain an up to date fire folder for the Prison in accordance with the government guidance referring to the Fire Precautions Workplace Regulations 1997 and the general fire precautions for the Prison in accordance with the Regulatory Reform (Fire Safety) Order 2005 and in

particular shall:

- 8.6.1.1 maintain maintenance / test records for the fire alarm systems and emergency lighting;
 - 8.6.1.2 prepare and communicate the evacuation procedures including instructions to all persons at the Prison on the correct action when discovering a fire and on the correct action when the fire alarm is sounded;
 - 8.6.1.3 prepare notices/signs reinforcing the evacuation procedures; and
 - 8.6.1.4 ensure and maintain the safety and security of the Prison to prevent fires and deliberate and/or accidental activation of the system.
- 8.6.2 The Contractor shall undertake all maintenance procedures in relation to the sprinkler systems in compliance with BS5307 Part 2 and LPC Technical Bulletins (or their replacement standards), to the same standard and frequency as would be undertaken by an experienced and competent maintenance company and, in any event, in accordance with Good Industry Practice.

8.7 Asbestos

- 8.7.1 Subject to **clause 8.7.2 (Asbestos)**, the Contractor accepts full responsibility (including any financial and other consequences which result whether directly or indirectly) for any Asbestos at the Site from the Services Commencement Date for the period of this Contract and the Contractor has, as between the Contractor and the Authority, the sole duty to manage any Asbestos at the Prison under the Control of Asbestos Regulations 2012 (as may be amended from time to time).
- 8.7.2 In respect of any Asbestos the presence or potential presence of which is not recorded or indicated in the Asbestos Register or of which the Contractor is not aware then the Authority accepts full responsibility (including any financial and other consequences which result whether directly or indirectly) for such Asbestos and the Parties shall, acting reasonably, agree the appropriate measures to be taken to manage such Asbestos in accordance with the Control of Asbestos Regulations 2012 (as may be amended from time to time).

8.8 Fossils and Antiquities

- 8.8.1 As between the Parties, all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at the Site are or shall become, upon discovery, the absolute property of the Authority.

- 8.8.2 Upon the discovery of such item the Contractor shall:
- 8.8.2.1 immediately notify the Authority's Representative of such discovery;
 - 8.8.2.2 take all steps not to disturb the item and, if necessary, cease any activity in so far as the carrying out of such activity would endanger the object or prevent or impede its excavation; and
 - 8.8.2.3 take all necessary steps to preserve the item in the same position and condition in which it was found.
- 8.8.3 The Authority shall procure that the Authority's Representative promptly, and in any event within fifteen (15) Business Days after being notified of such discovery, issues an instruction to the Contractor specifying what action the Authority's Representative requires to be taken in relation to such discovery, provided that if no such instruction is forthcoming within such period the Contractor may continue to carry out the relevant activity.
- 8.8.4 The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in **clause 8.8.3 (Fossils and Antiquities)** at its own cost (except and to the extent that such instruction constitutes an Authority Change pursuant to **clause 8.8.6 (Fossils and Antiquities)** in which case the provisions of **Schedule 16 (Change Protocol)** shall apply) save that the Contractor shall always act in accordance with all Legislation and codes of practice in respect of working with, removal of and disposal of any fossils and antiquities even in the event of an instruction from the Authority pursuant to **clause 8.8.3 (Fossils and Antiquities)**.
- 8.8.5 If directed by the Authority's Representative, the Contractor shall allow representatives of the Authority to enter the Site for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the Authority complying with relevant safety procedures.
- 8.8.6 If any instruction referred to in **clause 8.8.3 (Fossils and Antiquities)** includes a requirement for the Contractor to suspend the provision of the Services (or a part of it) and/or carry out any works and/or other activities, such instruction to suspend and/or to carry out such works and/or other activities shall be deemed to be an Authority Change and the provisions of **Schedule 16 (Change Protocol)** shall apply.
- 8.8.7 The Authority shall act promptly and diligently in dealing with its obligations in

this **clause 8.8 (Fossils and Antiquities)** in relation to any find so as to mitigate any effect on the Contractor, and/or the Services.

8.9 **Site Facilities Manager**

8.9.1 The Contractor shall nominate an experienced and competent person as Site Facilities Manager, and a competent Deputy Site Facilities Manager, to supervise all activities on the Site, whose duties shall include:

- 8.9.1.1 quickly to become familiar with the Site;
- 8.9.1.2 to ensure that all systems and functions are monitored in accordance with the requirements and the information so obtained is correctly analysed and interpreted for possible fault conditions and the appropriate action implemented;
- 8.9.1.3 to maintain an effective liaison between the Authority's Representative and the Contractor;
- 8.9.1.4 to ensure that all required records are maintained and kept up to date;
- 8.9.1.5 to provide Monthly status reports;
- 8.9.1.6 to attend Monthly meetings with the Authority's Representative; and
- 8.9.1.7 to receive and implement within the terms of this Contract all relevant instructions.

8.9.2 The Contractor shall give notice to the Authority's Representative of the names of the Site Facilities Manager and the Deputy Site Facilities Manager, and ensure that they, or replacements of comparable ability and qualification, are available at all times.

8.9.3 The Contractor agrees that any instructions given to the Site Facilities Manager by the Authority's Representative shall be deemed to be given to the Contractor.

8.10 **Safety and Security on the Site**

8.10.1 In carrying out any Services the Contractor shall at all times, and ensure its Sub-Contractors, comply with all health and safety Legislation including the obligations on the Contractor in **paragraph 6 of Schedule 11 (Property and Facilities Management)** and Section 3.1 of the Health and Safety at Work Act 1974. The Contractor shall indemnify the Authority against any Losses

sustained or incurred by the Authority in connection with any breach of this **clause 8.10.1.**

8.10.2 The Contractor shall ensure that its personnel and the personnel of any Sub-Contractor:

8.10.2.1 have adequate proof of identity in relation to their business at the Site, and that they carry such identification at all times and produce it on demand; and

8.10.2.2 provide all such necessary documentation to comply with the security clearance requirements at the Site.

8.10.3 The Contractor shall prevent unauthorised persons being admitted to the Prison.

8.10.4 The Contractor shall immediately notify the Authority's Representative with full details of any incident on Site which requires the attendance of an emergency service, a utility company, an environmental health officer, the health and safety executive or any other competent authority.

8.10.5 The Contractor shall be responsible for providing and maintaining all security and protective barriers and warning notices in relation to the performance of the Services (including any Works) necessary to protect all persons including owners and occupiers of Adjoining Property, members of the public, Prisoners, the Authority's staff and others from injury.

8.10.6 The Contractor shall only use petroleum products and other inflammable or vaporising liquids, gases, solids and hazardous chemicals in accordance with applicable Legislation. The Contractor shall ensure that when equipment and vessels containing those items are not in use they and their contents are removed to a safe place for storage.

8.10.7 The Contractor shall at all times keep the Site free from surplus materials, rubbish and debris and on completion of any Maintenance Services and Works (and also on termination of the Contract) remove all Contractor's equipment and leave the Site in a clean and workmanlike condition to the satisfaction of the Authority's Representative.

8.10.8 The Contractor shall provide all safety signs and safe systems of work for all work, testing and inspection works.

8.10.9 The Contractor shall be responsible for all keys, locks, catches, doors, gates, barriers, fences, external lighting, security lighting, CCTV, intruder alarms,

passes and any other electrical, electronic or mechanical security system or process both physical and other.

- 8.10.10 The Contractor shall be responsible for the ordering and safe storage of locks, lock spares and keys.
- 8.10.11 If the Prison serves a local Crown Court, the Contractor shall be responsible for the maintenance and replacement of the cell area locks and catches at that court.
- 8.10.12 In the event of a key or lock compromise resulting in a re-lock, the Contractor shall make appropriate arrangements to replace the compromised suite(s) and keys at its own cost.
- 8.10.13 The Contractor shall ensure full control of the security of the Prison at all times and manage all ingress and egress to and from the Site.
- 8.10.14 The Contractor shall manage the access to the Prison to allow any works to take place and provide assistance and protection to workers to enable them to carry out such works.
- 8.10.15 The Contractor shall ensure the CCTV management systems comply fully with the Data Protection Legislation and the Information Commissioner's Office's CCTV Code of Practice (as last revised in 2017 and as may be updated from time to time).

8.11 Utilities

- 8.11.1 The Contractor shall ensure that all necessary utilities are available at the Site.
- 8.11.2 The Contractor shall develop and maintain contingency plans in order to keep the Site operational in the event of any failure or disruption of utilities.
- 8.11.3 The Contractor shall ensure that all energy consumed is managed in order to ensure that there is minimum wastage and all plant and systems are operating efficiently.
- 8.11.4 The Contractor shall ensure that all controls and set points are set correctly and checked on a regular basis, and that all such set points and control settings are recorded on a regular basis.

8.12 Business Continuity and Disaster Recovery at the Site

- 8.12.1 The Contractor shall develop detailed business continuity and disaster recovery plans for the Site and shall submit such plans to the Authority's Representative



for approval within the period of three (3) Months following the Commencement Date. The Contractor shall agree such plans with the Authority, which shall be required to include provisions to address financial insolvency events outlined by Procurement Policy Note [X/XX]. **[Note to Bidders: This clause is subject to further amendment to reflect the procurement policy note expected to be published by Cabinet Office on resolution information]**

- 8.12.2 The Contractor shall test the agreed business continuity and disaster recovery plans on a regular basis as agreed with the Authority's Representative and include the emergency services as agreed with them.

PART III – ICT**9. INFORMATION AND COMMUNICATIONS TECHNOLOGY**

9.1 The Contractor shall comply with the requirements of **Schedule 2 (Digital)** in respect of ICT.

9.2 Installation of Authority's ICT System

9.2.1 The Authority shall supply, install, configure, test and commission the Authority's ICT System and any replacement, upgrade or modification as may from time to time be made to or incorporated into the Authority's ICT System (or any part of the Authority's ICT System).

9.2.2 The Authority shall be responsible for maintaining the Authority's ICT System.

9.3 Ownership and Use of Authority ICT System

9.3.1 Notwithstanding any other provision of this Contract, the Authority's ICT System, any equipment supplied by the Authority in relation to the Authority's ICT System shall remain the property of the Authority.

9.3.2 Subject to the provisions of **clause 71.6 (Licences Granted By The Authority)** and the materials licenced therein, the Authority hereby grants the Contractor a non-exclusive, personal, revocable, royalty-free licence to use for the term of this Contract the Authority's ICT System solely and exclusively for the purpose of complying with its obligations under this Contract and for no other purpose whatsoever.

9.3.3 The Contractor warrants that neither it nor its employees agents or Sub-Contractors will use the Authority's ICT System for any purpose other than that stated in **clause 9.3.2 (Ownership and Use of Authority ICT System)** or cause any accidental or malicious damage to the Authority's ICT System, and shall indemnify the Authority and any Relevant Organisation against any Losses sustained or incurred by the Authority in connection with any breach of this warranty.

9.4 Contractor's ICT Obligations

The Contractor shall:

9.4.1 maintain all necessary infrastructure, ducts, cabling and ancillary fixtures and fittings and power supplies in accordance with the Authority's Requirements and the Authority's Cabling Specification for the purpose of maintaining,

configuring, and operating the Authority's ICT System;

- 9.4.2 at the Authority's reasonable request, make available appropriately qualified personnel to consult with the Authority, its nominated agents or their authorised engineers about the maintenance, operation, upgrading, modification or replacement of any Authority's ICT System;
- 9.4.3 ensure that the Authority has a reasonable opportunity before any Authority's ICT System is commissioned, to test such Authority's ICT System;
- 9.4.4 procure that the Authority and any representative of the Authority may, at reasonable times and upon giving reasonable notice enter the Prison in order to:
 - 9.4.4.1 supply, install, configure, test and commission the Authority's ICT System and any replacement, upgrade or modification as may from time to time be made to or incorporated into the Authority's ICT System (or any part of the Authority's ICT System);
 - 9.4.4.2 carry out inspections and audits of the Authority's ICT System;
 - 9.4.4.3 undertake routine maintenance and fault resolution of the Authority's ICT System; and
- 9.4.5 not connect any device to the Authority's ICT System or network infrastructure and shall indemnify and keep indemnified in full the Authority and any Relevant Organisation from and against all costs incurred by the Authority in removing any such unauthorised device and rectifying any damage caused to the Authority's ICT System by the connection of such device.

9.5 Changes to ICT Systems

- 9.5.1 If the Authority wishes to change all or any part of the Authority's ICT System it shall be deemed to be an Authority Change and the provisions of **Schedule 16 (Change Protocol)** shall apply.
- 9.5.2 If the Contractor wishes to change all or any part of the Contractor's ICT System it shall be deemed to be a Contractor Change and the provisions of **Schedule 16 (Change Protocol)** shall apply.

9.6 Training

- 9.6.1 The Authority shall provide access to the following training (face to face or eLearning as appropriate) for Contractor's Staff requiring access to the

Authority's ICT System who have identified training needs relating to their role:

- 9.6.1.1 OASys training as required, as agreed by the Authority;
- 9.6.1.2 P-NOMIS training will be provided as e-learning through the Authority's eLearning management system and any replacement system; and
- 9.6.1.3 registration for up to [REDACTED] members of the Contractor's Staff to the Authority's eLearning management system and any replacement system. Concurrent usage of the eLearning management system and any replacement system shall be limited to [REDACTED] members of the Contractor's Staff.

The method of training delivery shall be defined by the Authority and, where face to face training is to be provided, dates, times and location for such training will be agreed with the Authority.

- 9.6.2 Training on the Authority's ICT System required for Contractor's Staff for the Services Commencement Date, including for any applications not referred to in **clause 9.6.1 (Training)**, and the access method and date of availability of the Authority's eLearning management system, shall be identified by the Contractor and agreed as part of the Initial Custodial Service Delivery Plan.
- 9.6.3 The Authority shall, at its own expense, provide access to training (face to face or eLearning) for any upgrade and/or change that materially impacts Contractor's Staff use of the Authority's ICT System.

9.7 Responsibility for Security of Authority ICT Systems

- 9.7.1 The Authority or its appointed agents shall be responsible for ensuring the security of its infrastructure, services and data up to the point at which there is a physical or logical interface with the Contractor's ICT System.
- 9.7.2 Notwithstanding **clause 9.7.1 (Responsibility for Security of Authority ICT Systems)**, the Contractor shall take all reasonable steps to ensure that the security of the Authority's ICT System and any other connected or related systems is not jeopardised including erecting firewalls, providing protection against viruses and ensuring security of access to the Authority's ICT System including as may be required to comply with the Authority Policies.

9.8 Malicious Software

9.8.1 Unless as otherwise required by any Authority Policy, the Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for, contain the spread of, minimise the adverse effects of and delete Malicious Software from the Contractor's ICT System.

9.8.2 Notwithstanding **clause 9.8.1 (Malicious Software)**, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data or Prescribed Documentation, assist each other to mitigate any Losses.

9.8.3 Any cost arising out of the actions of the Parties taken in accordance with **clause 9.8.2 (Malicious Software)** shall be borne by the Parties as follows:

9.8.3.1 by the Contractor where the Malicious Software originates from the Contractor's ICT System, Authority Data (whilst the Authority Data was under the control of the Contractor) or the Prescribed Documentation (whilst the Prescribed Documentation was under the control of the Contractor); and

9.8.3.2 by the Authority if the Malicious Software originates from the Authority's ICT System, Authority Data or the Prescribed Documentation (whilst the Prescribed Documentation was under the control of the Authority).

9.9 No Warranty

The Authority does not warrant the condition or performance of any existing network cabling within the Prison.

9.10 Information Assurance

Notwithstanding **clause 65 (Data Protection)**, the Contractor undertakes that all Prisoner and visitor data (and any other data as required pursuant to the provisions of **Schedule 2 (Digital)**) shall be stored, processed and accessed within the United Kingdom only. **[Note to Bidders: The Authority will consider any alternative proposals for storage outside of the UK as part of the Call-off Contract tender process]**

9.11 Authority Data

9.11.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data. As between the Contractor and the

Authority, the Authority is to be treated as the owner of Authority Data and the Contractor agrees that the Authority Data is the property of the Authority. All Intellectual Property Rights in or to the Authority Data shall vest in the Authority unconditionally and immediately on their creation.

- 9.11.2 The Contractor shall not store, copy, disclose or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract in accordance with **clause 71.6 (Licences Granted By The Authority)** or as otherwise Approved by the Authority.
- 9.11.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply the Authority Data to the Authority as requested by the Authority in the format specified by the Authority or as otherwise set out in this Contract.
- 9.11.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-Contractor.
- 9.11.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Authority Policies, any business continuity plan and as otherwise set out in this Contract. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties), and without additional cost to the Authority.
- 9.11.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Authority's Policies and any other relevant provisions of **Schedule 2 (Digital)**.
- 9.11.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- 9.11.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data; and/or
- 9.11.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 9.11.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for

any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

- 9.11.9 The Contractor shall comply with the requirements of the Authority's Policies and any relevant provisions of **Schedule 2 (Digital)** relating to security of Authority Data.

10. DUTIES UNDER CDM REGULATIONS

10.1 Responsibility for Design

As between the Contractor and the Authority, the Contractor shall be entirely responsible for the safety of any design which forms part of the Services and for the adequacy, stability and safety of all Site operations.

10.2 The Authority as Client

In accordance with the CDM Regulations, the Authority and the Contractor have elected that the Authority shall be, and shall be treated as, the only client in respect of the Services pursuant to the CDM Regulations.

10.3 Principal Contractor and Principal Designer

- 10.3.1 The Contractor shall be the 'Principal Designer' and 'Principal Contractor' for the purposes of the CDM Regulations (and such terms shall have the meaning given to them under the CDM Regulations).
- 10.3.2 The Contractor confirms it has the skills, knowledge, experience and organisational capability necessary to fulfil the role that it is appointed to undertake, in a manner that secures the health and safety of any person affected by any works carried out under this Contract.
- 10.3.3 Compliance by the Contractor with its duties under the CDM Regulations, including any directions as are referred to in Regulation 15(3) of the CDM Regulations, shall be at no cost to the Authority and shall not entitle the Contractor to any additional time.

10.4 Duties under CDM Regulations

- 10.4.1 The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations, requirements and duties arising under the CDM Regulations in connection with the Works (other than those that remain with the Authority pursuant to Regulation 8 of the CDM

Regulations) and shall at all times:

- 10.4.1.1 liaise and co-operate with all designers and the Authority to allow such parties to fulfil the obligations incumbent upon them pursuant to the CDM Regulations;
 - 10.4.1.2 comply with the obligations, duties, restrictions and responsibilities imposed on it by the CDM Regulations (including but not limited to Regulations 8 to 10 and 11 to 15 of the CDM Regulations);
 - 10.4.1.3 comply with the instructions given pursuant to the CDM Regulations by the Authority;
 - 10.4.1.4 seek the co-operation of and co-operate with any other consultants and/or contractors and/or sub-contractors appointed in relation to any Works and (if applicable) in relation to any adjoining site so far as is necessary to enable each of them to comply with their respective obligations, duties, or functions under the CDM Regulations;
 - 10.4.1.5 coordinate its activities with those parties listed in **clause 10.4.1.4 (Duties under CDM Regulations)** to ensure, so far as is reasonably practicable, the health and safety of persons carrying out any Works and any persons affected by any completed Works; and
 - 10.4.1.6 take account of and/or apply the general principles of prevention as required by the CDM Regulations.
- 10.4.2 The Contractor shall:
- 10.4.2.1 prepare the Construction Phase Plan before any Works are commenced under this Contract; and
 - 10.4.2.2 ensure that the health and safety file is revised as often as may be appropriate to incorporate any relevant new information in relation to the Services for the Contract Period.

PART IV - PREPARATION FOR OPERATION**11. NOTIFICATION REQUIREMENTS****11.1 Notice**

11.1.1 If, at any time, the Contractor becomes aware that there will be or is likely to be a delay such that:

11.1.1.1 the Services Commencement Date may be delayed;

11.1.1.2 (for New Prisons only) the Ramp-Up Timetable will not be achieved; and/or

11.1.1.3 at any time during the Contract Period, the reduction or increase in the number of Available Prisoner Places may not be achieved on or before the date specified for such reduction or increase in the relevant RRAPP Band Activation Notice, RRAPP Band Deactivation Notice (as the case may be), or (following the relevant date in the RRAPP Band Activation Notice, RRAPP Band Deactivation Notice (as the case may be)) the reduction or increase in the number of Available Prisoner Places may be further delayed, in either case for any period,

the Contractor shall as soon as reasonably practicable, and in any event within twenty (20) Business Days of becoming aware of the likely delay, give written notice to the Authority to that effect specifying in detail the reason for the delay or likely delay and an estimate of the likely effect of the delay on the provision of the Services (including the achievement of the Services Commencement Date, (if applicable) the Ramp-Up Timetable and/or the date specified for the provision of any Available Prisoner Place in the relevant RRAPP Band Deactivation Notice, RRAPP Band Activation Notice) and taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with **clause 11.3 (Duty to Mitigate)**.

11.2 Supply of Information

11.2.1 Following service of a notice by the Contractor pursuant to **clause 11.1 (Notice)**, the Contractor shall promptly supply to the Authority any further information relating to the delay which is:

11.2.1.1 received by the Contractor; or

11.2.1.2 reasonably requested by the Authority.

11.3 Duty to Mitigate

11.3.1 The Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to **clause 11.1 (Notice)**.

12. COMPENSATION EVENTS

12.1 Delays due to a Compensation Event

If, as a direct result of the occurrence of a Compensation Event, the Contractor shall:

- 12.1.1 be unable to achieve the Services Commencement Date;
- 12.1.2 (for New Prisons only) be unable to meet the Ramp-Up Timetable;
- 12.1.3 be unable to manage the reduction or increase in the number of Available Prisoner Places on or before the date specified for such reduction or increase in the number of Available Prisoner Places in the relevant RRAPP Band Activation Notice or RRAPP Band Deactivation Notice (as the case may be) or (following the relevant date in the RRAPP Band Deactivation Notice or RRAPP Band Activation Notice (as the case may be)) is delayed in providing such Available Prisoner Places, in either case for any period;
- 12.1.4 be unable to comply with its obligations under this Contract; and/or
- 12.1.5 incur costs,

then the Contractor is entitled to apply for an extension of time to the Services Commencement Date and/or the requirement to reduce the number of Available Prisoner Places in accordance with the relevant RRAPP Band Activation Notice and/or the requirement to increase the number of Available Prisoner Places in accordance with the relevant RRAPP Band Deactivation Notice and/or relief from its obligations (including, for New Prisons, compliance with the Ramp-Up Timetable) and/or to claim compensation under this Contract.

12.2 Procedure for Relief and Compensation

Subject to **clause 12.4 (Late Provision of Notice or Information)**, to obtain relief, extension and/or claim compensation, the Contractor must:

- 12.2.1 as soon as practicable, and in any event within twenty (20) Business Days, after

it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs, (or if earlier after it has received written notice from the Authority's Representative that a Compensation Event has occurred and that expressly requires the Contractor to claim relief, extension and/or compensation pursuant to this **clause 12.2 (Procedure for Relief and Compensation)**) give to the Authority a notice of its claim for:

12.2.1.1 an extension of time to (as appropriate):

- (a) the Services Commencement Date;
- (b) any date specified in a RRAPP Band Deactivation Notice for an increase in the number of Available Prisoner Places;
- (c) any date specified in a RRAPP Band Activation Notice for the reduction in the number of Available Prisoner Places; and/or
- (d) the period specified in paragraph (j) of the definition of Contractor Default; and/or

12.2.1.2 payment of compensation; and/or

12.2.1.3 relief from its obligations under this Contract;

12.2.2 within ten (10) Business Days after receipt by the Authority of the notice referred to in **clause 12.2.1 (Procedure for Relief and Compensation)** give full details of the Compensation Event and the extension of time and/or relief from its obligations under this Contract and/or any Change in Costs claimed; and

12.2.3 demonstrate to the reasonable satisfaction of the Authority that:

12.2.3.1 the Compensation Event was the direct cause of:

- (a) the Change in Costs;
- (b) any delay in achieving the Services Commencement Date;
- (c) (for New Prisons only) any failure to achieve the Ramp-Up Timetable;
- (d) any failure to reduce the number of Available Prisoner Places on or before the date for reduction of such Available Prisoner Places as specified in the relevant RRAPP Band Activation Notice or

(following the relevant date in the RRAPP Band Activation Notice) the delay in reducing any Available Prisoner Place, in either case for any period; and/or

(e) any failure to provide an increase in the number of Available Prisoner Places on or before the date for provision of such Available Prisoner Places as specified in the relevant RRAPP Band Deactivation Notice or (following the relevant date in the RRAPP Band Deactivation Notice) the delay in providing any Available Prisoner Place, in either case for any period; and/or

(f) any breach of the Contractor's obligations under this Contract; and

12.2.3.2 the Change in Costs, time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

12.3 Giving of Relief and Compensation

In the event that the Contractor has complied with its obligations under **clause 12.2 (Procedure for Relief and Compensation)**, then:

12.3.1 in the case of a delay:

12.3.1.1 the Services Commencement Date;

12.3.1.2 any date specified in a RRAPP Band Deactivation Notice for an increase in the number of any Available Prisoner Places; and/or

12.3.1.3 any date specified in a RRAPP Band Activation Notice for a reduction in the number of any Available Prisoner Places;

shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay. Any delay to the Ramp-Up Timetable shall be dealt with in accordance with **clause 12.3.5 (Giving of Relief and Compensation)**;

12.3.2 the period referred to in paragraph (j) of the definition of Contractor Default, shall be extended by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;

12.3.3 (subject to **clause 12.3.5 (Giving of Relief and Compensation)**) in the case of:

12.3.3.1 an additional cost being incurred by the Contractor as a result of Capital Expenditure being incurred by the Contractor at any time the Authority shall compensate the Contractor for the actual Change in Costs as adjusted to reflect the actual costs reasonably incurred (to the extent they could not reasonably have been mitigated); or

12.3.3.2 a payment of compensation for the Change in Costs that does not result in Capital Expenditure being incurred by the Contractor as referred to in **clause 12.3.3.1 (Giving of Relief and Compensation)** but which reflects a change in the costs being incurred by the Contractor during the Service Period;

the Authority shall compensate the Contractor either (at its sole discretion):

(a) by an adjustment to the Contract Price in accordance with **clause 59 (Financial Adjustments)**; or

(b) on a lump sum basis,

and the Parties shall use the process set out in **Schedule 16 (Change Protocol)** for Contractor Changes to agree an appropriate basis for the compensation to be made so as to minimise the costs to the Authority and provide reasonable compensation to the Contractor (save that the Authority may not use the process set out in **Schedule 16 (Change Protocol)** to reject compensation which would otherwise be payable pursuant to the terms of this **clause 12 (Compensation Events)**);

12.3.4 the Authority shall give the Contractor such relief from its obligations under this Contract as is reasonable for such a Compensation Event; and

12.3.5 in respect of New Prisons only, where the Services Commencement Date or further Ramp-Up is delayed and the Contractor has complied with its obligations under **clause 12.2 (Procedure for Relief and Compensation)**, then:

12.3.5.1 the Contractor shall be entitled to the payment that would have been paid during Ramp-Up for each week of delay; and

12.3.5.2 the Authority and the Contractor shall agree any amendments to the Ramp-Up Timetable needed to take account of such delay; and

12.3.5.3 the Expiry Date and the Early Termination Date shall not be extended.

12.4 Late Provision of Notice or Information

In the event that information is provided after the dates referred to in **clause 12.2 (Procedure for Relief and Compensation)**, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under this Contract in respect of the period for which the relevant information is delayed.

12.5 **Failure to Agree**

If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under this Contract, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to relief under this **clause 12 (Compensation Events)**, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

13. **MOBILISATION AND TESTING**

13.1 **Mobilisation, Transition and Transformation**

13.1.1 In respect of New Prisons, on and from the Commencement Date and until the completion of the Ramp-Up Period, the Contractor shall comply with the mobilisation obligations regarding the Preparation for Service period (as such term is defined in **Schedule 5 (Mobilisation)**) and Ramp-Up set out in **Schedule 5 (Mobilisation)**.

13.1.2 In respect of Existing Prisons, on and from the Commencement Date and until the Services Commencement Date, the Contractor shall comply with the mobilisation (and transition (where applicable)) obligations regarding the Preparation for Service period (as such term is defined in **Schedule 5 (Mobilisation)**) set out in **Schedule 5 (Mobilisation)**.

13.1.3 In respect of Existing Prisons, the Contractor shall, as part of its Mobilisation Assurance Plan, also implement the Transformation Plan to effect the successful transformation of the Services.

13.2 **Asset and Contract Transfer**

13.2.1 The Contractor shall agree and execute an Asset and Contract Transfer Contract, which shall be substantially in the form set out in **Schedule 13 (Asset and Contract Transfer Contract)** if any Legacy Assets and Legacy Contracts are identified by the Parties as being required to be utilised by the Contractor.

13.2.2 If any Legacy Assets and/or Legacy Contracts are identified and where an Asset and Contract Transfer Contract is executed, the Contractor shall comply with the provisions of the Asset and Contract Transfer Contract relating to the transfer of

the Legacy Assets and Legacy Contracts.

13.3 Initial Operating Procedures

The Contractor shall comply with the requirements of **Schedule 5 (Mobilisation)** in respect of providing the Initial Operating Procedures to the Authority. Once approved by the Authority's Representative, the Initial Operating Procedures shall constitute the Operating Procedures and shall be subject to ongoing review in accordance with **paragraph 9 (Approval of Operating Procedures)** of **Schedule 5 (Mobilisation)**.

13.4 Testing of Operating Procedures

13.4.1 The Authority's Representative may at any time notify the Contractor that it requires the Contractor to carry out a test of an Operating Procedure (an "**Operating Procedure Test**") whether or not such Operating Procedure has been approved by the Authority's Representative.

13.4.2 The Contractor shall:

13.4.2.1 give the Authority's Representative five (5) Business Days' notice of the time and location of the Operating Procedure Test;

13.4.2.2 allow representatives of the Authority to attend the Operating Procedure Test; and

13.4.2.3 carry out the Operating Procedure Test:

(a) in accordance with the Contractor's proposals for testing the Initial Operating Procedures or Operating Procedures set out in respect of each Operating Procedure in **Schedule 7 (Contractor's Proposal)**; and

(b) subject to **clause 13.4.2.1 (Testing of Operating Procedures)**, as soon as reasonably practicable after the date of any notice pursuant to **clause 13.4.1 (Testing of Operating Procedures)**.

13.4.3 Within five (5) Business Days after the completion of such test, the Authority's Representative shall either:

13.4.3.1 issue a notice confirming to the Contractor that he or she is satisfied that the Operating Procedure Test has demonstrated that the Initial Operating Procedure or Operating Procedure is satisfactory; or

13.4.3.2 issue a notice stating that the Operating Procedure Test has



demonstrated that the Initial Operating Procedure or Operating Procedure is not satisfactory, and specifying any matters that must be attended to.

- 13.4.4 Following receipt of a notice pursuant to **clause 13.4.3.2 (Testing of Operating Procedures)**, the Contractor shall attend to the matters referred to in such notice and shall re-run the test in accordance with **clause 13.4.2 (Testing of Operating Procedures)** (except that the notice period to the Authority's Representative shall be two (2) Business Days instead of the five (5) Business Days) as often as necessary to ensure that all outstanding matters in relation to the Initial Operating Procedure or Operating Procedure in question are attended to and the Initial Operating Procedure or Operating Procedure satisfies the test.

13.5 Contractor's Staff Information

- 13.5.1 At least three (3) Months prior to the Services Commencement Date, the Contractor shall submit to the Authority's Representative:

13.5.1.1 the names of, and such other information as the Authority's Representative may require about, the proposed members of the senior management of the Prison and all other persons requiring certification or approval, as specified in **clauses 35 (Certification of Prisoner Custody Officers)** and **36 (The Contractor's Staff)**; and

13.5.1.2 any other evidence reasonably required by the Authority's Representative to demonstrate that the Contractor is and will be capable of providing sufficient properly trained and certified Contractor's Staff,

together the "**Contractor's Staff Information**".

14. **WORKING WITH THE HEALTHCARE PROVIDER, SOCIAL CARE SERVICE PROVIDER AND PROBATION PROVIDER**

14.1 The Contractor shall provide such access to the Prison as the Healthcare Provider may reasonably require in order to provide the Healthcare Service as set out in **Part 5 (Healthcare)** of **Schedule 1 (Authority's Custodial Service Requirements)**.

14.2 The Contractor shall provide such access to the Prison as the Social Care Service Provider may reasonably require in order to provide the Social Care Service as set out in **Part 6 (Social Care)** of **Schedule 1 (Authority's Requirements)**.

14.3 The Contractor shall provide such access to the Prison as any Probation Provider may reasonably require in order to provide the Probation Services as set out in the Competition Operator Requirements.

14.4 The Contractor shall cooperate with Healthcare Providers, Social Care Service Providers and Probation Providers so as to ensure that each of the Healthcare Providers, Social Care Service Providers and Probation Providers is able to discharge its functions at the Prison.

14.5 The Contractor shall attend management meetings with the Healthcare Providers, Social Care Service Providers and Probation Providers each Month in order to discuss and address any issues arising in respect of the delivery of Healthcare Services, Social Care Services and Probation Services.

14.6 The Contractor shall, prior to the Services Commencement Date, agree and enter into partnering arrangements with:

14.6.1 the Authority and the Healthcare Provider (in accordance with the requirements of **Part 5 (Healthcare)** of **Schedule 1 (Authority's Custodial Service Requirements)**),

14.6.2 the Authority and the Social Care Service Provider (in accordance with the requirements of **Part 6 (Social Care)** of **Schedule 1 (Authority's Custodial Service Requirements)**); and

14.6.3 the Authority and the Probation Provider in accordance with the requirements of this Contract, including the Competition Operator Requirements,

which shall address amongst other things, interface issues, ICT provision by the Contractor and dispute resolution.

PART V - THE SERVICES**15. CONDUCT OF OPERATION****15.1 Standard of Performance**

15.1.1 The Contractor shall perform its obligations under this Contract in accordance with, and at all times shall ensure that the Services comply with and meet all the requirements of:

15.1.1.1 this Contract;

15.1.1.2 the Authority's Requirements;

15.1.1.3 the Contractor's Proposals;

15.1.1.4 the Initial Service Delivery Documents or the Service Delivery Documents (as relevant);

15.1.1.5 the Operating Procedures;

15.1.1.6 the PPT Measures and Contract Delivery Indicators;

15.1.1.7 Good Industry Practice;

15.1.1.8 all applicable Guidance;

15.1.1.9 all applicable Authority Policies; and

15.1.1.10 all applicable Legislation,

with effect from the Services Commencement Date.

15.1.2 The obligations in **clause 15.1.1 (Standard of Performance)** are independent obligations. In particular:

15.1.2.1 the fact that the Contractor has complied with the Authority's Requirements shall not be a defence to an allegation that the Contractor has not satisfied the Contractor's Proposals; and

15.1.2.2 the fact that the Contractor has complied with the Contractor's Proposals shall not be a defence to an allegation that the Contractor has not satisfied the Authority's Requirements.

15.1.3 The Contractor shall, at all times, ensure that the Services are performed by

appropriately qualified and trained Contractor's Staff.

- 15.1.4 The Contractor shall, at all times, ensure that the Services are performed in such a manner that it does not cause, contribute to or otherwise give rise to any breach by the Authority of any of its duties or the exercise of its powers under the Criminal Justice Act 1991.
- 15.1.5 The Authority's Requirements shall at all times have priority over the Contractor's Proposals, the Operating Procedures, the Initial Service Delivery Documents and the Service Delivery Documents, and the Contractor shall comply with the Authority's Requirements and provide the Services in accordance with the Authority's Requirements.
- 15.1.6 For the avoidance of doubt, in performing its obligations under this Contract, the Contractor shall comply with the requirements contained in each Schedule (including any Appendices) to this Contract (including in respect of the Authority's Requirements).

15.2 Disclosure of Information to Emergency Services

- 15.2.1 Notwithstanding **clause 61 (Information and Confidentiality)**, the Authority and/or the Authority's Representative shall have the right to disclose to the Emergency Services Confidential Information if the Authority and/or the Authority's Representative reasonably believes such information is material to the matters in respect of which the Authority and/or the Authority's Representative consults or confers with such member of the Emergency Services and subject, in each case, to such member of the Emergency Services undertaking to keep the information confidential and to use it only for the purpose for which it was provided.
- 15.2.2 The Contractor shall not object to the Authority and/or the Authority's Representative consulting or conferring with any of the Emergency Services with respect to any matter, including any matter related to the risk of a Riot occurring or other serious disturbance which has occurred.
- 15.2.3 The Authority and/or the Authority's Representative shall not be obliged to:
 - 15.2.3.1 inform the Contractor of any such consultation or conferring or of the context of such consultation or conferring; or
 - 15.2.3.2 enter into any such consultation or conferring with any third party.

15.3 Contractor's use of Authority Assets

15.3.1 During the Service Period, the Authority shall permit the Contractor to have access to and use of the Authority Assets upon the terms set out in this **clause 15.3 (Contractor's use of Authority Assets)**.

15.3.2 Title to the Authority Assets shall remain with the Authority or other owner at all times and, subject to the permissions granted under this **clause 15.3 (Contractor's use of Authority Assets)**, the Contractor shall have no right or interest in them and shall not obtain title to the Authority Assets. This shall also apply to any replacement Authority Assets from time to time purchased by the Authority.

15.3.3 The Contractor shall:

15.3.3.1 only use, and permit its Sub-Contractors to use, the Authority Assets to the extent necessary in order to provide the Services;

15.3.3.2 be responsible for taking delivery of the Authority Assets at the location where they are situated and not move such Authority Assets unless permission has been granted by the Authority in writing (and provided that the Contractor shall be responsible for meeting any associated delivery, off-loading and packaging costs related to the move and, at the request of the Authority, their return);

15.3.3.3 take reasonable and proper care of the Authority Assets in its or a Sub-Contractor's possession or control;

15.3.3.4 not use or permit any of the Authority Assets to be used in contravention of any Legislation;

15.3.3.5 be responsible for risk of loss of or damage to the Authority Assets provided that the Contractor shall not be liable for loss or damage caused by fair wear and tear resulting from normal and proper use in connection with the provision of the Services;

15.3.3.6 ensure that any instructions or manuals supplied by the manufacturer of the Authority Assets for their use and which are made available to the Contractor shall be followed by the Contractor's Staff;

15.3.3.7 not permit or assert any lien over, sell, offer for sale, assign,

mortgage, encumbrance, pledge, sub-let or lend out any of the Authority Assets and ensure that no lien claims are made in respect thereof;

15.3.3.8 where the Authority Assets are leased to the Authority, ensure that these are used only in accordance with the terms of any relevant leasing agreement (to the extent that such terms have been notified to it); and

15.3.3.9 deliver the Authority Assets back to the Authority (where still extant) in accordance with **Schedule 24 (Handover and Exit Management)** and transfer title to the Authority (as may be required).

15.4 Maintenance of Assets and Equipment Refresh Plan

15.4.1 Save in relation to Assets that are comprised within the Built Environment and M&E Assets (which are dealt with in **clause 19 (Maintenance of the Prison)**), the Contractor shall:

15.4.1.1 operate, manage, repair, maintain and (to the extent approved and required within the Equipment Refresh Plan or otherwise approved in writing by the Authority) dispose of them in order to maintain their condition for use in delivering the Services and in accordance with Good Industry Practice;

15.4.1.2 replace and upgrade them on a regular basis and in any event in accordance with the Equipment Refresh Plan; and

15.4.1.3 catalogue them accurately on, and maintain an up-to-date version of, the Equipment Register in accordance with **clause 64.3 (Maintenance of Records)**.

15.4.2 The Equipment Refresh Plan shall be updated by the Contractor on 1 April of each Contract Year and submitted to the Authority for review and approval in accordance with **Schedule 17 (Review Procedure)**.

15.5 Daily Report

15.5.1 The Contractor shall comply with its obligations to produce and submit to the Authority a Daily Report in accordance with the requirements of **paragraph 10 (Daily Report)** of **Schedule 14 (Payment Mechanism)** and the Contractor shall submit each Daily Report within the timescales set out therein. The form of

Daily Report to be used is as set out in **Schedule 8 (Daily Report)**.

15.6 Prisoner Amenities Fund

- 15.6.1 The Contractor will ensure, including in accordance with **paragraph 2.3 of Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements)** that any income generated by or through the direct expenditure or labour of Prisoners including income generated through Prison Industries in accordance with **Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements)** will be held in a "Prisoner Amenities Fund" and such income will be used solely for the benefit of Prisoners. No expenditure shall be made from the Prisoner Amenities Fund without the prior written consent of the Authority.

16. WORKS

- 16.1 The Contractor shall or shall procure that it or its Sub-Contractor(s) shall carry out the design, construction, installation, completion, commissioning and testing of any Works so that:
- 16.1.1 the Works shall be completed on or before any completion dates agreed with the Authority; and
- 16.1.2 the Works are performed at all times in accordance with and fully comply with and meet all requirements of **Schedule 11 (Property and Facilities Management)** and **Schedule 12 (Sustainability)**.
- 16.2 Before commencing any Works, the Contractor shall fully acquaint itself with:
- 16.2.1 all available operating and maintenance manuals and drawings in sufficient detail as to enable the Contractor to maintain, dismantle, re-assemble and adjust all parts of the plant and buildings as part of the Works;
- 16.2.2 any existing health and safety files; and
- 16.2.3 any available condition reports, summaries, drawings and sketches.
- 16.3 In carrying out any Works:
- 16.3.1 the Contractor shall comply with (and shall procure that any Sub-Contractor complies with) any reasonable directions of the Authority's Representative;
- 16.3.2 the Contractor (and shall procure that any Sub-Contractor) shall not use any apparatus or tools provided for use by third parties on the Site;

- 16.3.3 the Contractor agrees that all parts and materials supplied as part of the Works shall become the property of the Authority;
- 16.3.4 the Contractor (and shall procure that any Sub-Contractor) shall not make any alteration to the Works without the prior written consent of the Authority's Representative;
- 16.3.5 the Contractor shall inform the Authority's Representative when replacement parts are required for any systems and ensure that all replacement parts are of the same, similar or better standard than that which is being replaced;
- 16.3.6 the Contractor shall be responsible for conducting all necessary risk assessments and the production of all method statements to carry out all works, inspections and tests as specified by this Contract;
- 16.3.7 the Contractor shall be responsible for obtaining and complying with all necessary permits to work, including (but not limited to) those relating to testing, excavation, restricted area works (asbestos) and sealed system works;
- 16.3.8 the Contractor shall be fully responsible for ensuring that all persons working on the Site are provided with the appropriate and suitable personal protective equipment applicable to the tasks being carried out by those persons.
- 16.4 For the avoidance of doubt, the Contractor shall be responsible to the Authority for the cost of all repair that is required due to the Contractor's failure to carry out any Construction Works in accordance with the terms of this Contract, together with the cost of providing any necessary temporary service while the repair is being carried out.
- 16.5 The Contractor takes responsibility for the selection, design and specification of any Works and warrants that any Works as designed and constructed and/or installed shall discharge such responsibility.
- 16.6 The Contractor shall at the request of the Authority provide such information as the Authority shall reasonably require to enable the Authority to assess actual progress of any Works relative to the planned progress of such Construction Works, which shall be prepared in accordance with Construction Contractor Good Industry Practice and shall be in sufficient detail so as to enable the Authority's Representative to monitor the progress including all commissioning activities and likely future progress of the Works.
- 16.7 The Contractor shall procure that in respect of any Works each Sub-Contractor shall, upon request by the Authority, validly execute and deliver to the Authority, as a condition precedent to their appointment, collateral warranties in favour of the Authority in the form set out in **Schedule 21 (Collateral Warranty and Sub-Contractors)**. The delivered collateral

warranties shall be accompanied by a certified true copy of the fully executed relevant contract entered into by the Contractor and each such Sub-Contractor.

- 16.8 The Contractor shall, for the benefit of the Authority, use all reasonable endeavours to secure guarantees and/or warranties from any suppliers or Sub-Contractor(s) for equipment and/or materials and/or services in connection with any Property and Facilities Management Services.
- 16.9 The Authority shall provide access to the 'Electronic Drawing Management System' in order that existing surveys and reports can be reviewed in respect of Works. The Authority shall not be responsible for any existing surveys, reports and lifecycle replacement information with this regard and any such data is for information purposes only.
- 16.10 The Contractor shall provide all designs and options (supported by full life cycle costings including building components, mechanical and electrical services, staff and energy) to the Authority for comment for all Works.
- 16.11 The data capture process shall be undertaken in accordance with the Authority's protocols to ensure that all project data is captured and site plans etc are kept up to date both during and upon completion of the project. Data and drawings of completed Works shall be provided to the Authority as specified by the Authority for all Works.
- 16.12 The Contractor shall be responsible for obtaining from the Authority any required certification (including Cell Certificates) relating to any Property and Facilities Management Services.
- 16.13 The Contractor shall be fully responsible for all Works.

17. RIOT DAMAGES

- 17.1 The Contractor shall, from the Services Commencement Date:
- 17.1.1 not act, and shall use reasonable endeavours to ensure that the Contractor's Staff do not act, in a way which is likely to cause or provoke or does cause or provoke a Riot at the Prison;
 - 17.1.2 if a Riot does occur at the Prison, take reasonable steps, having regard to all relevant circumstances, to limit as far as possible the duration and consequences of the Riot, including minimising the risk of personal injury or death and limiting the damage to the Prison arising from the Riot or any related incident; and
 - 17.1.3 provide a weekly written report to the Authority's Representative, entitled "Stability Audit Return", detailing any incidents or intelligence that might

reasonably be regarded as evidence of an increased instability which poses a potential or actual threat to the order of the establishment and details of such measures that the Contractor has taken in response to such increased risk; and

- 17.1.4 without prejudice to the generality of **clauses 17.1.1 (Riot Damages)** and **17.1.2 (Riot Damages)**, enter into such arrangements with the Emergency Services as may be reasonably appropriate in order to establish the basis upon which the Emergency Services will or may respond in the event of a Riot occurring and shall provide to the Authority's Representative copies of any documentation relating to any such arrangements.

18. CELL CERTIFICATION AND ACCEPTANCE OF PRISONERS

18.1 Compliance with Cell Certificate Requirements

Subject to the provisions of **Schedule 14 (Payment Mechanism)** regarding Cell Certificates, the Contractor shall ensure that each and every Prison Cell, and any other living accommodation to be occupied by a Prisoner, shall comply with the Cell Certificate Requirements during the Service Period.

18.2 Inspection and Non-Compliance

- 18.2.1 The Authority's Representative may, at his or her discretion, carry out inspections during the Service Period from time to time in order to assess the certification of any Prison Cell.
- 18.2.2 If the Authority's Representative identifies during any such inspection that a Prison Cell does not comply with the Cell Certificate Requirements, he or she shall issue to the Contractor a Non-Compliance Notice. The Cell Certificate in respect of that Prison Cell shall be deemed to be revoked on the date of the Non-Compliance Notice and any affected Prisoner Place shall be treated as an Unavailable Prisoner Place pursuant to **paragraph 6 (Prisoner Places and Unavailability)** of **Schedule 14 (Payment Mechanism)**.

18.3 Notification of Events Affecting Cell Certificates or Availability

The Contractor shall inform the Authority's Representative promptly if any event occurs (and record details of such event in the Daily Reports) which could reasonably be expected to result in:

- 18.3.1 a Cell Certificate being withdrawn if the Authority were to exercise its rights pursuant to **clause 18.2 (Inspection and Non-Compliance)**; or

18.3.2 a failure to comply in all respects with the Minimum Requirements,

and in such circumstances **paragraph 6.6 (Prisoner Places and Unavailability) of Schedule 14 (Payment Mechanism)** shall apply.

18.4 **Refusal to Accept Prisoners**

The provisions of **paragraph 6.5 (Prisoner Places and Unavailability) of Schedule 14 (Payment Mechanism)** apply in respect of the Contractor's refusal to comply with a request for a Prisoner to occupy an Available Prisoner Place.

19. **MAINTENANCE OF THE PRISON**

19.1 **Built Environment and M&E Assets Condition Verification**

19.1.1 During the period between the Commencement Date and the Services Commencement Date, the Contractor shall inspect the Built Environment and M&E Assets to confirm their condition status and shall no later than thirty (30) Days prior to the Services Commencement Date provide the Authority's Representative with an asset verification report in such format as is specified by the Authority's Representative (the "**Built Environment and M&E Assets Condition Verification Report**").

19.1.2 The Contractor shall, within the Built Environment and M&E Assets Condition Verification Report, notify the Authority's Representative in writing of any discrepancies or variations from the Built Environment and M&E Assets described in the Asset Management Records found during their inspections of the Site. The Contractor shall update the Asset Condition Schedule to reflect such discrepancies or variations and issue the revised Asset Condition Schedule to the Authority's Representative prior to the Services Commencement Date.

19.1.3 The Contractor shall remedy any defects, failures or malfunctions identified as part of the Built Environment and M&E Assets Condition Verification Report process as soon as practicable following the Services Commencement Date as part of the Contractor's normal repair process at no additional cost to the Authority.

19.1.4 Where a testing and inspection certificate is not available for an item, the Contractor shall undertake the necessary test within ninety (90) Days following the Services Commencement Date and any remedial works identified during the test shall be included within the Asset Forward Maintenance Plan and acted on by the Contractor as necessary.

19.1.5 At the same time as the Contractor provides to the Authority's Representative the Built Environment and M&E Assets Condition Verification Report, it shall also provide to the Authority's Representative detailed proposals for maintaining, repairing and, where necessary, replacing or renewing the relevant equipment within the Prison during the Contract Period so as to ensure that all such equipment is at all times fully operational and in good working order such proposals to be included within the Asset Forward Maintenance Plan and the Asset Forward Replacement Plan. The Authority shall be entitled to propose changes to the Asset Forward Maintenance Plan and Asset Forward Replacement Plan and the final form of the plans shall be such as is agreed between the Authority and the Contractor, each acting reasonably.

19.1.6 The Contractor shall conduct an annual inspection of the Prison, and to the extent relevant and not included in the Prison, the Site, to assess its condition against that in the Asset Condition Schedule and to comply with its obligations pursuant to **Schedule 11 (Property and Facilities Management)**.

19.1.7 The Contractor shall conduct an annual review of the contents of the Built Environment and M&E Assets Condition Verification Report (including to incorporate any updates informed through its annual inspection pursuant to **clause 19.1.6 (Built Environment and M&E Assets Condition Verification)**) and on 1 April of each Contract Year shall submit an updated version of the Built Environment and M&E Assets Condition Verification Report to the Authority and approval in accordance with **Schedule 17 (Review Procedure)**.

19.2 Maintenance

19.2.1 The Contractor shall maintain and operate the Prison in accordance with this Contract, the Authority's Requirements, the maintenance and operating procedures set out in the Contractor's Proposals, the Contractor's Operating Manual, Asset Forward Maintenance Plan and Asset Forward Replacement Plan and the maintenance obligations contained in **paragraph 4.2 (Maintenance Services)** of **Schedule 11 (Property and Facilities Management)**.

19.3 Repair

19.3.1 The Contractor shall carry out repairs to plant and buildings as required to comply with **Schedule 11 (Property and Facilities Management)** and **Schedule 12 (Sustainability)**, Asset Forward Maintenance Plan and Asset Forward Replacement Plan.

19.3.2 The Contractor shall be responsible for the cost of all repairs required to be

carried out in order to comply with **Schedule 11 (Property and Facilities Management)** and **Schedule 12 (Sustainability)**, Asset Forward Maintenance Plan and Asset Forward Replacement Plan. For the avoidance of doubt, any repair which is required as a result of the Contractor's failure to complete the repair works in accordance with the requirements of this Contract together with the cost of any temporary services required to be implemented during the period in which any such repair work is completed will also be for the account of the Contractor.

19.3.3 The Contractor shall:

19.3.3.1 not, without the Authority's prior written approval:

- (a) carry out any structural alterations to the Site;
- (b) carry out any non-structural alterations which would materially affect the layout of the Site or the Contractor's ability to provide the Services in accordance with this Contract; and

19.3.3.2 comply with **clauses 16.1 to 16.13** (inclusive) (**Works**) and **Schedule 11 (Property and Facilities Management)** in respect of any alterations carried out by it to the Site, to the extent applicable to the Works in question.

19.4 **Asset Condition Schedule**

19.4.1 The Authority will make available asset condition survey data, related reports and indicative lifecycle replacement information (including in the form of the Asset Management Records) which may assist the Contractor in compiling its own list and priorities and developing the Asset Forward Replacement Plan. Included within the Asset Management Records shall be a plan of the repairs and maintenance the Authority or its contractor proposed to carry out if the Contractor had not been appointed under this Contract. The Authority shall have no liability for any existing surveys, reports and lifecycle replacement information or the Asset Management Records in this regard and any such data is for information purposes only, with the Contractor being under no obligation to implement the plans set out in the Asset Management Records.

19.4.2 The asset condition survey data forms the basis of the Asset Condition Schedule and the Contractor's Asset Forward Replacement Plan.

19.4.3 The Asset Forward Replacement Plan is to be issued as part of the Built Environment and M&E Assets Condition Verification Report process as

described in **clause 19.1.5 (Built Environment and M&E Assets Condition Verification)** and shall be revised and reissued on 1 April of each Contract Year.

- 19.4.4 The Asset Condition Schedule shall constitute the agreed statement of the condition of the Built Environment and M&E Assets at the Services Commencement Date.
- 19.4.5 The Contractor shall ensure that the Asset Condition Schedule is maintained and at all times kept up-to-date to reflect any changes to the condition of the Prison and, to the extent relevant and not included in the Prison, the Site, as the result of maintenance, repair, replacement and/or renewal of the fabric of the Prison and the equipment within the Prison.
- 19.4.6 Where the Contractor proposes to amend the Asset Condition Schedule pursuant to **clause 19.4.1 (Asset Condition Schedule)**, it shall provide the Authority with a revised version of the Asset Condition Schedule indicating the amendments it proposes to make.
- 19.4.7 Where the Authority does not agree with the revised Asset Condition Schedule, it shall provide the Contractor with a written statement of the grounds of its disagreement, and the Contractor shall review its revisions and issue a further revised Asset Condition Schedule.
- 19.4.8 If the Authority still does not agree with the Asset Condition Schedule as so revised, the matter shall be resolved pursuant to the Dispute Resolution Procedure. **[Note to Bidders: This clause 19 is to be reviewed for each Call-Off Contract to ensure there are adequate systems and processes in place to ensure the Contractor is in a position whereby it can complete adequate due diligence for asset verification and that for any new Buildings or Works it can verify that any Works reflect the designs provided to bidders as part of the Disclosed Data]**

20. DILAPIDATION SURVEY

20.1 Right to carry out Survey

- 20.1.1 If the Authority reasonably believes that the Contractor is in breach of its obligations under **clause 19 (Maintenance of Prison)** and/or the Authority's Property and Facilities Management Requirements then it may carry out (or procure the carrying out of) a survey of the Prison and, to the extent relevant not included in the Prison, the Site, to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under **clause 19**

(Maintenance of Prison) and/or, as applicable, the Authority's Property and Facilities Management Requirements.

20.1.2 The Authority shall notify the Contractor in writing a minimum of ten (10) Business Days in advance of the date on which it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

20.1.3 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The cost of the survey shall, except where **clause 20.2.1.3 (Results of Survey)** applies, be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority from time to time during the carrying out of any survey.

20.2 Results of Survey

20.2.1 If a survey shows that the Contractor has not complied with or is not complying with its obligations under **clause 19 (Maintenance of Prison)** and/or the Authority's Property and Facilities Management Requirements, the Authority shall:

20.2.1.1 notify the Contractor of the standard that the condition of the Prison and, to the extent relevant and not included in the Prison, the Site should be in to comply with its obligations under **clause 19 (Maintenance of Prison)**, the Authority's Property and Facilities Management Requirements and this Contract generally;

20.2.1.2 specify a reasonable period within which the Contractor must carry out any necessary rectification and/or maintenance work; and

20.2.1.3 be entitled to be reimbursed by the Contractor for the cost of the survey and any administrative costs incurred by the Authority in relation to such survey.

20.2.2 The Contractor shall carry out such rectification and/or maintenance work within the period specified by the Authority and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

21. RIGHTS OF ACCESS AND INSPECTION

- 21.1 The Authority, the Authority's Representative and any other representative of the Authority may enter upon any property used by the Contractor and/or its Sub-Contractors to perform the Services, to inspect the operation and maintenance of the Prison and to monitor compliance by the Contractor with its obligations.
- 21.2 The Authority, the Authority's Representative and any other representative of the Authority may enter upon any property used by the Contractor and/or its Sub-Contractors as training or workshop facilities and places where work is being prepared or materials being obtained for the delivery of the Services.
- 21.3 The Authority, the Authority's Representative and any other representative of the Authority may enter upon any part of the Prison to carry out major maintenance works (including any Major Maintenance Works (as defined in **Schedule 11 (Property and Facilities Management)**)) and replacement of major maintained assets) where the Authority undertakes to carry out such works.
- 21.4 The Contractor shall procure that satisfactory facilities are made available to the Authority, the Authority's Representative or any other representative of the Authority and that reasonable assistance is given for the purposes of **clauses 21.1, 21.2 and 21.3 (Rights of Access and Inspection)** subject to the Contractor's operational requirements not being adversely affected and to reimbursement of any reasonable costs and expenses of the Contractor.
- 21.5 The Contractor shall procure, in respect of those parts of the Site for which it has been granted a Lease or a licence to occupy or to control, that it shall:
- 21.5.1 allow access to those Third Parties who are to provide any of the Services or who are otherwise required to provide services to the Prison and/or the Site and/or Prisoners where such access is reasonably required by such Third Parties;
 - 21.5.2 allow access to all Authority Suppliers who provide services under any Authority Third Party Contract where such access is necessary in order for the relevant supplies or services to be provided in compliance with the terms of the relevant Authority Third Party Contract;
 - 21.5.3 all access to any Audit Agent where such access is required to carry out the relevant audit or review, including where such audit or review is of all or any part of the Services; and
 - 21.5.4 if reasonably required by a Third Party or by the Authority, grant written licences to the relevant Third Party or the Authority to access those parts of the



Site that the Third Party or the Authority (as the case may be) may reasonably require.

- 21.6 If the Authority is or becomes aware of a breach by the Contractor of its obligations under **clause 15.4 (Maintenance of Assets and Equipment Refresh Plan)**, **clause 19 (Maintenance of the Prison)** or the Authority's Property and Facilities Management Requirements, then the Authority may exercise its right of access and remedy such breach and shall be entitled to recover from the Contractor any costs or expenses incurred as a debt.
- 21.7 The Authority, the Authority's Representative or any other representative of the Authority shall comply with any health and safety requirements when exercising its rights under this **clause 21 (Rights of Access and Inspection)**.
- 21.8 If the Authority, the Authority's Representative or any other representative of the Authority causes material damage to the Prison in exercising any right under this **clause 21 (Rights of Access and Inspection)**, then the Authority shall reimburse the Contractor for its reasonable documented costs directly caused by such damage.

22. **HAZARDOUS SUBSTANCES**

22.1 **Storage**

The Contractor shall:

- 22.1.1 ensure that any hazardous materials or equipment used or intended to be used in the provision of the Services are authorised for use and kept under control and in safe keeping and disposed of in accordance with all relevant Legislation and Good Industry Practice;
- 22.1.2 ensure that all such materials are properly and clearly labelled on their containers, and submit all necessary notifications to any Relevant Authority in respect of such hazardous materials where required under the relevant Legislation;
- 22.1.3 promptly inform the Authority's Representative of all such materials being used or stored at the Site; and
- 22.1.4 comply with any other reasonable requirement of the Authority's Representative in respect of such materials and equipment.

22.2 **COSHH Register**

- 22.2.1 The Contractor shall, during the Service Period, maintain a COSHH register in

relation to the Prison and shall ensure that copies of the register are held at the Prison and at the Contractor's registered office, and that a copy is given to the Authority's Representative. The Authority's Representative shall notify the Contractor of any items that it or any Authority Related Party is using or storing at the Prison and that are required to be included in such register.

22.3 Montreal Protocol Substances

22.3.1 The Contractor shall comply with the provisions of **paragraph 9.18.6 (Hazardous Materials)** of **Schedule 12 (Sustainability)** regarding the use of Montreal Protocol Substances.

22.3.2 Any breach by the Contractor of the provisions of **paragraph 9.18.6 (Hazardous Materials)** of **Schedule 12 (Sustainability)** shall be deemed a Contractor Default falling within paragraph (a) of the definition of Contractor Default and shall entitle the Authority to terminate this Contract in accordance with **clause 44 (Termination on Contractor Default)**.

22.4 Sustainability

22.4.1 The Contractor shall comply with the provisions of **Schedule 12 (Sustainability)**.

23. PERFORMANCE MONITORING

23.1 Contractor Audits

The Contractor shall audit its performance in the delivery of the Services in accordance with **paragraph 4 of Part 1 (Custodial Services)** of **Schedule 1 (Authority's Custodial Services Requirements)**, **Schedule 11 (Property and Facilities Management)** and **Schedule 15 (Performance Mechanism)**.

23.2 Authority Auditing

23.2.1 The Authority's Representative may elect (acting by itself or through an Audit Agent) to undertake its own performance audit for any purpose, including in order to ensure that the Services are being provided in accordance with this Contract (including to review any performance monitoring reports and/or other reports or records relating to the Contractor's performance and to verify that these reflect the Contractor's own internal reports). The Contractor will use its reasonable endeavours to assist the Authority's Representative (or Audit Agent) in such an exercise.

23.2.2 The Authority's Representative shall be entitled to notify the Contractor of the outcome of the performance audit, and the Contractor shall have due regard to the Authority's Representative's comments and shall comply with all the requirements and recommendations of the Authority's Representative in relation to the future provision of the Services, provided that if the recommendations of the audit require a change to the Authority's Custodial Requirements and/or the Authority's Property and Facilities Management Requirements, this shall be deemed to be an Authority Change.

23.2.3 Without prejudice to the Authority's rights under **clause 44 (Termination on Contractor Default)** and to any other express rights under this Contract, where the Contractor:

23.2.3.1 submits a fraudulent claim for payment under **clause 39 (Payment Provisions)**; or

23.2.3.2 has submitted:

(a) Contract Delivery Management Information pursuant to **paragraph 2 (Management Information Reporting Requirements)** of **Schedule 15 (Performance Mechanism)** which contains at least three (3) material errors; or

(b) more than one Daily Report containing at least four (4) material errors,

within any consecutive three (3) Month period (provided that materiality shall not, for the purposes of this **clause 23.2.3.2 (Authority Auditing)** include clerical errors),

the Authority's Representative may, by notice to the Contractor, require to audit the Contractor's performance (acting by itself or through an Audit Agent) and/or (at the Authority's option) require the Contractor to audit its own performance of its obligations under this Contract in respect of any of the Services at more frequent intervals (as specified by the Authority) until such time as the Contractor has demonstrated to the reasonable satisfaction of the Authority's Representative that it is capable of performing and will perform such obligations in accordance with the requirements of this Contract.

23.2.4 For the purposes of **clause 23.2.3 (Authority Auditing)**, the Authority acknowledges that if:

23.2.4.1 the Contractor has removed the person or persons responsible for

the fraudulent reporting; or

- 23.2.4.2 in the following consecutive three (3) Month period after the date of the Authority's Representative's notice there have been no further material errors of any kind,

this shall be regarded as sufficient demonstration that the Contractor will perform and is capable of performing its relevant obligations.

- 23.2.5 If the Authority's Representative issues a notice under **clause 23.2.3 (Authority Auditing)**, the Contractor shall bear its own costs and indemnify and keep indemnified in full the Authority from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of auditing arising due to the circumstances described in **clause 23.2.3 (Authority Auditing)**.

24. ANNUAL CUSTODIAL SERVICE DELIVERY PLAN

24.1 Delivery of Annual Custodial Service Delivery Plan

- 24.1.1 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, the Contractor shall provide to the Authority's Representative a plan to show how it will provide the Custodial Service and Sustainability Requirements in the next Contract Year (the "**Annual Custodial Service Delivery Plan**").
- 24.1.2 The Contractor shall ensure that each Annual Custodial Service Delivery Plan shall contain:
- 24.1.2.1 all of the Operating Procedures;
 - 24.1.2.2 the Contractor's proposed review dates for each of the Operating Procedures (which shall require review on an annual basis as part of the Annual Custodial Service Delivery Plan, unless otherwise agreed between the Parties);
 - 24.1.2.3 the staff handbook;
 - 24.1.2.4 the public relations procedures;
 - 24.1.2.5 the Annual Interventions Plan;
 - 24.1.2.6 the Annual Interventions Cost;

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- 24.1.2.7 an Annual Resourcing Plan for the next Contract Year, highlighting any departure from the Annual Resourcing Plan for the preceding Contract Year and giving reasons for such departure;
- 24.1.2.8 a copy of the then current Exit Plan;
- 24.1.2.9 the Sustainability Plan;
- 24.1.2.10 the Contractor's plan to provide appropriate employment opportunities for certain Prisoners (as further detailed in **paragraph 2.2(e) of Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements)**);
- 24.1.2.11 details on the minimum number of Work Places (as such term is defined in **Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements)**) (as further described in **paragraph 5.1.1 of Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements)**);
- 24.1.2.12 details of the Contractor's IEP process (as further described in **paragraph 6.2.1 of Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements)**);
- 24.1.2.13 the Annual Purposeful Activity Plan which shall include:
 - (a) a description of all Purposeful Activities;
 - (b) a plan for how activities will be delivered to Prisoners;
 - (c) a description of how Purposeful Activity per Prisoner will be monitored; and
 - (d) targets for measuring progress against the plan which shall be incorporated in accordance with **Schedule 15 (Performance Management)**; and
- 24.1.2.14 the Annual ROTL Delivery Plan.

24.2 Approval of Annual Custodial Service Delivery Plan

- 24.2.1 Within twenty (20) Business Days after receipt of each Annual Custodial Service Delivery Plan, the Authority's Representative shall either:
 - 24.2.1.1 issue a certificate (the "**ACSDP Approval Certificate**") confirming

that he or she is satisfied that the Annual Custodial Service Delivery Plan is in accordance with the requirements of the Contract; or

- 24.2.1.2 issue a notice (an "**ACSDP Notice of Non-Compliance**") stating that the ACSDP Approval Certificate has not been issued, specifying the grounds on which the ACSDP Notice of Non-Compliance is based (provided that such grounds shall be one or more of those set out in **paragraph 3.2.2 of Schedule 17 (Review Procedure)**) and specifying any matters that must be attended to before the ACSDP Approval Certificate can be issued.
- 24.2.2 Following receipt of an ACSDP Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the ACSDP Notice of Non-Compliance and shall deliver the revised Annual Custodial Service Delivery Plan to the Authority's Representative within ten (10) Business Days after receipt of the ACSDP Notice of Non-Compliance so that the procedure in **clause 24.2.1 (Approval of Annual Custodial Service Delivery Plan)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Annual Custodial Service Delivery Plan are attended to and the ACSDP Approval Certificate can be issued in accordance with **clause 24.2.1.1 (Approval of Annual Custodial Service Delivery Plan)**.
- 24.2.3 No payment shall be made to the Contractor where the approval of the Annual Custodial Service Delivery Plan (such approval not to be unreasonably withheld or delayed by the Authority) has not occurred on or before the date falling ten (10) Business Days (or such other date as may reasonably be agreed) after the first re-submission of the Annual Custodial Services Delivery Plan pursuant to **clause 24.2.2 (Approval of Annual Custodial Service Delivery Plan)**, provided that, following subsequent agreement of the Annual Custodial Service Delivery Plan pursuant to **clause 24.2.4 (Approval of Annual Custodial Service Delivery Plan)** or otherwise, the Authority shall resume payment to the Contractor and reimburse the Contractor in respect of amounts which would otherwise have been paid to it by the Authority under this Contract but which have been withheld pursuant to this **clause 24.2.3 (Approval of Annual Custodial Service Delivery Plan)**.
- 24.2.4 Subject to **clause 24.2.3 (Approval of Annual Custodial Service Delivery Plan)**, if the Authority does not approve the Annual Custodial Service Delivery Plan either acting reasonably or within a reasonable time, the Dispute Resolution Procedure shall apply.

24.2.5 Subject to **clause 24.2.3 (Approval of Annual Custodial Service Delivery Plan)**, where the Dispute Resolution Procedure is invoked in respect of an Annual Custodial Service Delivery Plan which cannot be agreed between the Parties, the Annual Custodial Service Delivery Plan (or, in the case of the first Annual Custodial Service Delivery Plan to be agreed, the Initial Custodial Service Delivery Plan) used by the Parties prior to any dispute shall continue to be followed until such time as a new Annual Custodial Service Delivery Plan (or the first Annual Custodial Service Delivery Plan (as the case may be)) may be agreed.

24.3 Updates to the Annual Custodial Service Delivery Plan

24.3.1 The Contractor shall:

24.3.1.1 produce progress updates ("**ACSDP Reports**") to the Annual Custodial Service Delivery Plan each Month; and

24.3.1.2 ensure that the ACSDP Reports contain details of the Contractor's progress against the Annual Custodial Service Delivery Plan.

24.3.2 The Parties acknowledge that the production of an ACSDP Report may require the Annual Custodial Service Delivery Plan to be amended.

24.3.3 If the Annual Custodial Service Delivery Plan requires amendment, the Contractor shall:

24.3.3.1 amend the Annual Custodial Service Delivery Plan accordingly; and

24.3.3.2 issue it to the Authority's Representative for approval,

and the procedure outlined in **clause 24.2 (Approval of Annual Custodial Service Delivery Plan)** shall be repeated until the amended Annual Custodial Service Delivery Plan is approved by the Authority.

25. OPERATING MANUAL

25.1 Maintenance of Manual

25.1.1 The Authority shall use its reasonable endeavours to provide the Contractor with information relating to the operation and maintenance of the Prison during the period between the Commencement Date and the Services Commencement Date.

25.1.2 The Authority shall, on or before the Services Commencement Date, provide the Contractor with the existing manual setting out the procedures (excluding the

Operating Procedures) for providing the Services and maintaining the Prison (the "**Operating Manual**"). The Contractor shall throughout the Service Period maintain and update the Operating Manual.

25.2 Access to Manual

The Contractor shall at the request of the Authority's Representative provide the Authority's Representative with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under **clause 25.1 (Maintenance of Manual)**.

25.3 Copy on Termination

The Contractor shall:

- 25.3.1 no less than twelve (12) Months before the Expiry Date; or
- 25.3.2 if earlier, no more than two (2) Business Days after the date of any Termination Notice,

and, in addition, as required by **Schedule 24 (Handover and Exit Management)**, provide two (2) copies of the Operating Manual to the Authority in such format as the Authority reasonably requires.

26. QUALITY ASSURANCE

26.1 General Quality Assurance

The Contractor shall procure that all aspects of the Services are the subject of, and are conducted in accordance with, approved quality assurance systems.

26.2 Quality Management Officer

The Contractor shall appoint, as soon as reasonably practicable following the Commencement Date, an individual, who may be directly involved in the day-to-day performance of the Services (the "**Quality Management Officer**"), and who shall:

- 26.2.1 ensure the effective operation and implementation of the quality assurance system;
- 26.2.2 audit any quality assurance system at regular intervals and report the findings of such audit to the Contractor and the Authority;
- 26.2.3 review the quality assurance system at intervals agreed with the Authority to

ensure their continued suitability and effectiveness; and

26.2.4 liaise with the Authority on all matters relating to quality assurance.

26.3 Monitoring of Quality Assurance Systems

26.3.1 The Authority may carry out periodic audits of the quality assurance systems.

26.3.2 The Contractor shall procure that the Authority shall have the same right in respect of any relevant Sub-Contractors.

26.3.3 The Contractor shall co-operate and shall procure that any relevant Sub-Contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its rights under this **clause 26 (Quality Assurance)**.

27. CO-OPERATION FOR INVESTIGATION AND SECURITY

27.1 Co-operation

Notwithstanding **clause 4.2 (Co-operation)**, the Contractor shall:

27.1.1 co-operate with any investigation relating to a breach of safety or security which is carried out by or on behalf of the Authority;

27.1.2 use its reasonable endeavours to make its employees (and other Contractor Related Parties) identified by the Authority available to be interviewed by the Authority for the purposes of the investigation; and

27.1.3 subject to any legal restriction on their disclosure, provide all copies of Documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation.

27.2 Infectious Diseases

The Contractor shall comply with the Authority's reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to the Contractor.

28. BENCHMARKING AND VALUE TESTING

28.1 Benchmarking

The Authority may at its sole discretion conduct a Benchmarking Exercise on or from the fifth (5th) anniversary of the Services Commencement Date (but not more than once a Year)

as follows:

- 28.1.1 the Authority shall notify the Contractor of its intention to conduct a Benchmarking Exercise in accordance with this **clause 28.1 (Benchmarking)** and such notification will state a Benchmarking Review Date which shall not be less than three (3) Months from the date of such notification;
- 28.1.2 each Benchmarking Exercise shall be undertaken to ascertain the relative quality and competitiveness of the Tested Service. The Benchmarking Exercise shall be undertaken in good faith by the Authority (and with the reasonable co-operation of the Contractor) and on the basis of an objective and like for like comparison by comparing the standards and prices of the Tested Service and the costs of providing them with the standards and prices of equivalent services and the costs of providing them;
- 28.1.3 the Authority shall make the outcome of any Benchmarking Exercise available to the Contractor by the date occurring one (1) Month before the relevant Benchmarking Review Date in preparation for the Authority and the Contractor making the appropriate adjustments to the Contract Price on the basis set out in **clause 28.1.4 (Benchmarking)**. The outcome shall indicate the extent to which (if at all) the Market Costs differ (in percentage terms) from the Latest Service Element; and
- 28.1.4 where the Market Costs are between ninety five per cent (95%) and one hundred and five per cent (105%) of the Latest Service Element, no change shall be made to the Contract Price or the Latest Service Element. Where the Market Costs are less than ninety five per cent (95%) or more than one hundred and five per cent (105%) of the Latest Service Element or a Tested Service Benchmarking Exercise cannot be carried out, the Parties shall adjust the Contract Price on the basis that:
 - 28.1.4.1 the Contract Price will be increased by an amount to reflect the Market Costs where the Market Costs exceed one hundred and five percent (105%) of the Latest Service Element;
 - 28.1.4.2 the Contract Price will be decreased by an amount to reflect the Market Costs where the Market Costs are less than ninety five percent (95%) of the Latest Service Element; and
 - 28.1.4.3 the Latest Service Element shall be increased or decreased (as the case may be) to reflect the Market Costs,

and the Contract Price shall be adjusted in accordance with **clause 59 (Financial Adjustments)**.

- 28.1.5 Any dispute under this **clause 28.1 (Benchmarking)** (including as to the results of the Benchmarking Exercise) shall be determined in accordance with the Dispute Resolution Procedure.

28.2 **Costs of Benchmarking Exercise**

The Contractor shall be responsible for its own costs in relation to any Benchmarking Exercise.

28.3 **Value Testing Option**

- 28.3.1 The Authority shall consider which element of the Service shall be subject to value testing (the "**Value Tested Service**") pursuant to the remainder of this **clause 28.3 (Value Testing Option)** and shall inform the Contractor of its decision on or before the 1 January prior to the due date of the Annual Custodial Service Delivery Plan provided to the Authority's Representative in accordance with **clause 24.1 (Delivery of Custodial Service Delivery Plan)**, provided that:

- 28.3.1.1 the first Value Testing Exercise shall not take place before the second (2nd) anniversary of the Services Commencement Date;
- 28.3.1.2 no element of the Service shall be value tested more frequently than once every three (3) Years;
- 28.3.1.3 no more than ten per cent (10%) of the Service may be value tested in any Year; and
- 28.3.1.4 subject to **clause 28.3.3 (Value Testing Option)**, the Authority shall pay the costs incurred as a result of a Value Testing Exercise.

- 28.3.2 The Contractor shall notify the Authority of whether or not it agrees to carry out a Value Testing Exercise within fourteen (14) Business Days after receipt of the Authority's notice pursuant to **clause 28.3 (Value Testing Option)**.

- 28.3.3 If the Contractor agrees to carry out the Value Testing Exercise, then the costs, method, timescales and responsibility for such Value Testing Exercise shall be discussed, on the basis of open book accounting, and agreed by both Parties, acting in good faith, during the development of the Annual Custodial Service Delivery Plan, Built Environment and M&E Assets Condition Verification Report, Asset Forward Maintenance Plan and Asset Forward Replacement Plan.

- 28.3.4 Each Value Testing Exercise will be undertaken to ascertain the competitiveness and quality of the Value Tested Service in question and will be carried out in good faith and on the basis of open book accounting.
- 28.3.5 The Authority shall be entitled to receive a fifty per cent (50%) share of any gain arising from any Value Testing Exercise.
- 28.3.6 The carrying out of a Value Testing Exercise is subject to agreement between the Parties. Any failure to agree in relation this **clause 28.3 (Value Testing Option)** shall not constitute a dispute and shall not be subject to determination in accordance with the Dispute Resolution Procedure.

PART VI - GENERAL PERFORMANCE OBLIGATIONS**29. EQUALITY AND DIVERSITY****29.1 Compliance**

From the Commencement Date, the Contractor shall (and shall procure that its Sub-Contractors shall):

29.1.1 comply with any and all equality Legislation (including any codes of practice prepared and issued from time to time by the Equality and Human Rights Commission or any other Relevant Authority) relating to discrimination (whether in relation to race, sex, gender reassignment, age, disability, religion or belief, sexual orientation, marital or civil partnership status, pregnancy, maternity or otherwise) and, in particular, monitor and promote the principle of equal treatment at all times;

29.1.2 co-operate fully with the Authority to exchange experiences and good practice;

29.1.3 comply with Authority Policies and the Authority's standards on all equalities issues; and

29.1.4 comply with any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Legislation.

29.2 The Contractor shall take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal or by the Equality and Human Rights Commission.

29.3 Promotion and Engagement

The Contractor shall promote equality and diversity including the employment of SMEs, black and minority ethnic enterprises, women owned businesses and businesses owned by persons with disabilities and shall promote engagement with the voluntary sector in relation to the delivery of the Services.

29.4 Monitoring

The Contractor shall:

29.4.1 monitor the representation among the Contractor's Staff of:

29.4.1.1 persons of different racial groups (which shall mean groups of

persons classified as 'ethnic groups' in the most recent official census by the UK Office of National Statistics (or any successor of it));

29.4.1.2 persons with disabilities; and

29.4.1.3 the balance of gender,

having regard to the Authority's procedures for monitoring representation among its own employees which are notified from time to time by the Authority to the Contractor;

29.4.2 where it appears to the Contractor, in relation to particular work of the Contractor's Staff, that members of a racial group or persons with disabilities are under-represented among the Contractor's Staff or that there is a gender imbalance in the Contractor's Staff doing that work compared to their representation in the Contractor's Staff as a whole or in the population from which the Contractor's Staff are normally recruited, take such steps as may be reasonably necessary to promote racial, disability and/or gender equality (as the case may be) which may include:

29.4.2.1 the placing and use of job advertisements to reach members of such groups and to encourage their applications;

29.4.2.2 the use of employment agencies and careers offices;

29.4.2.3 the promotion of recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such groups;

29.4.2.4 the provision of appropriate training and the encouragement of members of the Contractor's Staff from such groups to apply for promotion or transfer to do work in which such groups are under-represented;

29.4.2.5 the monitoring and collection of information on staff in relation to all equalities issues using the race, religion and nationality categories employed by the UK Office of National Statistics, the monitoring of employment functions in accordance with the Equality Duties, and the supply of such information to the Authority on an annual basis;

29.4.2.6 the monitoring, collection and analysis of information relating to the

equality needs of Prisoners in accordance with the Authority's requirements, and the supply of such information to the Authority on a Monthly basis. The Authority shall at its sole discretion be entitled to make such information available to the public;

having regard to the Authority's procedures for monitoring the equality needs of Prisoners as notified from time to time by the Authority to the Contractor.

29.5 **Equality Duties**

The Contractor acknowledges that the Authority is subject to those obligations and duties set out in **clause 29.1 (Compliance)** (the "**Equality Duties**") and shall not (and shall procure that its Sub-Contractors shall not) by its or their acts or omissions cause, contribute to or otherwise give rise to a breach by the Authority of the Equality Duties in relation to this Contract.

29.6 **Provision of Information and Assistance**

The Contractor shall comply with requests for information, data or other assistance made by the Authority in pursuance of its Equality Duties, including to:

- 29.6.1 enable the Authority to conduct reviews of the Contractor's performance in relation to compliance with this **clause 29 (Equality and Diversity)**;
- 29.6.2 facilitate the Authority in preparing any report or statement to the Equality and Human Rights Commission or any other Relevant Authority;
- 29.6.3 enable the Authority to comply with any direction of the Equality and Human Rights Commission or any other Relevant Authority; and/or
- 29.6.4 carry out and provide to the Authority risk assessments and Equality Impact Assessments (or any other similar instruments required by the Authority) in relation to the Equality Duties and the Contractor's compliance with this **clause 29 (Equality and Diversity)**.

29.7 **Sub-Contractors**

The Contractor shall procure that its Sub-Contractors comply with the obligations set out in **clauses 29.1 (Compliance) to 29.6 (Provision of Information and Assistance)** (inclusive).

29.8 **Equality and Diversity Officer**

The Contractor shall nominate, as soon as reasonably practicable following the Commencement Date, an individual who will be responsible for managing and promoting

equality and diversity in respect of the Contractor's Staff and the Services and for the implementation of all equality and diversity arrangements and the monitoring and reporting of the Contractor's compliance with this **clause 29 (Equality and Diversity)**.

29.9 Equality and Diversity Reports

29.9.1 The Contractor shall provide a report at each Contract Review Meeting which shall include:

- 29.9.1.1 data on protected characteristics under the Equality Act 2010 with a particular focus on the racial make-up, proportion of persons with disabilities and the gender breakdown of the Contractor's Staff;
- 29.9.1.2 details of any complaints and/or investigations in relation to equality and diversity and details of any action taken;
- 29.9.1.3 data and analysis of any allegations of discrimination and/or harassment relating to race, gender, age, disability, religious belief, sexual orientation or otherwise;
- 29.9.1.4 information on training provided by or for the Contractor to the Contractor's Staff in relation to equality and diversity;
- 29.9.1.5 details of recruitment during the period covered by the report;
- 29.9.1.6 details and copies of any Equality Analysis (provided in accordance with PSI 20/2016 Implementation of Equality Analysis) carried out by the Contractor. The Authority shall be entitled at its sole discretion to publish copies of such assessments on the internet; and
- 29.9.1.7 details of any claims, the outcome of any claims and any recommendations made by an employment tribunal or other forum, broken down by protected characteristic.

29.9.2 The Contractor shall twelve (12) Months after the Commencement Date and on each twelve (12) Month anniversary of such date, submit a report to the Authority demonstrating its compliance with **clauses 29.1 (Compliance) to 29.7 (Sub-Contractors)** (inclusive) and its proposals in respect of equality and diversity for the following twelve (12) Months.

29.9.3 The Contractor shall provide the Authority with Equality Analyses (or any other similar instruments required by the Authority) as and when they are completed. The Authority shall be entitled at its sole discretion to make such assessments

available to the public.

29.10 Non-compliance and Investigations

- 29.10.1 If, in the reasonable opinion of the Authority, the Contractor fails to comply with its obligations in **clauses 29.1 (Compliance) to 29.7 (Sub-Contractors)** (inclusive), the Contractor shall co-operate fully with the Authority to remedy such non-compliance, provided that the Authority reserves the right to report any non-compliance to any Relevant Authority.
- 29.10.2 Where any investigation is undertaken by a Relevant Authority and/or proceedings are instituted in accordance with any matter relating to the Contractor's obligations set out in this **clause 29 (Equality and Diversity)**, the Contractor shall (and shall ensure that its Sub-Contractors shall):
- 29.10.2.1 provide any information requested in the timescale allotted;
 - 29.10.2.2 attend and permit members of the Contractor's Staff to attend any meetings as required;
 - 29.10.2.3 allow itself and any member of the Contractor's Staff to appear as witnesses in any ensuing proceedings; and
 - 29.10.2.4 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation and/or proceedings.
- 29.10.3 If any Relevant Authority makes a finding of any unlawful discrimination (whether in relation to race, gender, age, disability, religious belief, sexual orientation or otherwise) against the Contractor or any of its Sub-Contractors the Contractor shall:
- 29.10.3.1 take all reasonable steps to eliminate such unlawful discrimination and shall otherwise comply with all the requirements and recommendations of such Relevant Authority; and
 - 29.10.3.2 as soon as reasonably practicable, provide the Authority with details of such requirements and (if any) recommendations and the remedial steps to be taken by the Contractor.

29.11 Modern Slavery

- 29.11.1 The Contractor shall ensure that it, the Contractor's Staff and other persons

associated with it, comply with the Modern Slavery Act 2015 and shall:

- 29.11.1.1 take all reasonable steps to identify, address, remove and avoid slavery and/or human trafficking from anywhere in its business or supply chain; and
 - 29.11.1.2 shall notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract. Any notice shall set out the full details of the circumstances concerning the breach or potential breach of the Contractor's obligations.
- 29.11.2 If, in the Authority's reasonable opinion, the Contractor fails to take steps to deal adequately with any actual or suspected slavery or human trafficking in its business or supply chain, or the Contractor otherwise breaches the provisions of this **clause 29.11 (Modern Slavery)**, this shall constitute a Contractor Default falling within paragraph (a) of the definition of Contractor Default and shall entitle the Authority to terminate this Contract in accordance with **clause 44 (Termination on Contractor Default)**.
- 29.11.3 The Contractor warrants that it is not and has not been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 29.11.4 The Contractor shall indemnify the Authority against any losses, liabilities, damages, costs (including legal fees) and expenses incurred by or awarded against the Authority as a result of any breach by the Contractor of the Modern Slavery Act 2015.

30. SUSTAINABILITY REPORTING REQUIREMENTS

The Contractor shall on an annual basis, in accordance with the specific timescales notified by the Authority, comply with the Sustainability Reporting Requirements set out in **Schedule 12 (Sustainability)**.

31. WORKING IN WALES AND WELSH LANGUAGE REQUIREMENTS

- 31.1 The Contractor shall recognise and work together with the structures put in place from time to time by the Ministry of Justice and the Welsh Government.
- 31.2 The Contractor shall, at all times, comply with the Welsh Language Act 1993 and the Authority's Welsh Language Scheme (as amended from time to time) as if it were the

Authority to the extent that the same relate to the provision of the Services.

- 31.3 The Contractor shall be responsible for promoting the delivery of the services in Welsh or English to the Prisoners and shall use reasonable endeavours to achieve this.

PART VII - ESCORT ARRANGEMENTS AND VISITORS**32. ESCORT ARRANGEMENTS**

The Contractor shall, during the Service Period, co-operate with all reasonable requirements of any other person(s) providing Prisoner Escort Services to the Prison, but subject at all times to the maintenance of the security and control at the Prison and in accordance with **Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Services Requirements)**.

33. VISITORS

Notwithstanding any other provision of this Contract, the Contractor shall, during the Service Period, be responsible for the safety and protection of all visitors to the Prison, and for the maintenance of security in the Prison when visitors are given access to the Prison, for whatever purpose.



PART VIII - STAFF AND PERSONNEL

34. THE DIRECTOR

34.1 Conditions for Appointment of the Director

The Contractor shall not appoint any person as the Director without first having such person:

34.1.1 approved by the Authority's Representative pursuant to **clause 34.2 (Appointment of the Director)**; and

34.1.2 certified as a Prisoner Custody Officer in accordance with **clause 35 (Certification as Prisoner Custody Officer)**.

34.2 Appointment of the Director

34.2.1 The Contractor shall submit a nomination for the position of the Director to the Authority's Representative in accordance with **clause 13.5 (Contractor's Staff Information)** or, after the appointment of the first Director at any time after that appointment, which nomination the Authority's Representative may approve or reject as he or she thinks fit. The Contractor shall submit to the Authority's Representative such further particulars of the proposed Director and the terms of his or her employment contract as the Authority's Representative may require in order to decide whether to approve the appointment. The Authority's Representative shall consult with the Contractor with respect to any such proposed Director and if a Contractor's proposed Director is rejected by the Authority's Representative, the Authority's Representative shall provide reasons for the rejection, and the Contractor shall nominate a new proposed Director for the Authority's Representative's approval or rejection in the same manner as the earlier nomination.

34.2.2 The Contractor shall ensure that any person required to exercise the powers of the Director, by reason of the Director's absence, or to replace the existing Director or for whatsoever reason, will be subject to the same terms of approval, appointment and certification as specified in this **clause 34 (The Director)**.

34.3 Status of the Director

During the Contract Period, the Director shall be an appointee of the Contractor.

35. CERTIFICATION AS PRISONER CUSTODY OFFICERS

35.1 Certification

The Contractor shall:

- 35.1.1 ensure that all persons carrying out Custodial Duties in the Prison shall be subject to certification as Prisoner Custody Officers by the Authority (as required by sections 85 and 89 (and where appropriate section 80) of, and Schedule 10 to, the Criminal Justice Act 1991 (as amended)); and
- 35.1.2 in order to obtain such certification by the Authority submit to the Authority:
 - 35.1.2.1 the name of any proposed Prisoner Custody Officer;
 - 35.1.2.2 without prejudice to **clause 36.1.2 (Recruitment and Training)**, the results of the applicable check made with the Disclosure and Barring Service (or other relevant body) in respect of each person who it is proposed will be employed as a Prisoner Custody Officer at the Prison; and
 - 35.1.2.3 such other information as the Authority may require, to assist in the Authority's decision as to his or her certification as a Prisoner Custody Officer at the Prison.

35.2 Suspended or Revoked Certificates

- 35.2.1 The Contractor shall ensure that no person certified as a Prisoner Custody Officer may be employed in that capacity if his or her certification has been revoked or during any period when his or her certificate is suspended.
- 35.2.2 The Contractor shall notify the Authority's Representative immediately of any behaviour of any Prisoner Custody Officer which would cast doubt on his or her fitness for certification as a Prisoner Custody Officer, including if any member of the Contractor's Staff receives a police caution, a Conviction or an ASBO.
- 35.2.3 The Contractor shall ensure that Prisoner Custody Officers shall display their prisoner custody certificates at all times whilst on duty at the Site.

36. THE CONTRACTOR'S STAFF

36.1 Recruitment and Training

The Contractor shall:

- 36.1.1 be responsible for the recruitment and provision of the Contractor's Staff;
- 36.1.2 in respect of any member of the Contractor's Staff:

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- 36.1.2.1 question each such person as to whether he or she has any police cautions, Convictions or ASBOs;
- 36.1.2.2 carry out the applicable check with the Disclosure and Barring Service (or such other relevant body from time to time); and
- 36.1.2.3 notify the Authority's Representative of the results of such checks;
- 36.1.3 ensure that no person who discloses any Convictions or ASBOs, or who is found to have any Convictions following the results of a Disclosure and Barring Service or other applicable check, is employed or engaged as a member of the Contractor's Staff without the Authority's Representative's Approval (such approval not to be unreasonably delayed);
- 36.1.4 advise the Authority's Representative at all times of any person who, subsequent to his or her commencement of employment as a member of the Contractor's Staff receives a Conviction or ASBO or whose previous Convictions or ASBOs become known to the Contractor (or any Sub-Contractor); and
- 36.1.5 ensure that all members of the Contractor's Staff:
- 36.1.6 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence; and
- 36.1.7 receive proper training and supervision in their functions and duties to ensure the proper performance of the Services, such training to be subject to the Authority's Representative's Approval (such approval not to be unreasonably delayed).

36.2 Uniforms

The Contractor shall:

- 36.2.1 submit for the Authority's Representative's Approval any and all uniforms to be worn by the Contractor's Staff (including the Prisoner Custody Officers) at least four (4) Months prior to the Services Commencement Date;
- 36.2.2 not take such uniforms into use and/or implement its required standards of dress for the Contractor's Staff (including the Prisoner Custody Officers) without the Authority's Representative's Approval; and
- 36.2.3 not change the uniforms or standards of dress without the Authority's Representative's Approval.

36.3 Approval of Contractor's Staff

Subject to **clause 36.4 (Transferring Employees)**, the Contractor shall:

- 36.3.1 ensure that it obtains the Authority's Representative's Approval for any member of the Contractor's Staff who is not required to be certified as a Prisoner Custody Officer (including, for the purposes of this **clause 36.3 (Approval of Contractor's Staff)**) at the Prison; and
- 36.3.2 provide to the Authority's Representative such details of those members of the Contractor's Staff who are not required to be certified as Prisoner Custody Officers as may be required by the Authority's Representative for the purposes of deciding whether to give the Authority's Representative's Approval,

provided that the Authority's Representative may exempt certain categories of the Contractor's Staff from the requirements of this **clause 36.3 (Approval of Contractor's Staff)**.

36.4 **Transferring Employees**

The obligations set out in **clause 36.1 (Recruitment and Training)** and **clause 36.3 (Approval of Contractor's Staff)** shall not apply prior to or on the Services Commencement Date to the Transferring Authority Employees and/or Transferring Contractor Employees transferring to the Contractor or a Sub-Contractor on the Services Commencement Date.

36.5 **Approval of New Members of Contractor's Staff**

If the Contractor or any Sub-Contractor seeks to engage a new member of the Contractor's Staff, and such person has not been the subject of prior approval or certification (as the case may be) in accordance with this **clause 36 (The Contractor's Staff)**, **clauses 34 (The Director)** and/or **35 (Certification as Prisoner Custody Officers)**, or such approval or certification has lapsed, the Contractor shall not permit such person to commence work at the Prison until the Contractor has complied with such provisions of this **clause 36 (The Contractor's Staff)**, **clauses 34 (The Director)** and/or **35 (Certification as Prisoner Custody Officers)** (as the case may be).

36.6 **Operating and Procedural Instructions**

The Contractor shall provide all members of the Contractor's Staff with:

- 36.6.1 those parts of the Operating Procedures, the Initial Service Delivery Documents and the Service Delivery Documents that are relevant to them; and
- 36.6.2 those parts of any revised or amended Operating Procedures, Initial Service Delivery Documents and Service Delivery Documents that are relevant to them

and may be issued by the Contractor during the term of this Contract.

36.7 **Obligation of Confidentiality**

The Contractor shall:

- 36.7.1 ensure that all Contractor's Staff are under an obligation of confidence owed to the Contractor and the Authority not to disclose any information acquired during the course of their employment otherwise than in the proper discharge of their duties or as authorised by the Authority;
- 36.7.2 provide in the terms of all Sub-Contracts that:
 - 36.7.2.1 the Sub-Contractors will undertake to the Authority in the same terms as the provisions of this **clause 36.7 (Obligation of Confidentiality)**; and
 - 36.7.2.2 the Sub-Contractors shall ensure that all its sub-contractors undertake in the same terms as the provisions of this **clause 36.7 (Obligation of Confidentiality)**; and
- 36.7.3 at the Authority's request, provide the Authority with the benefit of a confidentiality undertaking from any Sub-Contractor, the form of such undertaking to be provided by the Authority.

36.8 **Suspension of Staff**

- 36.8.1 Without prejudice to **clauses 34 (The Director)** and **35 (Certification as Prisoner Custody Officers)**, if, in the opinion of the Authority's Representative, any member of the Contractor's Staff is guilty of misconduct, incapable of efficiently performing his or her duties or it is not in the public interest for such individual to work in the Prison, then the Authority's Representative may, by notice to the Contractor, require the Contractor to immediately suspend such individual from his or her work and refuse the admission of such individual to the Prison (except, with the Authority's Representative's Approval, in connection with disciplinary matters) (a "**Suspended Member of Staff**") and shall, immediately on being required to do so, remove such Suspended Member of Staff from the Prison.
- 36.8.2 The Contractor will ensure that such Suspended Member of Staff's work is performed by such other member of the Contractor's Staff as is necessary. The Authority's Representative may, in respect of any such Suspended Member of Staff, take such action as it considers appropriate.

36.8.3 The Contractor and the Authority's Representative shall, following the suspension, refusal of admission and/or removal of such Suspended Member of Staff pursuant to **clause 36.8 (Suspension of Staff)**, consult in good faith to ascertain whether the Suspended Member of Staff should be allowed to recommence his or her duties in the Prison.

36.8.4 If the Contractor considers in good faith that suspension is no longer appropriate and that the Suspended Member of Staff should be allowed to resume his or her duties at the Prison, it shall notify the Authority's Representative in writing (a **"Cessation of Suspension Notice"**).

36.8.5 Following receipt of any Cessation of Suspension Notice by the Authority's Representative, the Authority's Representative shall be entitled, by giving notice in writing (a **"Continued Suspension Notice"**) to the Contractor within ten (10) Business Days after receipt of the Cessation of Suspension Notice, to require continued suspension and refusal of admission to the Prison of such Suspended Member of Staff for a specified period or permanently.

36.8.6 If the Authority's Representative does not give a Continued Suspension Notice within the period specified in **clause 36.8.5 (Suspension of Staff)**, the Suspended Member of Staff may be allowed to continue his or her duties and to be admitted to the Prison.

36.9 **Job Description and Details**

The Contractor shall:

36.9.1 provide written job descriptions (including any amendments), staff record systems and a performance evaluation plan for all members of the Contractor's Staff that shall be available for inspection by the Authority's Representative;

36.9.2 provide all members of the Contractor's Staff with written job descriptions before they begin work in the Prison; and

36.9.3 ensure that such job descriptions shall be amended as necessary and promptly reissued to the members of the Contractor's Staff concerned after each amendment.

36.10 **Section 88**

The Contractor shall ensure the inclusion in the contract of employment of all members of the Contractor's Staff a condition requiring the Contractor's Staff to co-operate with any Governor who may be appointed to the Prison.

36.11 Sufficient Contractor's Staff

36.11.1 The Contractor shall at all times:

- 36.11.1.1 maintain a sufficient number of Contractor's Staff with the requisite level of skill and experience engaged in the provision of the Services to ensure that the Prison is a safe, secure and decent environment; and
- 36.11.1.2 ensure that there are sufficient Contractor's Staff to cover for periods of holiday, sickness, other absences and anticipated and actual peaks in demand for the Services or any part of it.

36.11.2 In respect of resourcing:

- 36.11.2.1 the overriding principle shall be that the resourcing levels provided by the Contractor as set out in the Annual Resourcing Plan shall be sufficient to ensure that the Prison is a safe, secure and decent environment, and the Contractor may not propose changes to such resourcing which would conflict with or adversely affect that principle;
- 36.11.2.2 subject to **clause 36.11.2.1 (Sufficient Contractor's Staff)**, the Annual Resourcing Plan may include such flexibility of resource provision as may be reasonably necessary for the day-to-day running of the Prison;
- 36.11.2.3 the Contractor shall give the Authority prior written notification of any significant changes it proposes to make to the resourcing levels set out in the Annual Resourcing Plan for the then-current Contract Year, together with its reasons for such proposed changes; provided that where changes to resourcing levels are necessary to comply with **clause 36.11.2.1 (Sufficient Contractor's Staff)**, the Contractor may make such changes without prior notification;
- 36.11.2.4 if the proposed resourcing changes are not acceptable to the Authority, the Authority's Representative shall so notify the Contractor within twenty (20) Business Days after receipt of the Contractor's notification pursuant to **clause 36.11.2.1 (Sufficient Contractor's Staff)**, in which case the Contractor shall either:
 - (a) withdraw its proposed changes; or

(b) propose revised changes within ten (10) Business Days;

36.11.2.5 if the revised resourcing changes proposed by the Contractor pursuant to **clause 36.11.2.4(b) (Sufficient Contractor's Staff)** are not acceptable to the Authority, the Authority's Representative shall so notify the Contractor; and

36.11.2.6 where the Authority notifies the Contractor that proposed resourcing changes are not acceptable, such changes shall not be implemented or effective.

36.11.3 If the Authority considers that the Contractor is not complying with the requirements of **clauses 36.11.1 (Sufficient Contractor's Staff)** or **36.11.2.1 (Sufficient Contractor's Staff)**:

36.11.3.1 the Authority may issue an Improvement Notice in accordance with **Schedule 15 (Performance Mechanism)** and the provisions of **paragraph 12 (Improvement Notices and Improvement Plan)** of **Schedule 15 (Performance Mechanism)** shall apply; and

36.11.3.2 if at any time the Authority considers that urgent and immediate steps are required to deal with the situation, it may take action in accordance with the provisions of **clause 60 (Authority Step-In)**.

36.11.4 Any dispute over what constitutes sufficient resourcing to ensure that the Prison is a safe, secure and decent environment shall be resolved in accordance with **clause 70 (Dispute Resolution)**.

36.12 Continual Availability

36.12.1 The Contractor shall ensure that:

36.12.1.1 sufficient Contractor's Staff (including Prisoner Custody Officers, the Director and other senior management of the Prison or their delegated representatives that have sufficient authority to take decisions necessary for the proper operation of the Prison) for the provision of the Services in accordance with the requirements of this Contract; and

36.12.1.2 a member of the senior management of the Contractor (if different from the senior management of the Prison),

shall be available twenty four (24) hours a Day on every Day of the Service

Period.

36.12.2 The Contractor shall:

36.12.2.1 inform the Authority's Representative not less than three (3) Months prior to the Services Commencement Date of the procedures by which the obligations referred to in **clause 36.12.1 (Continual Availability)** will be performed (and any changes to such procedures); and

36.12.2.2 obtain the Authority's Representative's Approval to such procedures (and any such changes) before implementing them.

36.13 **Responsibility for Staff Costs**

As between the Contractor and the Authority, the Contractor shall be entirely responsible for all aspects, including costs, of the contracts of employment of its and its Sub-Contractors' employees.

36.14 **Offers of Employment**

The Contractor shall not, and shall use reasonable endeavours to ensure that no Sub-Contractor shall not, make any offer of employment or otherwise approach, entice, induce or encourage any employee of the Authority, any Authority Related Party or any other part of the criminal justice system (including Relevant Organisations or sub-contractors of the Authority) to leave the employment of the Authority, such Authority Related Party or such other part of the criminal justice system (including any Relevant Organisations or sub-contractors of the Authority) unless it has given the Authority not less than five (5) Business Days' prior written notice of such intended offer of employment, approach, enticement or encouragement.

36.15 **Contractor's Key Personnel and Senior Managers**

36.15.1 The Contractor shall appoint an individual to each of the positions listed in the column headed 'Position' in the table in **Schedule 6 (Contractor' Key Personnel)**, in accordance with the provisions of the clauses listed in the column headed 'Clause reference' in the table in **Schedule 6 (Contractor' Key Personnel)** where appropriate.

36.15.2 The Contractor shall notify the Authority's Representative:

36.15.2.1 of the identity of each individual appointed to each position on or before the date of the initial appointments to those positions; and

36.15.2.2 within five (5) Business Days of any change to the identity of any individual appointed to any of those positions.

36.15.3 The Contractor shall ensure that the employment contract for each key individual and senior manager ("**Senior Employee**") contains a mobility clause that obliges the Senior Employee to undertake such travel both within the United Kingdom and abroad and/or to relocate to another prison as may be required.

36.16 **Apprenticeships and Skills**

36.16.1 The Contractor shall use reasonable endeavours to procure the employment of apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during the delivery of this Contract.

36.16.2 The Contractor shall procure the provision of any appropriate further skills training opportunities for employees delivering the Contract.

36.16.3 The provisions of **clauses 36.16.1 to 36.16.2 (Apprenticeships and Skills)** above shall not apply in respect of Prisoner Custody Officers.

36.17 **Monitoring and Reporting**

The Contractor shall monitor, and report to the Authority when required:

36.17.1 the level of volunteering undertaken by the Contractor's Staff including the total number of Days spent on volunteering per Year and the average number of Days spent on volunteering per member of staff per Year; and

36.17.2 the level of training and development undertaken by the Contractor's Staff including the total number of Days spent on training and development per Year and the average number of Days spent on training and development per member of staff per Year.

37. **TUPE AND EMPLOYEES**

37.1 The Parties shall comply with the provisions of **Schedule 18 (TUPE, Employees and Pensions)**. The Parties agree that:

37.1.1 **Relevant Transfer on Services Commencement**

Where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, **Schedule 18 (TUPE, Employees and Pensions)** shall apply as follows:

- 37.1.1.1 where the Relevant Transfer involves the transfer of Transferring Authority Employees, **Part A (Transferring Authority Employees at Commencement of Services)** and **Part D (Pensions)** of **Part 1 (Staff Transfer)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply;
- 37.1.1.2 where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, **Part B (Transferring Former Contractor Employees at Commencement of Services)** and **Part D (Pensions)** of **Part 1 (Staff Transfer)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply;
- 37.1.1.3 upon the expiry or termination of the Services (or any part of the Services), **Part E (Employment Exit Provisions)** of **Part 1 (Staff Transfer)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply; and
- 37.1.1.4 **Part 2 (TUPE Surcharge)** and **Part 3 (Redundancy Surcharge)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply; and
- 37.1.1.5 **Part C (No Transfer of Employees at Commencement of Services)** of **Part 1 (Staff Transfer)** of **Schedule 18 (TUPE, Employees and Pensions)** shall not apply;

37.1.2 No Relevant Transfer on Services Commencement

Where commencement of the provision of the Services or any part of the Services does not result in a Relevant Transfer:

- 37.1.2.1 **Part C (No Transfer of Employees at Commencement of Services)** of **Part 1 (Staff Transfer)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply;
- 37.1.2.2 **Part D (Pensions)** of **Part 1 (Staff Transfer)** of **Schedule 18 (TUPE, Employees and Pensions)** may apply; and
- 37.1.2.3 upon the expiry or termination of the Services (or any part of the Services), **Part E (Employment Exit Provisions)** of **Part 1 (Staff Transfer)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply; and
- 37.1.2.4 **Part 3 (Redundancy Surcharge)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply; and

37.1.2.5 **Parts A (Transferring Authority Employees at Commencement of Services) and B (Transferring Former Contractor Employees at Commencement of Services) of Part 1 (Staff Transfer) of Schedule 18 (TUPE, Employees and Pensions)** shall not apply;

provided that should any person claim to have been subject to TUPE following the Commencement Date, the provisions of **Part 2 (TUPE Surcharge) of Part 1 of Schedule 18 (TUPE, Employees and Pensions)** shall apply.

37.2 **Income Tax and National Insurance Contributions**

37.2.1 Where the Contractor or any Contractor's Staff are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Contractor shall:

37.2.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and

37.2.1.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Contractor's Staff.

37.3 **Employment Indemnity**

Save as limited or otherwise provided in any applicable provisions of this Contract (including in particular **Schedule 18 (TUPE, Employees and Pensions)**), the Parties agree that:

37.3.1 the Contractor shall both during and after the Contract Period indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Contractor or any Contractor's Staff; and

37.3.2 the Authority shall both during and after the Contract Period indemnify the Contractor against all Employee Liabilities that may arise as a result of any claims brought against the Contractor by any person where such claim arises from any act or omission of the Authority, an Authority Related Party or the Controller (or persons engaged or employed by the Controller).

38. THE CONTROLLER**38.1 Section 85**

Without prejudice to any other provision of this Contract, the Contractor will note and comply with section 85 of the Criminal Justice Act 1991 (as amended by the Criminal Justice and Public Order Act 1994 and the Offender Management Act 2007).

38.2 Unrestricted Access

The Controller, or any person performing similar or like obligations on behalf of the Authority, shall be allowed unrestricted access to the Prison at any hour of the Day. In accordance with section 85(5) of the Criminal Justice Act 1991 the Contractor shall do all that it reasonably can to facilitate the exercise by the Controller of its functions, whether such functions are conferred by statute or by the Authority.

38.3 Provision of Facilities

38.3.1 From the Services Commencement Date, the Contractor shall provide such suitable accommodation in the Prison as the Authority may reasonably require, at no additional cost, for the use of the Controller and his or her representatives. All such accommodation shall be:

38.3.1.1 sized to accommodate comfortably a minimum of four (4) persons and include a separate room of a similar size for meetings and shall include at least two (2) direct external telephone lines linked to the UK national telephone network which shall not be routed through any exchange or network gateway within the Prison or operated by the Contractor or any Sub-Contractor;

38.3.1.2 adequately furnished, lighted, heated and ventilated, and shall include cloakroom, internal and external telephone, photocopying facilities, internet and other ICT infrastructure facilities; and

38.3.1.3 capable of being made secure by means of door locks or other such equipment.

38.3.2 The Contractor shall provide, at the Authority's direction, similar space and facilities for the Independent Monitoring Board and other Authority representatives and nominated third parties who have a reasonable need to collocate at the Prison from time to time. Any such accommodation required by the Independent Monitoring Board shall (at the direction of the Independent Monitoring Board) be dedicated to the Independent Monitoring Board and

contain a computer (installed with Microsoft Office, Quantum, P-NOMIS, internet access and any other items of the Authority's ICT System or replacement systems as specified by the Authority), telephone, photocopying facilities and filing cabinet.

- 38.3.3 The Contractor shall provide suitable temporary facilities for any other representative of the Authority who has cause to visit the Site or the Prison from time to time. This shall, where required, include the provision to the Independent Monitoring Board members the opportunity to receive Hepatitis B immunisations at no additional cost to the Authority.
- 38.3.4 The Contractor shall be responsible for the cleanliness and reasonable care and maintenance of all such accommodation and facilities provided.

PART IX - PAYMENT PROVISIONS**39. PAYMENT PROVISIONS****39.1 Payment of the Contract Price**

39.1.1 The Authority shall pay to the Contractor the Contract Price in respect of each Month, which shall be calculated in accordance with **Schedule 14 (Payment Mechanism)** in accordance with this **clause 39 (Payment of the Contract Price)**.

39.1.2 The Monthly Payment for each Month in each Contract Year following the Services Commencement Date shall be calculated in accordance with **Schedule 14 (Payment Mechanism)** and paid in accordance with **clauses 39.2 (Report and Invoice)** and **39.3 (Payment)**. No payments shall be made for any period prior to the Services Commencement Date other than for Mobilisation in accordance with the provisions of **Schedule 14 (Payment Mechanism)**.

39.2 Report and Invoice

Within five (5) Business Days after the end of each Month, the Contractor shall submit to the Authority:

39.2.1 a report showing for that Month the Monthly Payment and, individually, each item taken into account in calculating the Monthly Payment for that Month pursuant to **paragraph 10.3 (Monthly Reporting)** of **Schedule 14 (Payment Mechanism)**; and

39.2.2 an invoice for the amount (if any) shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount,

together the "**Application for Payment**".

39.3 Payment

39.3.1 Payment of the amount specified in the Application for Payment shall be due on the date the Authority receives the Application for Payment pursuant to **clause 39.2 (Report and Invoice)** (the "**Payment Due Date**").

39.3.2 No later than five (5) Days after the Payment Due Date the Authority shall submit to the Contractor a notice specifying the amount that the Authority considers to be due at the Payment Due Date and the basis on which that amount



is calculated (the "**Payment Notice**"). It is immaterial that the amount referred to in the Payment Notice may be zero.

39.3.3 The Authority shall, subject to any Pay Less Notice (as defined in **clause 39.3.4 (Payment)**), pay the amount specified in the Payment Notice or, if no Payment Notice is issued by the Authority pursuant to this **clause 39.3.3 (Payment)**, the amount stated in the Application for Payment (in either case the "**Notified Amount**"), within thirty (30) Days of the Payment Due Date (the "**Final Date for Payment**").

39.3.4 If the Authority intends to pay less than the Notified Amount the Authority shall, not later than one (1) Day before the Final Date for Payment, give the Contractor notice of that intention specifying:

39.3.4.1 the amount which the Authority considers to be due to the Consultant at the date the notice is given; and

39.3.4.2 the basis on which that amount is calculated,

(a "**Pay Less Notice**"). It is immaterial that the amount then considered to be due may be zero. Where a Pay Less Notice is given, the payment to be made on or before the Final Date for Payment shall not be less than the amount stated in the Pay Less Notice. Where the Authority fails to issue a Payment Notice or Pay Less Notice within the periods required by this **clause 39.3 (Payment)** the amount stated in the Application for Payment shall be paid by the Authority by the Final Date for Payment. Should the Authority determine the amount in the Application for Payment to be incorrect the Authority shall be entitled to take this into account in the following Monthly Payment by issuing a valid Payment Notice or Pay Less Notice.

39.3.5 Where a report shows a net amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority on or before the date falling thirty (30) Days after the date of the invoice, or at the option of the Authority carry forward that amount to the next invoice in reduction of the amount which would otherwise have been owed by the Authority to the Contractor.

39.3.6 Any dispute in respect of sums payable under this Contract shall be determined under the Dispute Resolution Procedure (save it is acknowledged the parties are entitled at any time to bring adjudication proceedings in respect of disputes regarding payments under this **clause 39 (Payment Provisions)**).

39.3.7 For the avoidance of doubt, notwithstanding any disputed amounts referred for



resolution pursuant to **clause 39.3.6 (Payment Provisions)**, the Authority shall pay any undisputed amounts in accordance with this **clause 39 (Payment Provisions)**.

39.4 **Interest on Late Payment**

Except where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid on or before the due date, it shall bear interest on that amount at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Contract provide the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

40. **TAXATION**

40.1 **Value Added Tax**

- 40.1.1 All amounts due under this Contract are exclusive of VAT.
- 40.1.2 If any supply made or referred to in this Contract is or becomes chargeable to VAT then the person receiving the supply (the "**Recipient**") shall in addition pay the person making the supply (the "**Supplier**") the amount of that VAT (added at the prevailing rate) against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
- 40.1.3 Where under this Contract any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.
- 40.1.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Contract and payable by the Authority to the Contractor.
- 40.1.5 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under this **clause 40.1.5 (Value Added Tax)** shall be paid in cleared funds by the Contractor to the Authority not less than five (5) Business Days before the date upon which the tax

or other liability is payable by the Authority.

40.2 Promoting Tax Compliance

If, at any point during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

40.2.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and

40.2.2 promptly provide to the Authority:

40.2.2.1 details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

40.2.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

41. SET OFF

41.1 Rights of Set Off

41.1.1 The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Contractor to the Authority against any amount due to the Contractor under this Contract.

41.1.2 If the Authority wishes to set off any amount owed by the Contractor to the Authority against any amount due to the Contractor pursuant to **clause 41.1.1 (Rights of Set Off)**, it shall give notice to the Contractor by way of a Payment Notice or Pay Less Notice (as such terms are defined in **clauses 39.3.2 and 39.3.4 (Payment)** respectively) in accordance with the procedure for payment described in **clause 39 (Payment Provisions)** setting out the Authority's reasons for withholding or retaining the relevant amount.

41.2 Set Off and Disputed Amounts

If the payment or deduction of any amount referred to in **clause 41.1 (Rights of Set Off)** is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.



PART X - EXPIRY AND TERMINATION**42. EXPIRY**

Where this Contract expires due to effluxion of time then the Authority shall have the option to require the Contractor to transfer to the Authority, or as directed by the Authority, all of its rights, title and interest in and to the Contractor Assets in accordance with **Schedule 24 (Handover and Exit Management)**.

43. TERMINATION ON AUTHORITY DEFAULT**43.1 Termination on Authority Default**

43.1.1 If an Authority Default has occurred and the Contractor wishes to terminate this Contract, the Contractor must serve a termination notice (the "**Contractor Termination Notice**") on the Authority within thirty (30) Business Days after becoming aware of the Authority Default.

43.1.2 The Contractor Termination Notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.

43.1.3 This Contract will terminate on the day falling thirty (30) Business Days after the date the Authority receives the Contractor Termination Notice, unless the Authority rectifies the Authority Default within twenty (20) Business Days after receipt of the Contractor Termination Notice.

43.2 Compensation on Termination for Authority Default

43.2.1 On termination of this Contract under **clause 43 (Termination on Authority Default)**, the Authority shall pay to the Contractor the following amounts:

43.2.1.1 the Contractor Breakage Costs;

43.2.1.2 loss of profits limited to an amount equivalent to the Contractor's projected loss of profits for the period from the Termination Date to the earlier of the Expiry Date and the date falling twelve (12) Months after the Termination Date; and

43.2.1.3 (where termination occurs in the first Contract Year only) an amount equal to the Contractor's Restructuring Costs if and to the extent that such Restructuring Costs have not been recovered through the Monthly Payments as at the Termination Date,

in accordance with **clause 50 (Date for Payment)**.



- 43.2.2 On termination under this **clause 43 (Termination on Authority Default)**, the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 24 (Handover and Exit Management)**.

44. **TERMINATION ON CONTRACTOR DEFAULT**

44.1 **Persistent Breach**

- 44.1.1 If a particular breach (other than any breach for which Performance Points could have accrued and/or for which a Deduction could have been made), has continued for more than fourteen (14) Days or occurred more than three (3) times in any six (6) Month period then the Authority may serve a notice on the Contractor:

44.1.1.1 specifying that it is a formal warning notice;

44.1.1.2 giving reasonable details of the breach; and

44.1.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

- 44.1.2 If, following service of a warning notice, the breach specified has continued beyond thirty (30) Days or recurred in two (2) or more Months within the six (6) Month period after the date of service, then the Authority may serve another notice (a "**Final Warning Notice**") on the Contractor:

44.1.2.1 specifying that it is a Final Warning Notice;

44.1.2.2 stating that the breach specified has been the subject of a warning notice served within the six (6) Month period prior to the date of service of the Final Warning Notice; and

44.1.2.3 stating that if the breach continues for more than fourteen (14) Days or recurs in two (2) or more Months within the six (6) Month period after the date of service of the Final Warning Notice, this Contract may be terminated.

- 44.1.3 A warning notice may not be served in respect of any incident of breach which has previously been counted in the making of a separate warning notice.

44.2 **Rectification**

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If a Contractor Default has occurred and the Authority wishes to terminate this Contract, it must serve a Termination Notice on the Contractor.

44.2.1 The Termination Notice must specify:

44.2.1.1 the type and nature of Contractor Default that has occurred, giving reasonable details; and

44.2.1.2 that in the case of any Contractor Default falling within paragraphs (a), (e), (i) and (m) of the definition of Contractor Default, this Contract will terminate on the Day falling forty (40) Business Days after the date the Contractor receives the Termination Notice, unless:

(a) in the case of a breach under paragraph (a) of the definition of Contractor Default, the Contractor puts forward an acceptable rectification programme within twenty (20) Business Days after the date the Contractor receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or

(b) in the case of any Contractor Default falling within paragraphs (a), (e) and (m) of the definition of Contractor Default, the Contractor rectifies the Contractor Default within forty (40) Business Days after the date the Contractor receives the Termination Notice; or

(c) in the case of any Contractor Default falling within paragraph (i) of the definition of Contractor Default, the Contractor rectifies the Contractor Default within twenty (20) Business Days after the date the Contractor receives the Termination Notice; or

44.2.1.3 that in the case of any Contractor Default falling within paragraph (c) of the definition of Contractor Default this Contract will terminate immediately on the date specified in the Authority's notice; or

44.2.1.4 that in the case of any other Contractor Default (not being a Contractor Default falling within paragraphs (a), (c), (e), (i) and (m) of the definition of Contractor Default), this Contract will terminate on the date falling forty (40) Business Days after the date the Contractor receives the Termination Notice (and in such

circumstances this Contract shall terminate on such date).

44.2.2 If the Contractor either rectifies a Contractor Default falling within paragraphs (a), (e), (i) and (m), within the time period specified in the Termination Notice, or implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and this Contract will continue.

44.2.3 If:

44.2.3.1 in the case of a Contractor Default within paragraph (a) of the definition of Contractor Default, no acceptable rectification programme has been put forward pursuant to **clause 44.2.1.2(a) (Rectification)** and the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice; or

44.2.3.2 in the case of a Contractor Default falling within paragraphs (e), (i) and (m) of the definition of Contractor Default, the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice,

the Authority may give notice stating that this Contract will terminate on the date falling five (5) Business Days after the date of receipt of such notice.

44.2.4 If the Authority issues a Termination Notice in any of the circumstances outlined in **paragraph 12.5.3 (Rectification)** of **Schedule 15 (Performance Mechanism)**, this Contract will terminate on the date falling five (5) Business Days after the date of such notification.

44.3 Notice of Default Events

The Contractor shall notify the Authority immediately it has knowledge of any event which constitutes a Contractor Default.

44.4 Compensation on Termination for Contractor Default

44.4.1 On termination of this Contract under this **clause 44 (Termination on Contractor Default)**, without prejudice to its other rights and remedies under this Contract, the Authority may recover from the Contractor the costs reasonably incurred of making other arrangements for the provision of the Services (including, for the avoidance of doubt, the Authority's administrative costs) up to the Expiry Date provided that in the payment of compensation by the

Contractor only the difference in cost between the amount that would have been paid by the Authority for the provision of the Services had a Contractor Default not occurred and amounts reasonably incurred by the Authority for the delivery of the Services by an alternative provider (which the Authority shall take reasonable steps to mitigate) shall be paid by the Contractor to the Authority.

44.4.2 The amount which would have been paid to the Contractor had a Contractor Default not occurred shall, for the purposes of this **clause 44.4 (Compensation on Termination for Contractor Default)**, be calculated as:

44.4.2.1 where the Service Period at the Termination Date was three (3) Months or more, the average Monthly Service Payment paid or payable by the Authority per Month (excluding VAT) in respect of the Services provided in the three (3) Month period immediately preceding the Termination Date; or

44.4.2.2 where the Service Period at the Termination Date was less than three (3) Months, the average Monthly Service Payment paid or payable by the Authority per Month during the Service Period (excluding VAT) in respect of the Services provided in the Service Period;

in each case multiplied by the number of Months in respect of which compensation is payable.

44.4.3 On termination of this Contract pursuant to this **clause 44 (Termination on Contractor Default)**, no compensation shall be payable by the Authority to the Contractor as a result of such termination.

44.5 **Transfer of Contractor Assets on Contractor Default**

On termination under this **clause 44 (Termination on Contractor Default)**, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 24 (Handover and Exit Management)**.

45. **TERMINATION ON FORCE MAJEURE**

45.1 **Termination**

45.1.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event

occurs and it is prevented from carrying out obligations by that Force Majeure Event.

- 45.1.2 The Authority shall not be entitled to terminate this Contract for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to **clauses 45.1.6 (Termination) or 45.1.8 (Termination)**).
- 45.1.3 Nothing in **clause 45.1 (Termination)** shall affect any entitlement to make Deductions in the period during which the Force Majeure Event is subsisting.
- 45.1.4 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 45.1.5 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 45.1.6 If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty (120) Business Days, then, subject to **clause 45.1.7 (Termination)**, either Party may terminate this Contract by giving twenty (20) Business Days' written notice to the other Party.
- 45.1.7 If this Contract is terminated under **clauses 45.1.6 (Termination) or 45.1.8 (Termination)**:
- 45.1.7.1 compensation shall be payable by the Authority in accordance with **clause 45.2 (Compensation on Termination on Force Majeure)**; and
- 45.1.7.2 the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 24 (Handover and Exit Management)**.
- 45.1.8 If the Contractor gives notice to the Authority under **clause 45.1.6 (Termination)** that it wishes to terminate this Contract, then the Authority has the option either to accept such notice or to respond in writing on or before the

date falling ten (10) Business Days after the date of its receipt stating that it requires this Contract to continue. If the Authority gives the Contractor such notice, then:

45.1.8.1 the Authority shall pay to the Contractor the Maximum Contract Price for each Month of each Contract Year from the Day after the date on which this Contract would have terminated under **clause 45.1.6 (Termination)** until the Expiry Date or Termination Date (as the case may be) as if the Services were being fully provided; and

45.1.8.2 this Contract will not terminate until expiry of written notice (of at least twenty (20) Business Days) from the Authority to the Contractor that it wishes this Contract to terminate.

45.1.9 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

45.1.10 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

45.2 Compensation on Termination on Force Majeure

45.2.1 On termination of this Contract under **clause 45.1 (Termination on Force Majeure)**, the Authority shall pay to the Contractor the "**Force Majeure Termination Sum**" in accordance with **clause 50 (Date for Payment)**. The Force Majeure Termination Sum shall be an amount equivalent to the Contractor Breakage Costs.

45.2.2 If the amount referred to in **clause 45.2.1 (Compensation on Termination on Force Majeure)** is less than zero, then, for the purposes of the calculation in **clause 45.2.1 (Compensation on Termination on Force Majeure)** it shall be deemed to be zero.

46. TERMINATION OF THE FRAMEWORK AGREEMENT

46.1 The Authority may terminate this Contract with immediate effect by issuing a Termination Notice to the Contractor where the Authority has the right to terminate the Framework

Agreement in connection with a Correctable Default or a Critical Default (as such terms are defined in the Framework Agreement).

- 46.2 On termination of this Contract pursuant to **clause 46.1 (Termination of the Framework Agreement)**, no compensation shall be payable by the Authority to the Contractor as a result of such termination.

47. **TERMINATION IN ACCORDANCE WITH THE REGULATIONS**

- 47.1 The Authority may terminate this Contract with immediate effect by issuing a Termination Notice to the Contractor on the occurrence of any of the statutory provisos contained in Regulation 73(1)(a) to 73(1)(c) of the Public Contracts Regulations 2015.

- 47.2 Where this Contract is terminated:

47.2.1 pursuant to Regulation 73(1)(a) of the Public Contracts Regulations 2015, the Authority shall pay to the Contractor an amount equivalent to the Contractor Breakage Costs, except where such termination is due to a Contractor cause (including by reason of a breach of its obligations, any other default, negligence or statement or any other act or omission of the Contractor prior to the Commencement Date), in which case no compensation shall be payable by the Authority to the Contractor as a result of such termination; or

47.2.2 pursuant to Regulation 73(1)(b) of the Public Contracts Regulations 2015, no compensation shall be payable by the Authority to the Contractor as a result of such termination;

47.2.3 pursuant to Regulation 73(1)(c) of the Public Contracts Regulations 2015, the Authority shall pay to the Contractor an amount equivalent to the Contractor Breakage Costs, except where such termination is due to a Contractor cause (including by reason of a breach of its obligations, any other default, negligence or statement or any other act or omission of the Contractor prior to the Commencement Date), in which case no compensation shall be payable by the Authority to the Contractor as a result of such termination.

48. **TERMINATION FOR PROHIBITED ACT AND PROHIBITED EQUALITY AND DIVERSITY ACT**

48.1 **Prohibited Act**

48.1.1 The Contractor warrants that in entering into this Contract it has not committed any Prohibited Act.

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- 48.1.2 The Contractor shall not (and shall procure that any Contractor's Staff shall not) during the Contract Period:
- 48.1.2.1 commit a Prohibited Act; and/or
 - 48.1.2.2 commit any offence contrary to Legislation concerning fraudulent acts or omissions; and/or
 - 48.1.2.3 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any applicable Legislation relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010 (the "**Relevant Requirements**"), or otherwise incur any liability in relation to the Relevant Requirements.
- 48.1.3 The Contractor shall during the Contract Period:
- 48.1.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - 48.1.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Contractor do not commit tax evasion facilitation offences as defined under that Act;
 - 48.1.3.3 keep appropriate records of its compliance with its obligations under **clause 48.1.3.1 (Prohibited Act)** and make such records available to the Authority on request; and
 - 48.1.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with section 47 of the Criminal Finances Act 2017.
- 48.1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of **clause 48.1 (Prohibited Act)**, or has reason to believe that it has or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or Affiliates have during the Contract Period:

- 48.1.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act and/or any fraudulent act or omission;
- 48.1.4.2 been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 48.1.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

48.2 Termination for Prohibited Act

- 48.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or Affiliates commits any Prohibited Act, then the Authority shall be entitled to act in accordance with the remaining provisions of this **clause 48.2 (Termination for Prohibited Act)**.
- 48.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Contract by giving notice to the Contractor and the effective date of termination will be the date specified in the Authority's notice.
- 48.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate on the date specified in the Authority's notice, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.
- 48.2.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate on the date specified in the Authority's notice, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the relevant Sub-Contract and procures the performance of such part of the Services by another person.

- 48.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate on the date specified in the Authority's notice, unless within twenty (20) Business Days after receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.
- 48.2.6 If the Prohibited Act is committed by any other person not specified in **clauses 48.2.2 (Termination for Prohibited Act) to 48.2.5 (Termination for Prohibited Act)**, then the Authority may give notice to the Contractor of termination and this Contract will terminate on the date specified in the Authority's notice unless prior to the date specified in the Authority's notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Services by another person.
- 48.2.7 Any Termination Notice under this **clause 48.2 (Termination for Prohibited Act)** shall specify:
- 48.2.7.1 the nature of the Prohibited Act;
 - 48.2.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act;
 - 48.2.7.3 the date on which this Contract will terminate, in accordance with the applicable provision of this **clause 48.2 (Termination for Prohibited Act)**; and
 - 48.2.7.4 the Authority's chosen option under **clause 48.4.1 (Compensation on Termination for Prohibited Act and Prohibited Equality and Diversity Act)**.

48.3 **Termination for Prohibited Equality and Diversity Act**

- 48.3.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents commits any Prohibited Equality and Diversity Act, then the Authority shall be entitled to act in accordance with **clauses 48.3.2 (Termination for Prohibited Equality and Diversity Act) to 48.3.6 (Termination for Prohibited Equality and Diversity Act)**.

- 48.3.2 If a Prohibited Equality and Diversity Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Contract by giving notice to the Contractor and the Contract will terminate on the date specified in the Authority's notice.
- 48.3.3 If the Prohibited Equality and Diversity Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate on the date specified in the Authority's notice, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.
- 48.3.4 If the Prohibited Equality and Diversity Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate on the date specified in the Authority's notice, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the relevant Sub-Contract and procures the performance of such part of the Services by another person.
- 48.3.5 If the Prohibited Equality and Diversity Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate on the date specified in the Authority's notice, unless within twenty (20) Business Days after receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Services by another person.
- 48.3.6 If the Prohibited Equality and Diversity Act is committed by any other person not specified in **clauses 48.3.2 (Termination for Prohibited Equality and Diversity Act) to 48.3.5 (Termination for Prohibited Equality and Diversity Act)**, then the Authority may give notice to the Contractor of termination and this Contract will terminate on the date specified in the Authority's notice unless within twenty (20) Business Days after receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Services by another person.
- 48.3.7 Any Termination Notice under this **clause 48.3 (Termination for Prohibited**

Equality and Diversity Act) shall specify:

- 48.3.7.1 the nature of the Prohibited Equality and Diversity Act;
- 48.3.7.2 the identity of the party whom the Authority believes has committed the Prohibited Equality and Diversity Act;
- 48.3.7.3 the date on which this Contract will terminate, in accordance with the applicable provision of this **clause 48.3 (Termination for Prohibited Equality and Diversity Act)**; and
- 48.3.7.4 the Authority's chosen option under **clause 48.4.1 (Compensation on Termination for Prohibited Act and Prohibited Equality and Diversity Act)**.

48.4 Compensation on Termination for Prohibited Act and Prohibited Equality and Diversity Act

48.4.1 On termination of this Contract under this **clause 48 (Termination for Prohibited Act and Prohibited Equality and Diversity Act)**, without prejudice to its other rights and remedies under this Contract, the Authority may recover from the Contractor:

- 48.4.1.1 the costs and expenses reasonably incurred by the Authority in making other arrangements for the provision of the Services by an alternative provider (including, for the avoidance of doubt, operational and/or administrative costs incurred by or on behalf of the Authority in dealing with such alternative arrangements) up to the Expiry Date provided that in the payment of compensation by the Contractor only the difference in cost between the amount that would have been paid by the Authority for the provision of the Services had a Prohibited Act or Prohibited Equality and Diversity Act not occurred;
- 48.4.1.2 any wasted expenditure or charges; and
- 48.4.1.3 any other amounts reasonably incurred by the Authority for the delivery of the Services by an alternative provider (which the Authority shall take reasonable steps to mitigate).

48.4.2 The amount which would have been paid to the Contractor had a Prohibited Act or Prohibited Equality and Diversity Act not occurred shall, for the purposes of this **clause 48.4 (Compensation on Termination for Prohibited Act and**

Prohibited Equality and Diversity Act), be calculated as either:

- 48.4.2.1 where the Service Period at the Termination Date was three (3) Months or more, the average Monthly Service Payment paid or payable by the Authority per Month (excluding VAT) in respect of the Services provided in the three (3) Month period immediately preceding the Termination Date; or
- 48.4.2.2 where the Service Period at the Termination Date was less than three (3) Months, the average Monthly Service Payment paid or payable by the Authority per Month during the Service Period (excluding VAT) in respect of the Services provided in the Service Period;

in each case multiplied by the number of Months in respect of which compensation is payable.

- 48.4.3 On termination of this Contract pursuant to this **clause 48 (Termination for Prohibited Act and Prohibited Equality and Diversity Act)**, no compensation shall be payable by the Authority to the Contractor as a result of such termination.

- 48.4.4 If termination occurs under this **clause 48 (Termination for Prohibited Act and Prohibited Equality and Diversity Act)**, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 24 (Handover and Exit Management)**.

48.5 Interpretation

In this **clause 48 (Termination for Prohibited Act and Prohibited Equality and Diversity Act)**, the expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting with the authority or knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be).

49. VOLUNTARY TERMINATION BY THE AUTHORITY

49.1 Voluntary Termination by the Authority

- 49.1.1 Notwithstanding the Authority's right to terminate this Contract on the Early Termination Date pursuant to **clause 2.3 (Duration of Contract)** (where no compensation is payable to the Contractor pursuant to **clause 2.4 (Duration of Contract)**), the Authority may terminate this Contract at any time on or before

the Expiry Date by complying with its obligations under **clauses 49.1.2 (Voluntary Termination by the Authority) to 49.1.3 (Voluntary Termination by the Authority)**.

49.1.2 If the Authority wishes to terminate this Contract under this **clause 49.1 (Voluntary Termination by the Authority)**, it must give a Termination Notice to the Contractor stating:

49.1.2.1 that the Authority is terminating this Contract under this **clause 49.1 (Voluntary Termination by the Authority)**;

49.1.2.2 that this Contract will terminate on the date specified in the Termination Notice, which must be a minimum of twenty (20) Business Days after the date of receipt of the Termination Notice; and

49.1.2.3 whether the Authority has chosen to exercise its option under **clause 49.2.2 (Voluntary Termination by the Authority)**.

49.1.3 This Contract will terminate on the date specified in the Termination Notice referred to in **clause 49.1.2 (Voluntary Termination by the Authority)**.

49.2 **Compensation on Voluntary Termination**

49.2.1 On termination under **clause 49.1 (Voluntary Termination by the Authority)**, the Authority shall pay the Contractor an amount equal to the amount payable under **clause 43.2.1 (Termination on Authority Default)** in accordance with **clause 50 (Date for Payment)**.

49.2.2 On termination under this **clause 49 (Voluntary Termination by the Authority)**, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 24 (Handover and Exit Management)**.

49.3 **Authority Partial Termination**

49.3.1 The Authority, where it has any right to terminate this Contract as a whole (including under **clauses 45 (Termination on Force Majeure), 47 (Termination in accordance with the Regulations), 48 (Termination for Prohibited Act and Prohibited Equality and Diversity Act) or 49 (Voluntary Termination by the Authority)**) may instead elect to terminate any part of this Contract under the relevant clause as set out in this **Part X (Expiry and**



Termination).

PART XI - ARRANGEMENTS ON TERMINATION OR EXPIRY**50. DATE FOR PAYMENT**

The Authority shall pay to the Contractor any Termination Sum, together with any interest at the Prescribed Rate (if applicable) on or before the date falling forty (40) Business Days after the Termination Date.

51. LATE PAYMENT OF TERMINATION SUM

If the Authority:

- 51.1.1 fails to make a payment to the Contractor in accordance with **clause 50 (Date for Payment)**; or
- 51.1.2 breaches **clause 72.1 (Restrictions on Transfer of this Contract by the Authority)**,

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of any Termination Sum payable by the Authority together with any accrued but unpaid interest at the Prescribed Rate to be immediately due and payable.

52. EXCLUSIVITY OF REMEDY

Save as provided in and subject to **clause 53 (Consequences of Termination)**, any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to the termination of this Contract. The payment of compensation under **clauses 43.2 (Compensation on Termination for Authority Default)**, **45.2 (Compensation on Termination on Force Majeure)** and/or **49.2 (Compensation on Voluntary Termination)** shall be the sole remedy of the Contractor against the Authority in respect of termination of the Contract.

53. CONSEQUENCES OF TERMINATION**53.1 Upon termination (howsoever arising) or expiry of this Contract the Contractor shall:**

- 53.1.1 raise its final invoice to the Authority for any amounts due in respect of Services performed prior to termination or expiry in accordance with **clause 39 (Payment of the Contract Price)** and/or refund to the Authority any amounts paid in advance for Services not yet performed (if any) or any other amounts owed to the Authority in connection with this Contract (such as any rebate in respect of the TUPE Surcharge);

- 53.1.2 repay to the Authority any surplus within the Lifecycle Reserve Account

(together with earned interest) in the agreed proportions in accordance with **paragraph 2.16.6 of Schedule 14 (Payment Mechanism)**; and

53.1.3 return or irretrievably delete (as directed by the Authority and/or Relevant Organisation) all copies of Personal Data to the Authority and/or Relevant Organisation or other third party as directed by the Authority and/or Relevant organisation (as applicable).

53.2 Except as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract, and notwithstanding the provisions of **clause 52 (Exclusivity of Remedy)**, termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date.

53.3 Termination (howsoever arising) or expiry of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under **clauses 7 (Nature of Land Interests), 37 (TUPE and Employees), 39 (Payment Provisions), 41 (Set Off), 43.2 (Compensation on Termination for Authority Default), 44.4 (Compensation on Termination for Contractor Default), 45.2 (Compensation on Termination on Force Majeure), 48.4 (Compensation on Termination for Prohibited Act and Prohibited Equality and Diversity Act), 49.2 (Compensation on Voluntary Termination), 54 (Surveys on Expiry or Termination and Retention Fund), 55 (Transition to Another Contractor), 61 (Information and Confidentiality), 62 (Public Relations and Publicity), 64 (Contractor's Records and Provision of Information), 65 (Data Protection), 66 (Indemnities and Liabilities), 68 (Insurance), 70 (Dispute Resolution), 71 (Intellectual Property Rights), 72.1 (Restrictions on Transfer of this Contract by the Authority), 80 (Notices), 83 (Governing Law and Jurisdiction) and 87 (Capacity) or under Schedules 22 (Notices), 24 (Handover and Exit Management) and 25 (Data Protection) or under any other provision of this Contract which is expressed to survive termination (howsoever arising) or expiry or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.**

54. **SURVEYS ON EXPIRY OR TERMINATION AND RETENTION FUND**

54.1 **Final Survey**

54.1.1 No earlier than the date thirty six (36) Months prior to the Expiry Date, or, in the case of early termination, no later than eighteen (18) Months following the Termination Notice (or other notice having the effect of termination), the Authority shall be entitled to carry out or procure the carrying out of a final survey of the Prison and, to the extent relevant not included in the Prison, the Site, to audit and assess whether it and the Assets have been and are being

maintained by the Contractor in accordance with its obligations under **clause 15.4 (Maintenance of Assets and Equipment Refresh Plan)**, **clause 19 (Maintenance of the Prison)** and **Schedule 11 (Property and Facilities Management)** (the "Required Condition Standard").

54.1.2 No later than the date six (6) Months prior to the Expiry Date, or, in the case of early termination, no later than twenty four (24) months following the Termination Notice (or other notice having the effect of termination), the Authority shall be entitled to carry out or procure the carrying out of a further final survey of the Prison and, to the extent relevant not included in the Prison, the Site, to further audit and assess whether:

54.1.2.1 it and the Assets have been and are being maintained by the Contractor in accordance with the Required Condition Standard; and

54.1.2.2 any failure of the Prison, Site or Assets to meet the Required Condition Standard identified prior to such further final survey have been addressed.

54.1.3 The Authority shall notify the Contractor in writing a minimum of ten (10) Business Days before the date it wishes to carry out or procure the carrying out of a final survey. The Authority shall consider in good faith any reasonable request by the Contractor for a final survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out a final survey on the notified date would materially prejudice the Contractor's ability to provide the Services.

54.2 **Minimisation of Disruption**

Where the Authority carries out or procures the carrying out of a final survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Services by the Contractor. The Contractor shall afford the Authority or any person carrying out the survey (free of charge) any reasonable assistance required by the Authority during the carrying out of a final survey.

54.3 **Results of Survey**

If a final survey shows that the Contractor has not complied with or is not complying with its obligations under **clause 15.4 (Maintenance of Assets and Equipment Refresh Plan)** or **clause 19 (Maintenance of the Prison)**, the Authority shall:

- 54.3.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Prison and, to the extent relevant not included in the Prison, the Site, and/or as applicable the relevant Assets to the standard they would have been in if the Contractor had complied or was complying with its obligations under **clause 15.4 (Maintenance of Assets and Equipment Refresh Plan)** and **clause 19 (Maintenance of the Prison)**;
- 54.3.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
- 54.3.3 recover the cost of the survey from the Contractor by means of a deduction from the next payment or payments of the Contract Price.

54.4 **Maintenance Work**

The Contractor shall carry out such rectification and/or maintenance work notified pursuant to **clause 54.3.1 (Results of Survey)** (the "**Outstanding Work**") in order to bring the condition of the Prison and, to the extent relevant not included in the Prison, the Site, and/or as applicable the relevant Assets up to the Required Condition Standard within the period specified and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

54.5 **Retention Fund**

- 54.5.1 If the Contractor has been notified under **clause 54.3.1 (Results of Survey)** that rectification and/or maintenance work is required, then for the remaining Months of the term of this Contract following such notification, the Authority shall (to the extent that the Outstanding Work has not been carried out in the interim) deduct the costs of that work as quantified by either of the surveys referred to in **clause 54.1 (Final Survey)** from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of the Contract Price and pay such amount into an interest bearing account (the "Retention Fund Account").
- 54.5.2 The Retention Fund Account shall be maintained during and following the end of the term of this Contract until it has been exhausted in meeting the costs of Outstanding Work as contemplated by **clause 54.6 (Costs)** or any balance has been paid to the Contractor as contemplated by **clause 54.8 (Balance of Fund)**.

54.6 **Costs**

If and to the extent that the Contractor carries out the Outstanding Work to the Authority's reasonable satisfaction within the specified period, to the extent that there are funds standing

to the credit of the Retention Fund Account, the Authority shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account. If the amount in the Retention Fund Account is insufficient to cover the Contractor's costs, the Contractor shall bear the balance of such costs itself.

54.7 **Failure to Carry Out Work**

If and to the extent that the Contractor fails to carry out the Outstanding Work to the Authority's reasonable satisfaction within the specified period (which may be before or after the term of this Contract), the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall:

54.7.1 make withdrawals from the Retention Fund Account; or

54.7.2 where there are insufficient funds in the Retention Fund Account, make deductions from any subsequent payment of the Contract Price to pay for such work or recover such amounts from the Contractor as a debt payable on demand.

54.8 **Balance of Fund**

If:

54.8.1 all the Outstanding Work identified by the Authority or the person the Authority procures to carry out a final survey has been carried out to the Authority's reasonable satisfaction;

54.8.2 all such Outstanding Work has been paid for by the Contractor; and

54.8.3 no Termination Notice is outstanding,

then the Authority shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

55. **TRANSITION TO ANOTHER CONTRACTOR**

55.1 The provisions of **Schedule 24 (Handover and Exit Management)** shall apply in connection with the expiry or termination (howsoever caused) of this Contract.

55.2 Upon termination or expiry (howsoever caused) of this Contract that Contractor shall provide any end of Contract information (including Recompetition Data) as specified in **Schedule 24 (Handover and Exit Management)**.

55.3 Notwithstanding any of the other provisions of this Contract, including **clause 2 (Contract Duration)** and this **Part X (Expiry and Termination)**, the Expiry Date, Early Termination

Date and any Termination Date may be extended by the Authority as set out in **paragraph 5.1 (Effective Date of Termination or Expiry) of Schedule 24 (Handover and Exit Management)** in connection with the completion of exit assistance in accordance with this Contract.

55.4 **Duty to Co-operate**

Without prejudice to its obligations under **Schedule 24 (Handover and Exit Management)**, during the eighteen (18) Months immediately preceding the Expiry Date and during the period of any Termination Notice, and in either case for the period subsequently as specified in **Schedule 24 (Handover and Exit Management)**, the Contractor shall co-operate fully with the transfer of responsibility for the Services (or any part of the Services) to the Authority and/or any New Contractor of such services the same or similar to the Services, and for the purposes of this **clause 55 (Transition to Another Contractor)** the meaning of the term "co-operate" shall include:

- 55.4.1 liaising with the Authority and/or any New Contractor, and providing reasonable assistance and advice concerning the Services and its transfer to such New Contractor;
- 55.4.2 allowing any New Contractor access (at reasonable times and on reasonable notice) to the Prison but not so as to interfere with or impede the provision of the Services;
- 55.4.3 without prejudice to the obligations of the Contractor pursuant to **clause 25 (Operating Manual)**, providing to the Authority and/or to any New Contractor all and any information concerning the Site, the Prison, and/or the Services which is reasonably required for the efficient transfer of responsibility for their performance; and
- 55.4.4 transferring its rights, title and interest in and to the Contractor Assets to the Authority or at the Authority's direction in accordance with **Schedule 24 (Handover and Exit Management)**.

55.5 **Transfer of Responsibility**

The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a New Contractor and the Contractor shall take no action at any time during the term of this Contract or afterwards which may prejudice, frustrate or make more difficult such transfer.

55.6 **Handback**



- 55.6.1 Upon the termination or expiry of the Contract, the Contractor shall ensure that:
- 55.6.1.1 all areas which the Contractor has used for storage or operation have been left clean and tidy and all rubbish has been removed from the Site;
 - 55.6.1.2 all spares and parts have been stored in good order and protected from any damage of contamination and damp and a comprehensive schedule of such spares and parts has been handed to the Authority, or the Authority's agent;
 - 55.6.1.3 all consumables, oils, solvents, chemicals, gas canisters and aerosols have been safely stored at the Site, save where otherwise agreed with the Authority's Representative (in which case the Contractor shall safely remove them as directed); and
 - 55.6.1.4 it has given at least eighteen (18) Months' notice to its Sub-Contractors of the expiry of the Contract, details of which shall be agreed with the Authority's Representative.

PART XII - RELIEF EVENTS**56. RELIEF EVENTS****56.1 Occurrence**

If and to the extent that a Relief Event:

56.1.1 is the direct cause of a failure by the Contractor to achieve:

56.1.1.1 the Services Commencement Date;

56.1.1.2 a reduction in the number of Available Prisoner Places on or before the date specified in any RRAPP Band Activation Notice or (following the relevant date in the RRAPP Band Activation Notice) the further delay in the reduction in the number of Available Prisoner Places, or a decrease in the Additional Prisoner Places on or before the date specified in any APP Band Deactivation Notice or (following the relevant date in the APP Band Deactivation Notice) the further delay in the decrease in the number of Additional Prisoner Places, in each case for any period;

56.1.1.3 the provision of an increase in number of Available Prisoner Places on or before the date specified in any RRAPP Band Deactivation Notice or (following the relevant date in the RRAPP Band Deactivation Notice) the further provision of an increase in the number of Available Prisoner Places, or an increase in the Additional Prisoner Places on or before the date specified in any APP Band Activation Notice or (following the relevant date in the APP Band Activation Notice) the further delay in the increase in the number of Additional Prisoner Places, in each case for any period; and/or

56.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Contract,

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under **clause 44 (Termination on Contractor Default)** and its obligations under this Contract.

56.2 Relief

Subject to **clause 56.5 (Information)**, to obtain relief, the Contractor must:



- 56.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations, (or if earlier after it has received written notice from the Authority's Representative that a Relief Event has occurred and that expressly requires the Contractor to claim relief pursuant to this **clause 56.2 (Relief)**) give to the Authority a notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;
- 56.2.2 within five (5) Business Days after receipt by the Authority of the notice referred to in **clause 56.2.1 (Relief)**, give full details of the relief claimed; and
- 56.2.3 demonstrate to the reasonable satisfaction of the Authority that:
- 56.2.3.1 the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
- 56.2.3.2 the Relief Event directly caused:
- (a) the failure to achieve the Services Commencement Date;
- (b) a failure to achieve a reduction in the number of Available Prisoner Places on or before the date specified in any RRAPP Band Activation Notice or (following the relevant date in the RRAPP Band Activation Notice) the further delay in the reduction in the number of Available Prisoner Places or a decrease in the Additional Prisoner Places on or before the date specified in any APP Band Deactivation Notice or (following the relevant date in the APP Band Deactivation Notice) the further delay in the decrease in the number of Additional Prisoner Places, in each case for any period;
- (c) a failure to provide an increase in the number of Available Prisoner Places on or before the date specified in any RRAPP Band Deactivation Notice or (following the relevant date in the RRAPP Band Deactivation Notice) the further provision of an increase in the number of Available Prisoner Places or an increase in the Additional Prisoner Places on or before the date specified in any APP Band Activation Notice or (following the relevant date in the APP Band Activation Notice) the further delay in the increase in the number of Additional Prisoner Places, in each case for any period;

and/or

(d) the need for relief from other obligations under this Contract;

56.2.3.3 the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and

56.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under this Contract.

56.3 Consequences

In the event that the Contractor has complied with its obligations under **clause 56.2 (Relief)**:

56.3.1 then:

56.3.1.1 the Services Commencement Date;

56.3.1.2 any date specified in a RRAPP Band Activation Notice for a decrease in the number of Available Prisoner Places or APP Band Deactivation Notice for a decrease in the number of Additional Prisoner Places;

56.3.1.3 any date specified in a RRAPP Band Deactivation Notice for an increase in the number of Available Prisoner Places or APP Band Activation Notice for an increase in the number of Additional Prisoner Places,

shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

56.3.2 the period referred to in paragraph (j) of the definition of Contractor Default shall be extended by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and

56.3.3 the Authority shall not be entitled to exercise its right to terminate this Contract under **clause 44 (Termination on Contractor Default)** and, subject to **clause 56.4 (Deductions)**, shall give such other relief as the Authority reasonably determines is appropriate in the circumstances,

provided that the Expiry Date and the Early Termination Date shall not be extended.

56.4 Deductions

Nothing in **clause 56.3 (Consequences)** shall affect any entitlement to make Deductions under **clause 39 (Payment Provisions)** and **Schedule 14 (Payment Mechanism)** during the period in which the Relief Event is subsisting provided that any such Deductions shall be disregarded for the purposes of the Authority's right to terminate this Contract for Contractor Default.

56.5 Information

In the event that information required by **clause 56.2 (Relief)** is provided after the dates referred to in that **clause 56.2 (Relief)**, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

56.6 Notice

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

56.7 Disputes

If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to the Services Commencement Date, any date specified in a RRAPP Band Activation Notice for a decrease in the number of Available Prisoner Places, any date specified in a RRAPP Band Deactivation Notice for an increase in the number of Available Prisoner Places, any date specified in an APP Band Activation Notice for an increase in the number of Additional Prisoner Places, any date specified in an APP Band Deactivation Notice for a decrease in the number of Additional Prisoner Places and/or the period referred to in paragraph (j) of the definition of Contractor Default and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

PART XIII – VARIATIONS**57. CHANGE TO SERVICES**

57.1 The provisions of **Schedule 16 (Change Protocol)** shall have effect in respect of any Change except as otherwise expressly provided in this Contract.

57.2 During the Contract Period, the Parties acknowledge that the Authority's operational and other requirements in respect of the Services and/or Site will change from time to time, necessitating amendments to this Contract. Without limitation, the following is a non-exhaustive list of the circumstances in which those operational and other requirements may change:

57.2.1 a change to the Prison function, Category or other characteristic of the Site, or a change in the Prisoner population or its profile, any of which may result in a change to the scope and nature of the Services, and/or the associated performance requirements pursuant to this Contract;

57.2.2 a change:

57.2.2.1 specific to the Prison (to the extent it does not fall within **clause 57.2.1 (Change to Services)**);

57.2.2.2 arising from the mobilisation and transition approach and the associated activities to be performed under this Contract, including under **Schedule 5 (Mobilisation)**;

57.2.2.3 arising from Works to be undertaken, including any Major Maintenance Work (as such term is defined in **Schedule 11 (Property and Facilities Management)**) and any Construction Works;

57.2.2.4 pursuant to the requirements of the Leases (including pursuant to amendments to those Leases or new Leases), licences or other Site arrangements;

57.2.2.5 arising from the Site matters referred to in **clause 8.2 (Site Matters)** or Consents referred to in **clause 8.3 (Consents)**;

57.2.2.6 (if applicable) the requirements arising from any construction activity at the Site, including for New Prisons and for sectional completion arrangements;

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- 57.2.2.7 arising from the requirements of the Asset and Contract Transfer Contract;
- 57.2.2.8 to the performance mechanism (including applicable performance measures and associated performance measurement regime) as anticipated by **Schedule 15 (Performance Mechanism)**;
- 57.2.2.9 to the security requirements of the Authority;
- 57.2.2.10 to the nature or scope of any ICT or utility services, or their associated infrastructure, including where driven by changes in the technology or utility markets;
- 57.2.2.11 to the number, scope and nature of the Authority Third Party Contracts (and any other changes relating to such Authority Third Party Contracts including any alternative, replacement or additional contracts) and/or any changes in the arrangements and/or contracts of any Relevant Organisation that may affect the provision of the Services;
- 57.2.2.12 arising from the asset verification procedure, including to the scope and nature of the Built Environment and M&E Assets Condition Verification Report, Asset Forward Maintenance Plan or Asset Forward Replacement Plan;
- 57.2.2.13 arising from any audits, the final survey and associated activities referred to in **clauses 19 (Maintenance of the Prison) and 54 (Surveys on Expiry or Termination and Retention Fund)**;
- 57.2.2.14 to **Schedule 14 (Payment Mechanism)** and/or the Base Case in accordance with the terms of this Contract;
- 57.2.2.15 to the Authority Policies or Good Industry Practice;
- 57.2.2.16 in connection with Legislation or arising from a Change in Law;
- 57.2.2.17 arising from any other matter referred to the process set out in **Schedule 16 (Change Protocol)**; and/or
- 57.2.2.18 to reflect the agreed arrangements in respect of any staff transfers as referred to in **Schedule 18 (TUPE, Employees and Pensions)**.

57.3 In relation to any such change, at the Authority's option and request, the necessary

consequential changes to this Contract shall be made in accordance with **Schedule 16 (Change Protocol)**, without prejudice to any provision of this Contract that requires the change to be made at the cost and expense of the Contractor.

58. CHANGES IN LAW

58.1 Occurrence

The Contractor shall take all steps necessary to ensure that the Services are performed in accordance with the provisions of this Contract following any Change in Law.

58.2 Qualifying Change in Law

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- 58.2.1 any necessary change to the Services;
- 58.2.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;
- 58.2.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to:
 - 58.2.3.1 achieve the Services Commencement Date;
 - 58.2.3.2 reduce the number of Available Prisoner Places on or before the date specified for the reduction of such Available Prisoner Places in the relevant RRAPP Band Activation Notice by that date or (following the relevant date in the RRAPP Band Activation Notice) to provide any Available Prisoner Place, in either case for any period;
 - 58.2.3.3 provide the number of Available Prisoner Places on or before the date specified for the provision of such Available Prisoner Places in the relevant RRAPP Band Deactivation Notice by that date or (following the relevant date in the RRAPP Band Deactivation Notice) to provide any Available Prisoner Place, in either case for any period; and/or
 - 58.2.3.4 meet the Authority's Requirements and/or the Contractor's Proposals and/or the Initial Service Delivery Documents or the Service Delivery Documents (as relevant) and/or the Operating

Procedures during the implementation of any relevant Qualifying Change in Law;

- 58.2.4 any loss of or increase in revenue that will result from the relevant Qualifying Change in Law;
- 58.2.5 any Change in Costs that directly results from the Qualifying Change in Law; and
- 58.2.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law;

in each case giving in full detail the procedure for implementing the change in the Services. Responsibility for the costs of implementation (and any resulting variation to the Contract Price) shall be dealt with in accordance with **clauses 58.3 (Parties to Discuss)** and **58.4 (Costs of implementation)**.

58.3 Parties to Discuss

As soon as practicable after receipt of any notice from either Party under **clause 58.2 (Qualifying Change In Law)**, the Parties shall discuss and agree the issues referred to in **clause 58.2 (Qualifying Change In Law)** and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law, including:

- 58.3.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- 58.3.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
- 58.3.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Contractor, including similar businesses in which its Affiliates carry on business; and
- 58.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under **58.2.5 (Qualifying Change In Law)** or **58.2.6 (Qualifying Change In Law)**.

58.4 Costs of implementation

- 58.4.1 The Authority shall pay to the Contractor such compensation in respect of the costs of implementation pursuant to **clause 58.2 (Qualifying Change in Law)** as is agreed is payable to it pursuant to **clause 58.3 (Parties to Discuss)**.
- 58.4.2 Any compensation payable under this **clause 58 (Changes in Law)** by means of an adjustment to or reduction in the Contract Price shall be determined and made in accordance with **clause 59 (Financial Adjustments)**.

58.5 Other Change in Law

- 58.5.1 Either Party may give notice to the other of the need for a Change which is necessary in order to enable the Contractor to comply with any General Change in Law (other than a Qualifying Change in Law).
- 58.5.2 The Parties shall, within fifteen (15) Business Days of a notice referred to in **clause 58.5.1 (Other Change in Law)**, meet and discuss the effect of any such General Change in Law and any Change required as a consequence of it.
- 58.5.3 The Authority shall, within ten (10) Business Days of the meeting referred to in **clause 58.5.2 (Other Change in Law)**, if a Change is required in order to comply with the General Change in Law (other than a Qualifying Change in Law), issue a Change Notice and the relevant provisions of **Schedule 16 (Change Protocol)** shall apply except that:
- 58.5.3.1 the Contractor may give notice to the Authority that it objects to such Change Notice only on the grounds that the implementation of the Change would not implement the relevant General Change in Law;
- 58.5.3.2 the Authority shall issue a Change Notice in respect of the Change in accordance with the relevant provisions of **Schedule 16 (Change Protocol)**;
- 58.5.3.3 the provisions of **clause 8.3 (Consents)** shall apply;
- 58.5.3.4 the Contractor shall not be entitled to payment or other compensation or relief from performance of its obligations under this Contract in respect of any such General Change in Law or associated Change (or the consequences of either of them).

59. FINANCIAL ADJUSTMENTS

59.1 Updating the Base Case

Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this Contract or where the Parties mutually agree otherwise) be determined in accordance with this **clause 59 (Financial Adjustments)**. Where for the purposes of this **clause 59 (Financial Adjustments)** the Base Case is to be adjusted by reference to a Relevant Event, this shall be carried out by the Contractor, in consultation with the Authority, to reflect the cumulative impact of any prior Relevant Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken. In calculating the Change in Costs and in assessing other adjustments to be made to the Base Case arising from the Relevant Event, the Contractor shall be entitled to take into account, inter alia:

- 59.1.1 any Change in Costs;
- 59.1.2 reasonable economic assumptions prevailing at the time; and
- 59.1.3 changes in the prospective technical performance of this Contract arising as a result of the Relevant Event,

provided that the Authority shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Contractor bears under the provisions of this Contract, including (to the extent so borne by the Contractor under this Contract) changes in VAT rates, taxation rates, indexation (if applicable) and the impact of Deductions.

59.2 Application to the Base Case

Where, pursuant to this Contract, either Party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case, the adjustment to the Contract Price due shall be that required to ensure that, by reference to the Base Case adjusted under this **clause 59 (Financial Adjustments)**, the Contractor is left in a "no better and no worse" position than under the version of the Base Case applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Contract Price required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

59.3 No Better and no Worse

Any reference in this Contract to "no better and no worse" or to leaving the Contractor in a "no better and no worse position" shall be construed by reference to the Contractor's:

59.3.1 rights, duties and liabilities under or arising pursuant to performance of this Contract; and

59.3.2 ability to perform its obligations and exercise its rights under this Contract,

so as to ensure that:

59.3.3 the Contractor is left in a position which is no better and no worse in relation to its percentage profit margin by reference to the version of the Base Case applicable immediately prior to the Relevant Event than had the Relevant Event not occurred; and

59.3.4 the ability of the Contractor to comply with this Contract is not adversely affected or improved as a consequence of the Relevant Event.

59.4 Replacement of Base Case

Any Base Case produced following adjustments in accordance with this **clause 59 (Financial Adjustments)** shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Contract until its further amendment in accordance with this Contract.

59.5 Amendments to Logic and/or Formulae

Where it is necessary to amend the logic or formulae incorporated in the Base Case to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles.

59.6 Copies of the Revised Base Case

Following any change to the Base Case under the provisions of this **clause 59 (Financial Adjustments)**, the Contractor shall promptly deliver a copy of the revised Base Case to the Authority in the same form as is established at the Commencement Date or in such other form as may be agreed between the Parties.

PART XIV - STEP-IN AND SECTION 88

60. AUTHORITY STEP-IN

60.1 Right to Step-In

Without prejudice to **clause 60.6 (Intervention under Section 88)**, if the Authority reasonably believes that it needs to take action in connection with the Services:

- 60.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or
- 60.1.2 to discharge a statutory duty or where the Authority is advised by a regulatory body that the exercise by the Authority of its rights under this **Clause 60 (Step-In Rights)** is necessary; and/or
- 60.1.3 following a Contractor Default; and/or
- 60.1.4 pursuant to **clause 36.11.3.2 (Sufficient Contractor's Staff)**,

then the Authority shall be entitled to take action in accordance with **clauses 60.2 (Notice to the Contractor)** to **60.5 (Step-In on Contractor Breach)**.

60.2 Notice to the Contractor

If **clause 60.1 (Right to Step-In)** applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:

- 60.2.1 the action it wishes to take;
- 60.2.2 the reason for such action;
- 60.2.3 the date it wishes to commence such action;
- 60.2.4 the time period which it believes will be necessary for such action; and
- 60.2.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken.

60.3 Action by Authority

- 60.3.1 Following service of such notice, the Authority shall (acting by itself or with or through a third party) take such action as notified under **clause 60.2 (Notice to the Contractor)** and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.
- 60.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify and keep

indemnified in full the Contractor against all Direct Losses where it fails to do so.

60.4 Step-In without Contractor Breach

If the Contractor is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

- 60.4.1 the Contractor shall be relieved from its obligations to provide such part of the Services; and
- 60.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period.

60.5 Step-In on Contractor Breach

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

- 60.5.1 the Contractor shall be relieved of its obligations to provide such part of the Services; and
- 60.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

60.6 Intervention under Section 88

- 60.6.1 Without prejudice to any other provision of this Contract, the Contractor shall note and comply with the provisions of Section 88.
- 60.6.2 If the Secretary of State for Justice shall appoint a Governor of the Prison by virtue of his or her powers under Section 88, then:

- 60.6.2.1 this Contract shall continue in force;
- 60.6.2.2 all provisions of this Contract shall, without prejudice to the Authority's rights under **Part X (Expiry and Termination)** of this Contract, continue to operate except that the functions that would otherwise be exercisable by the Director and the Controller shall be exercised by the Governor; and
- 60.6.2.3 for the period during which a Governor is appointed the Contract Price due from the Authority to the Contractor shall continue to be paid in accordance with **clause 39 (Payment Provisions)**, less an amount equal to all the Authority's costs of operation in respect of any action taken under this **clause 60.6.2 (Intervention under Section 88)**.

60.7 Step-Out

- 60.7.1 The Authority may, at any time during the period of the Required Action, provide notice (a "**Step-Out Notice**") to the Contractor stating that the Authority wishes to cease the Required Action with effect from such date as is reasonable in the circumstances (a "**Step-Out Date**").
- 60.7.2 Where the Authority exercised its rights to take the Required Action as a result of a breach of the obligations of the Contractor under this Contract then the Authority shall issue the Contractor with a Step-Out Notice as soon as is reasonably practicable following the Contractor having demonstrated to the Authority, to the Authority's reasonable satisfaction, that:
 - 60.7.2.1 the Contractor is capable of resuming the provision of the Services; and
 - 60.7.2.2 the circumstances which gave rise to the Required Action are not continuing and are unlikely to recur.
- 60.7.3 On the Step-Out Date:
 - 60.7.3.1 the Authority shall be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action; and
 - 60.7.3.2 the Contractor shall resume the provision of all or any relevant part of the Services which were the subject of the Required Action.

PART XV - INFORMATION AND PUBLICITY**61. INFORMATION AND CONFIDENTIALITY****61.1 Section 91 of the Criminal Justice Act 1991**

Without prejudice to any other provisions of this Contract, the Contractor shall note and shall ensure that all of its employees and its Sub-Contractors' employees comply with the provisions of section 91 of the Criminal Justice Act 1991 (as amended) on the wrongful disclosure of information acquired by persons who are or have been employed at a Prison (whether as a Prisoner Custody Officer or otherwise).

61.2 Notice of Statutory Provisions

The Contractor shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all persons including all Contractor's Staff or Sub-Contractors employed on any work in connection with this Contract have notice that these statutory provisions apply to them and shall continue to apply to them after the Expiry Date or Termination Date and after termination of their employment.

61.3 Confidentiality

61.3.1 The Parties agree that the provisions of this Contract shall, subject to **clause 61.3.2 (Confidentiality)**, not be treated as Confidential Information and may be disclosed without restriction provided that prior to such disclosure the Authority may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:

- (a) national security;
- (b) the information is Personal Data;
- (c) the information is protected by intellectual property law;
- (d) it is not in the public interest to disclose the information (pursuant to FOIA);
- (e) the information is third party confidential information;
- (f) IT security; or
- (g) prevention of fraud.

61.3.2 **Clause 61.3.1 (Confidentiality)** shall not apply to the provisions of this Contract



designated as Commercially Sensitive Information and listed in **Part 1** of **Schedule 20 (Commercially Sensitive Information)** which shall, subject to **clause 61.4 (Permitted Disclosure)**, be kept confidential for the periods specified in that Part.

- 61.3.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and shall (except as otherwise specified in this Contract) use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

61.4 **Permitted Disclosure**

Clauses 61.3.2 (Confidentiality) and **61.3.3 (Confidentiality)** shall not apply to:

- 61.4.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Contract for the performance of those obligations;
- 61.4.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this **clause 61 (Information and Confidentiality)**;
- 61.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its Sub-Contractors;
- 61.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 61.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 61.4.6 any provision of information to the Parties' own professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor in connection with the carrying out of its obligations under this Contract, or may wish to acquire shares in the Contractor in

accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

61.4.7 any disclosure by the Authority of information relating to the operation and maintenance of the Prison and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:

61.4.7.1 any proposed New Contractor and its advisers, should the Authority decide to retender this Contract; or

61.4.7.2 any person in connection with **clause 28 (Benchmarking and Value Testing)**;

61.4.8 any application for registration or recording of the Consents and property registration required;

61.4.9 any disclosure of information by the Authority:

61.4.9.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;

61.4.9.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

61.4.9.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

61.4.9.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 61.4.9.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

61.4.9.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the rights of audit described in **clause 75 (Audit Access)**, its step-in rights pursuant to **clause 60 (Authority Step-In)**, and exit management rights pursuant to **Schedule 24 (Handover and Exit Management)**; and

61.4.9.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights,



obligations or liabilities under this Contract,

and, for the purposes of the foregoing, references to 'disclosure on a confidential basis' shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under **clause 61.3 (Confidentiality)**;

61.4.10 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract;

61.4.11 any disclosure for the purpose of:

61.4.11.1 the examination and certification of the Authority's or the Contractor's accounts;

61.4.11.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

61.4.11.3 complying with a proper request from either Party's insurance advisers or insurers on placing or renewing any insurance policies;
or

61.4.11.4 (without prejudice to the generality of **clause 61.4.4 (Permitted Disclosure)**) compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither **clauses 61.4.11.4 (Permitted Disclosure)** nor **61.4.4 (Permitted Disclosure)** shall permit disclosure of Confidential Information otherwise prohibited by **clause 61.3.3 (Confidentiality)** where that information is exempt from disclosure under section 41 of the FOIA; or

61.4.12 (provided that it complies with its obligations under **clause 61.5 (Permitted Disclosure)**) any disclosure of information by the Contractor to the officers or employees of the Contractor's Group who need to know the relevant Confidential Information for the Specified Purpose.

61.5 The Contractor shall, in respect of any Confidential disclosed pursuant to **clause 61.4.12 (Permitted Disclosure)**:

61.5.1.1 inform the relevant recipient, before or at the same time as the

Confidential Information is disclosed, of the confidential nature of such Confidential Information;

61.5.1.2 procure that the relevant recipient shall, in relation to any such Confidential Information disclosed to it, comply with this Contract as if the recipient were the Contractor; and

61.5.1.3 at all times be responsible for each recipient's compliance with the terms of this Contract as if the recipient were the Contractor.

61.6 Obligations Preserved

Where disclosure is permitted under **clause 61.4 (Permitted Disclosure)**, other than **clauses 61.4.2 (Permitted Disclosure), 61.4.4 (Permitted Disclosure), 61.4.5 (Permitted Disclosure), 61.4.8 (Permitted Disclosure), 61.4.11 (Permitted Disclosure) and 61.4.12 (Permitted Disclosure)**, the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

61.7 Audit

61.7.1 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Contractor and/or any of the Sub-Contractors for the purposes of and pursuant to applicable Legislation.

61.7.2 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such Documents as he or she may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-Contractor and may require the Contractor and any Sub-Contractor to produce such oral or written explanations as he or she considers necessary. It is declared that the carrying out of an examination under section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.

61.8 Exploitation of Information

The Contractor shall not make use of this Contract or any information issued or provided by or on behalf of the Authority in connection with this Contract otherwise than for the purposes of this Contract, except with the written consent of the Authority.

61.9 Information about Prisoners

Where the Contractor, in carrying out its obligations under this Contract, is provided with information relating to Prisoners, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that Prisoner and has obtained the Authority's Representative's Approval.

61.10 Expiry and Termination

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all Documents (including computer records) in its possession, custody or control, containing any information, as directed by the Authority, including any Documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority or as the Authority so directs.

61.11 Disclosure by the National Audit Office

The Parties acknowledge that the National Audit Office has the right to publish details of this Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

61.12 Official Secrets Acts

The provisions of this **clause 61 (Information and Confidentiality)** are without prejudice to the application of the Official Secrets Acts 1911 to 1989 and section 182 of the Finance Act 1989.

61.13 Freedom of Information

61.13.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.

61.13.2 The Contractor shall and shall procure that its Sub-Contractors shall:

61.13.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information;

61.13.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Business Days (or such other period as the Authority may specify) of the Authority's request; and

- 61.13.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 61.13.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 61.13.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 61.13.5 The Contractor acknowledges that (notwithstanding the provisions of this **clause 65.12 (Freedom of Information)**) the Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 61.13.5.1 in certain circumstances without consulting the Contractor; or
- 61.13.5.2 following consultation with the Contractor and having taken their views into account;
- provided always that where **clause 61.13.5.1 (Freedom of Information)** applies the Authority shall take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 61.13.6 The Contractor shall ensure that all Information is retained for disclosure in accordance with the provisions of this Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Authority to inspect such records as requested from time to time.
- 61.13.7 The Contractor acknowledges that the Commercially Sensitive Information listed in **Schedule 20 (Commercially Sensitive Information)** is of indicative value only and that the Authority may be obliged to disclose it in accordance with **clause 61.13.5 (Freedom of Information)**.

61.14 Transparency

61.14.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA.

61.14.2 Notwithstanding any other term of this Contract, the Contractor hereby gives consent to the Authority to publish this Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to this Contract agreed from time to time.

61.14.3 The Authority may consult with the Contractor to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.

61.14.4 The Contractor shall assist and cooperate with the Authority to enable the Contractor to publish this Contract.

62. PUBLIC RELATIONS AND PUBLICITY**62.1 Restriction**

62.1.1 The Contractor shall not by itself, its employees or agents and shall procure that its Sub-Contractors shall not communicate with representatives of the press, television, radio, social media including the internet or other communications media on any matter concerning this Contract without the prior written approval of the Authority.

62.2 Photographs

Without prejudice to any other obligation of the Contractor under this Contract, no facilities to photograph or film in or upon any property used in relation to this Contract shall be given or permitted by the Contractor without the prior written approval of the Authority.

63. ADVERTISEMENTS

The Contractor shall not exhibit or attach to any part of the Site any notice or advertisement without the Authority's Representative's Approval, except where otherwise required to comply with Legislation.

64. CONTRACTOR'S RECORDS AND PROVISION OF INFORMATION**64.1 Records and Open Book Accounting**

In addition to any other obligation in this Contract for the Contractor to keep books of account in respect of any Services and provide these to the Authority, the Contractor shall (and shall procure that each Sub-Contractor shall) at all times:

- 64.1.1 maintain a full record of particulars of the costs of providing the Services (which shall include cost detail broken down into the actual cost of providing each element of the Services), including those relating to the maintenance and operation of the Prison;
- 64.1.2 upon request by the Authority, provide a written summary of any of the costs referred to in **clause 64.1.1 (Records and Open Book Accounting)**, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract;
- 64.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this **clause 64 (Contractor's Records and Provision of Information)**;
- 64.1.4 not store any records outside of the United Kingdom without the prior written consent of the Authority; and
- 64.1.5 comply with the Authority's processes and procedures relating to Open Book Contract Management.

64.2 Books of Account

In addition to any other obligation in this Contract for the Contractor to keep books of account in respect of any Services and provide these to the Authority, compliance with **clause 64.1 (Records and Open Book Accounting)** shall require the Contractor to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to this Contract showing in detail;

- 64.2.1 administrative overheads;
- 64.2.2 payments to Sub-Contractors and by Sub-Contractors to their respective Sub-Contractors;

64.2.3 capital and revenue expenditure; and

64.2.4 such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract,

and the Contractor shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in **clauses 64.2.1 (Books of Account) to 64.2.4 (Books of Account)** (inclusive) available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a written report of these to the Authority as and when requested.

64.3 **Maintenance of Records**

64.3.1 The Contractor shall maintain or procure the maintenance of detailed records relating to the provision of the Services, in each case in accordance with Good Industry Practice and any applicable Legislation.

64.3.2 Without prejudice to **clause 64.3.1 (Maintenance of Records)**, the Contractor shall procure that the following are maintained (and where necessary created):

64.3.2.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract;

64.3.2.2 full records of all maintenance procedures carried out during the term of this Contract;

64.3.2.3 full Site records and log books, including emergency attendances, and relevant notes, calculations and recordings, all such entries to be dated and signed;

64.3.2.4 (where plant, or systems, are modified, replaced and recommissioned) full record of all data and drawings in the site operation and maintenance manuals;

64.3.2.5 other reports, registers and records required by this Contract, including but not limited to:

a Asbestos register;

b Asset Register (in accordance with **paragraph 10.2 (Asset Register)** of **Schedule 11 (Property and Facilities**

Management));

- c Automatic heat and smoke detector test records;
- d Air sampling records;
- e Building services log books;
- f Cooling tower registration certificate and test sheets;
- g COSHH records;
- h Drainage logs and plans;
- i Fire alarm system test records;
- j Certificates relating to the regular testing of electrical appliances including portable appliance testing (PAT);
- k Electrical and network cabling schematics;
- l Emergency generator test log;
- m Emergency lighting test records;
- n Fire drill reports;
- o Fire extinguisher inspection sheets;
- p Fire risk assessments and drawings as required by the Regulatory Reform (Fire Safety) Order 2005;
- q Fire damper checks;
- r Fixed wiring test records;
- s Gas system test records (including up-to-date gas schematics);
- t Insurance inspections;
- u Legionella testing including purity/hygiene test records;
- v Legislative compliance files, including health and safety file;
- w Lift maintenance and test results;

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- x Lighting protection system and earthing test results;
- y Maintenance log books;
- z Maintenance and repair requisitions;
- aa Manufacturers' instructions library index;
- bb Up-to-date operation and maintenance manuals;
- cc Plant room check sheets;
- dd Pressure vessel inspection records;
- ee Public address and communication systems test logs;
- ff Record drawing index sheets;
- gg Records/test certificates relating to any other testing that is required in order to comply with statutory requirements
- hh RIDDOR;
- ii Roof surveys and inspection sheets;
- jj Schedules of the Authority's property and Contractor's equipment;
- kk Security systems test logs;
- ll Smoke ventilation and sprinkler test records;
- mm Sub-Contractor service logs;
- nn Test certificates and specialist reports;
- oo Transportation logs;
- pp Up-to-date "as-built" and "as fitted" drawings and manuals;
- qq Water hygiene risk assessments and schematics;
- rr Water test reports;
- ss Work order summaries and additional work order sheets and

corrective maintenance summary;

tt Valve schedules – charts and logs; and

uu Energy and sustainability records and reports (including those required pursuant to **Schedule 12 (Sustainability)**).

and the Contractor shall have the items referred to in **clause 64.3.2** available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a report of them to the Authority as and when requested.

64.3.3 Without prejudice to **clause 64.3.1 (Maintenance of Records)**, the Contractor shall use the Contractor's or Authority's provided Computer Aided Facilities Management System to manage, amongst other things, all aspects of maintenance, the Asset Register, tasks, frequencies and history files. The Contractor shall also:

64.3.3.1 supply its own ICT equipment to operate, file, share and print all necessary activities relating to the Computer Aided Facilities Management System; and

64.3.3.2 keep the Authority's Representative apprised of the Computer Aided Facilities Management System and keep records on such system. The data stored on the Computer Aided Facilities Management System shall become and remain the property of the Authority and as such all such data and information shall be handed back to the Authority on expiry or earlier termination of the Contract, as the case may be.

64.3.4 The Contractor shall keep all records in a format which has been approved by the Authority, and store them in such a way that they can be easily accessed for the purposes of auditing or the production for the HSE, EHO, Fire Officer or any other enforcing body.

64.4 Auditor

The Contractor shall permit all records referred to in this **clause 64 (Contractor's Records and Provision of Information)** to be examined and copied by the Controller and other representatives of the Authority, and by the Comptroller and Auditor General and his or her representatives.

64.5 Retention

The records referred to in this **clause 64 (Contractor's Records and Provision of Information)** shall be retained in accordance with and for the periods specified in **clause 64.10 (Retention of Records)**, or if not so specified for a period of at least six (6) Years after the Contractor's obligations under this Contract have come to an end.

64.6 **Termination or Expiry**

Prior to the Expiry Date or Termination Date, in accordance with **Schedule 24 (Handover and Exit Management)**, the Contractor shall (and shall ensure that any Sub-Contractors) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Contract.

64.7 **Confidentiality**

All information referred to in this **clause 64 (Contractor's Records and Provision of Information)** is subject to the obligations set out in **clause 61 (Information and Confidentiality)**.

64.8 **Prescribed Documentation**

During the Contract Period, certain Documents shall be produced by or for the Contractor under the terms of this Contract. The Prescribed Documents shall be defined as any item or document which relates to the performance of the Services (the "**Prescribed Documentation**") and shall include all plans of the Site and such other Documents which relate to the provision of the Services, including, whether as hard copy or electronic data:

64.8.1 drawings (including of all Buildings, premises and vehicles);

64.8.2 reports and records;

64.8.3 data sheets;

64.8.4 schedules;

64.8.5 presentation brochures;

64.8.6 Prisoners' records;

64.8.7 photographs; and

64.8.8 other information, including models and samples.

64.9 **Security and Confidentiality of Prescribed Documentation**

- 64.9.1 The Contractor shall be responsible for the security and confidentiality of all Prescribed Documentation. The Contractor shall control and monitor the issue, use and return of the Prescribed Documentation issued by the Contractor to its Sub-Contractors, suppliers and third parties and the security and safe storage of such Prescribed Documentation.
- 64.9.2 The Contractor shall procure that the Prescribed Documentation is managed and controlled by its Sub-Contractors, suppliers and third parties in the manner set out in this **clause 64.9 (Security and Confidentiality of Prescribed Documentation)**.
- 64.9.3 The Contractor shall ensure that the Prescribed Documentation shall only be issued for review outside the following organisations:
- 64.9.3.1 the Authority (including any contractors contracted to operate prisons);
 - 64.9.3.2 any Authority Related Party;
 - 64.9.3.3 any coroner (as defined in section 1 of the Coroners Act 1988);
 - 64.9.3.4 any Relevant Organisation,
- where the Authority has given its prior written consent.
- 64.9.4 The Contractor shall at all times comply with any instructions of the Authority or the Authority's Representative relating to security of the Prescribed Documentation.
- 64.9.5 The Prescribed Documentation that is issued to the Contractor by the Authority or the Authority's Representative remains at all times the property of the Authority and on termination or expiry of this Contract shall either be returned to the Authority in accordance with this Contract, or be certified by the Contractor as having been destroyed in a secure manner or shall be retained by the Contractor pursuant to **clauses 64.9 (Security and Confidentiality of Prescribed Documentation) to 64.11 (Alternative Methods of Documentation Storage)** (inclusive).
- 64.9.6 The Contractor shall notify the Authority in writing of its nominated Prescribed Documentation Security Officer (the "**Prescribed Documentation Security Officer**"), who shall promptly respond to any enquiries by or on behalf of the Authority or the Authority's Representative that relate to the Prescribed Documentation.

- 64.9.7 The Contractor shall prevent information detrimental to the security of the Authority coming into the possession of unauthorised persons and shall establish an audit trail to track the movement and location of the Prescribed Documentation at all times.
- 64.9.8 The Contractor shall be responsible at all times for the security of all Prescribed Documentation in the keeping of the Contractor, whether issued by the Authority or the Authority's Representative or copied or produced by the Contractor, its Sub-Contractors or agents.
- 64.9.9 The Contractor shall notify all Contractor's Staff handling Prescribed Documentation of the requirements imposed by the Authority pursuant to **clauses 64.9 (Security and Confidentiality of Prescribed Documentation) to 64.11 (Alternative Methods of Documentation Storage)** (inclusive) and of the procedures for maintaining security. The Contractor shall notify all others (including its Sub-Contractors) having an interest in this Contract of the particular requirements imposed regarding the security of Prescribed Documentation.
- 64.9.10 The Contractor shall include in all contracts with its Sub-Contractors similar but no less strict conditions of security for the Prescribed Documentation and shall be responsible for their compliance.
- 64.9.11 The Contractor shall arrange for the secure destruction and recording of any Prescribed Documentation which are no longer required, have been superseded or are additional to the requirements of the Authority.
- 64.9.12 The Contractor shall:
- 64.9.12.1 report immediately to the Controller and the Authority's Representative the loss of any Prescribed Documentation stating details of the loss and the actions the Contractor is taking to secure the recovery of such Prescribed Documentation;
 - 64.9.12.2 use its best endeavours to recover such lost Prescribed Documentation; and
 - 64.9.12.3 record the loss, the action taken by the Contractor and outcome in the Operational Briefing Sheet and immediately notify the Authority by such method as the Authority shall notify to the Contractor in writing from time to time.

64.10.1 Notwithstanding **clause 64.10.2 (Retention of Records)**, the Contractor shall retain all Documents held by it or a Sub-Contractor upon the Expiry Date or Termination Date for a period of six (6) Years after the Expiry Date or Termination Date (as the case may be).

64.10.2 From the Commencement Date, the Contractor shall retain all Documents of the type set out below for the minimum periods specified opposite such Documents from the creation of the relevant Document:

Document Type	Retention Period
Prisoner records	To comply with PSI 04/2018
Financial records	6 Years
Medical records	6 Years
Incident records	6 Years
Complaint records	6 Years
Court records	6 Years
Personnel records	6 Years
Record of visitors	2 Years
Staffing details	2 Years
Administrative records	2 Years
Prisoner journey details	2 Years

64.10.3 The Contractor shall determine (and shall promptly notify the Authority) if there are any requirements of Legislation, Relevant Authorities or otherwise, that would necessitate the retention of any Documents for longer retention periods than those specified in **clause 64.10.2 (Retention of Records)**.

64.10.4 The retention periods specified in **clause 64.10.2 (Retention of Records)** apply to the primary source Documents and any electronic or other types of Documents for such records produced.

64.11 Alternative Methods Of Documentation Storage

64.11.1 The Contractor may propose alternative means of storing the records, Prescribed Documentation and Documents referred to in this **clause 64 (Contractor's Records and Provision of Information)** storage for the Authority's Representative's Approval. The Contractor shall ensure that any such proposals:

64.11.1.1 comply with Legislation, including the FOIA, Public Records Acts 1958 and 1967, the Taxes Management Act 1970, the Value Added Tax Act 1994, the Companies Act 2006, EU Regulations and the Limitation Act 1980;

64.11.1.2 state methods of minimising any potential risks of such alternative



means of storage that may arise; and

64.11.1.3 offer no opportunity for the records, Prescribed Documentation and Documents referred to in this **clause 64 (Contractor's Records and Provision of Information)** to be amended.

64.11.2 Without prejudice to **clause 61.11 (Disclosure by National Audit Office)**, the Contractor shall promptly provide the National Audit Office with such Documents including this Contract and such other contracts, agreements, guarantees and titles to property that the National Audit Office may request from time to time.

64.12 **Interpretation**

Clauses 64.8 (Prescribed Documentation) to 64.11 (Alternative Methods of Documentation Storage) (inclusive) shall be without prejudice to any other provisions of this Contract.

64.13 **Data Loss**

The Contractor acknowledges that:

64.13.1 the security of data, including Personal Data is of paramount importance to the Authority; and

64.13.2 loss of such data may have a significant impact on the operation and reputation of the Authority, the Contractor and the Prison.

65. **DATA PROTECTION**

The Parties shall comply with their respective obligations under the Data Protection Legislation and comply with their respective obligations set out in **Schedule 25 (Data Protection)**.

PART XVI - INDEMNITIES AND INSURANCE**66. INDEMNITIES AND LIABILITIES****66.1 Contractor's Indemnity**

66.1.1 In addition to any other indemnity provided by the Contractor under this Contract, the Contractor shall, subject to clause 66.2 (Contractor not Responsible), be responsible for, and shall indemnify and keep indemnified in full and on demand the Authority or any Authority Related Party from and against all liability for:

66.1.1.1 death or personal injury;

66.1.1.2 loss of or damage to property (including property belonging to the Authority or for which it is responsible);

66.1.1.3 breach of statutory duty;

66.1.1.4 third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis);

66.1.1.5 subject to **clause 66.10 (Limitation of Liability under clause 66.1.1.5)**, and notwithstanding any Unavailability Deductions, losses suffered or incurred by the Authority in connection with accommodating prisoners who should have been accommodated at the Prison outside the Prison (including the costs of transferring prisoners to and from alternative accommodation) due to any failure by the Contractor to fulfil its obligations under this Contract to provide Available Prisoner Places,

which may arise out of, or in consequence of, the operation or maintenance of the Prison or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Authority's property of the Contractor or any Contractor Related Party.

66.2 Contractor not Responsible

The Contractor shall not be responsible or be obliged to indemnify the Authority for:

66.2.1 any of the matters referred to in **clause 66.1 (Contractor's Indemnity)** which arises as a direct result of the Contractor acting on the written instruction of the Authority, provided that the Contractor has implemented the instruction in a

manner which is not negligent and is in accordance with Good Industry Practice;
or

66.2.2 any injury, loss, damage, cost and expense to the extent caused by the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Contract) or by the breach by the Authority of its obligations under this Contract.

66.3 Limitation of Indemnity

An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

66.4 Notification of Claims

Where either Party (the "**Indemnified Party**") wishes to make a claim under this Contract against the other (the "**Indemnifying Party**") in relation to a claim made against it by a third party (a "**Third Party Claim**"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

66.5 Conduct of Claims

66.5.1 Except in respect of any Third Party Claims or investigations under or in connection with any breaches of **clause 65 (Data Protection)** (which shall be dealt with in accordance with **Schedule 25 (Data Protection)**), the Contractor agrees (and undertakes to procure that its Sub-Contractors agree) that (subject to the agreement of the relevant insurer) and on giving written notice to such effect to the Contractor at any time, the Authority has:

66.5.1.1 the sole right to control of any proceedings; or

66.5.1.2 the right to join the proceedings,

in relation to any Third Party Claim (including any claim by employees of the Parties), to which the Authority is, or is likely to be, a party as a defendant, regardless of whether the Contractor (or any Sub-Contractor) is also a party to such proceedings.

66.5.2 The Authority agrees that it shall not settle or compromise any Third Party Claim giving rise to losses exceeding fifty thousand pounds (£50,000) (Indexed) for which the Contractor is liable to indemnify the Authority under **clause 66.1 (Contractor's Indemnity)** without prior consultation with the Contractor. The



Authority shall keep the Contractor reasonably informed as to the progress and status of any such Third Party Claim until such Third Party Claim is settled or withdrawn.

66.5.3 If, in contesting, settling or compromising any Third Party Claim, the Authority takes or fails to take any action which prejudices any entitlement of the Contractor to recover any portion of the claim from any insurer under any insurance policy maintained by the Contractor in accordance with this Contract, the liability of the Contractor to indemnify the Authority in respect of such claim shall be reduced by such portion.

66.5.4 The Contractor undertakes that:

66.5.4.1 it shall not, without the prior written consent of the Authority, settle or compromise any claim (whether insured or uninsured) to which the Authority is, or is likely to become, a party;

66.5.4.2 where a claim is made against the Contractor and the Authority is not, and is not likely to become, a party to such claim as a defendant, the Contractor shall not settle or compromise any claim exceeding fifty thousand pounds (£50,000) (Indexed) without prior consultation with the Authority; and

66.5.4.3 it shall ensure that its Sub-Contractors give undertakings identical to those given by the Contractor to the Authority under this **clause 66.5 (Conduct of Claims)**.

66.5.5 If conduct of a claim is so assumed by the Authority pursuant to this **clause 66.5 (Conduct of Claims)**, the Authority shall hold the Contractor and its insurers harmless against all or any Direct Losses which either of them may incur by reason of its conduct of the claim and any settlement of the relevant claim or judgment being given if the settlement is made without their prior written approval (such approval not to be unreasonably withheld or delayed).

66.6 Sensitive Claims

66.6.1 Except in respect of any Third Party Claims or investigations under or in connection with any breaches of **clause 65 (Data Protection)** (which shall be dealt with in accordance with **Schedule 25 (Data Protection)**), and subject to the agreement of the relevant insurer, with respect to any Third Party Claim which the Indemnified Party, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Indemnified Party (a

"Sensitive Claim"), the Indemnifying Party shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Indemnified Party's prior written consent. If the Indemnified Party withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifying Party shall only be liable to indemnify the Indemnified Party in respect of that amount which would have been recoverable by the Indemnified Party had it conducted the Sensitive Claim with all due diligence.

- 66.6.2 The Indemnified Party shall be free at any time to give written notice to the Indemnifying Party that it is retaining or taking over (as the case may be) the conduct of any Third Party Claim, to which **clause 66.5.1 (Conduct of Claims)** applies if, in the reasonable opinion of the Indemnified Party, the Third Party Claim is, or has become, a Sensitive Claim.

66.7 Mitigation

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Contract.

66.8 Limitation of the Authority's Liability

- 66.8.1 Without prejudice to the Authority's obligation to pay the Contract Price as and when it falls due for payment and any other payments due under this Contract (including the TUPE Surcharge), the maximum liability of the Authority in respect of all Losses incurred by the Contractor under or in connection with this Contract as a result of defaults of the Authority shall not exceed:

- 66.8.1.1 during the first Contract Year, an amount equal to one hundred and fifty percent (150%) of the amount set out in [] **[Bidder note: this will be the estimated Contract Price for the first Contract Year as derived from the Base Case];**

- 66.8.1.2 in relation to defaults of the Authority occurring during any subsequent Contract Year (other than the final Contract Year), an amount equal to one hundred and fifty percent (150%) of the total Contract Price paid and/or due to be paid to the Contractor under this Contract in that Contract Year;

- 66.8.1.3 in relation to relation to defaults of the Authority occurring during

the final Contract Year, an amount equal to one hundred and fifty percent (150%) of the total Contract Price paid and/or due to be paid to the Contractor under this Contract in the immediately preceding Contract Year; and

66.8.1.4 in relation to defaults of the Authority occurring after the Expiry Date or Termination Date (as applicable), an amount equal to one hundred and fifty percent (150%) of the Contract Price paid and/or due to be paid to the Contractor in the twelve (12) Month period immediately prior to the last day of the Contract Period.

66.8.2 For the purposes of **clause 66.8.1 (Limitation of the Authority's Liability)**, a "default of the Authority" shall mean any breach of the Authority's obligations (including but not limited to abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the Authority, its employees, servants, agents in connection with or in relation to the subject-matter of this Contract.

66.8.3 For the avoidance of doubt and without prejudice to or limitation of any other liability the Authority may have under this Contract, this **clause 66.8 (Limitation of the Authority's Liability)** shall not apply in respect of:

66.8.3.1 personal injury or death resulting from the negligence of the Authority;

66.8.3.2 fraud or fraudulent misrepresentation;

66.8.3.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; and

66.8.3.4 any liability to the extent it cannot be excluded or limited by applicable Legislation.

66.9 **Limitation of the Contractor's Liability**

66.9.1 Subject to **clauses 66.1.1.5 (Contractor's Indemnity)** and **66.9.3 (Limitation of the Contractor's liability)** and unless otherwise expressly provided, the maximum amount for which the Contractor shall be liable to the Authority in respect of Uninsured Losses under or in connection with this Contract as a result of defaults of the Contractor shall not exceed:

66.9.1.1 during the first Contract Year, an amount equal to one hundred and

fifty percent (150%) of the amount set out in [] **[Note to Bidders: this will be the estimated Contract Price for the first Contract Year as derived from the Base Case]**;

- 66.9.1.2 in relation to defaults of the Contractor occurring during any subsequent Contract Year (other than the final Contract Year), an amount equal to one hundred and fifty percent (150%) of the total Contract Price paid and/or due to be paid to the Contractor under this Contract in that Contract Year;
- 66.9.1.3 in relation to relation to defaults of the Contractor occurring during the final Contract Year, an amount equal to one hundred and fifty percent (150%) of the total Contract Price paid and/or due to be paid to the Contractor under this Contract in the immediately preceding Contract Year; and
- 66.9.1.4 in relation to defaults of the Contractor occurring after the Expiry Date or Termination Date (as applicable). an amount equal to one hundred and fifty percent (150%) of the Contract Price paid and/or due to be paid to the Contractor in the twelve (12) Month period immediately prior to the last day of the Contract Period.
- 66.9.2 For the purposes of **clause 66.9.1 (Limitation of the Contractor's Liability)**, a "default of the Contractor" shall mean any breach of the Contractor's obligations (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the Contractor, its Sub-Contractors or any Contractor's Staff in connection with or in relation to the subject-matter of this Contract.
- 66.9.3 For the avoidance of doubt and without prejudice to or limitation of any other liability the Contractor may have under this Contract, this **clause 66.9 (Limitation of the Contractor's Liability)** shall not apply in respect of:
- 66.9.3.1 any Insured Losses (which shall be capped at the minimum required financial level (being the level required for each and every claim) of that insurance pursuant to **clause 68 (Insurance)** disregarding any excess or deductibles that may apply to such insurance, with any remaining Losses being recoverable subject to the other provisions of this **clause 66**); and
- 66.9.3.2 to the extent not constituting an Insured Loss, any liability the

Contractor may have in respect of:

- (a) personal injury or death resulting from the negligence of the Contractor or any Contractor Related Party;
 - (b) fraud or fraudulent misrepresentation;
 - (c) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - (d) any liability to the extent it cannot be excluded or limited by applicable Legislation;
 - (e) any injury, loss, damage, cost and expense to the extent caused by the wilful misconduct or wilful default of the Contractor;
 - (f) any Deductions;
 - (g) the indemnities contained in **clause 29.11 (Modern Slavery)**, **clause 37.2 (Income Tax and National Insurance Contributions)**, **clause 37.3 (Employment Indemnity)**, **clause 40.1.5 (Value Added Tax)**, **clause 71.7 (IPRs Indemnity)**, **Schedule 18 (TUPE, Employees and Pensions)** and the **Annexes to Schedule 18 (TUPE, Employees and Pensions)**; and
- 66.9.3.3 to the extent not constituting an Insured Loss, any liability the Contractor may have in respect of:
- (a) breaches of **clause 65 (Data Protection)**; and
 - (b) the indemnity contained in **Schedule 25 (Data Protection)**.

66.10 Limitation of Liability under clause 66.1.1.5

- 66.10.1 The provisions of this **clause 66.10 (Limitation of Liability under clause 66.1.1.5)** shall apply to claims made by the Authority under **clause 66.1.1.5 (Contractor's Indemnity)**.
- 66.10.2 If the Authority has to house prisoners who should have been accommodated at the Prison outside the Prison due to any failure by the Contractor to fulfil its obligations under this Contract to provide Available Prisoner Places, the Authority shall:

- 66.10.2.1 on the Contractor's written request, increase the Permitted Level (either on a temporary or a permanent basis) if and to the extent that such increase, in the Authority's opinion, will not prejudice the level of security and safety in the Prison and the control of Prisoners as required under the Operating Procedures;
 - 66.10.2.2 mitigate the relevant Losses where it is reasonably practicable to do so, for example taking reasonable steps to arrange for such prisoners to be housed in alternative accommodation that is not more costly than other suitable accommodation reasonably available to the Authority at the relevant time (having regard to the circumstances from time to time); and
 - 66.10.2.3 to the extent practicable (having regard to the then existing circumstances) consult with the Contractor as to where such prisoners should be accommodated.
- 66.10.3 In the case of prisoners housed in alternative accommodation not managed by the Authority, the Authority shall only be entitled to recover Losses under **clause 66.1.1.5 (Contractor's Indemnity)** to the extent that the payment by the Authority for such accommodation exceeds the amount that the Authority would pay to the Contractor for providing an Available Prisoner Place to accommodate each such Prisoner if the Contractor were satisfying all its obligations and providing the Services in full over that period.
- 66.10.4 The amount of Losses recoverable under **clause 66.1.1.5 (Contractor's Indemnity)** shall be calculated by deducting (to the extent not already taken into account) from the total of the relevant Losses the aggregate of the following:
- 66.10.4.1 any damages for breach of contract received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places (whether pursuant to **paragraph 4.5.3 (Services Commencement)**, **Schedule 5 (Mobilisation)** or otherwise);
 - 66.10.4.2 any insurance proceeds received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places; and
 - 66.10.4.3 the amount of the Contract Price the Authority would have paid the Contractor if the Contractor had provided the required number of Available Prisoner Places.



66.10.5 If the Authority recovers any amount (the "**Relevant Amount**") pursuant to **clause 66.1.1.5 (Contractor's Indemnity)** and subsequently receives amounts of the type described in **clauses 66.10.4.1 (Limitation of Liability under clause 66.1.1.5)**, or **66.10.4.2 (Limitation of Liability under clause 66.1.1.5)** in circumstances that amount to double recovery, the Authority shall (subject to the other provisions of this Contract and any rights of set off), to the extent of such double recovery, reimburse the party from whom the Relevant Amount was received within twenty (20) Business Days after written demand for reimbursement.

66.11 No Prejudice to clause 69

For the avoidance of doubt, this **clause 66 (Indemnities and Liabilities)** shall take effect without prejudice to the Contractor's obligations under **clause 69 (Liability for Loss and Damage)**.

67. MUTUAL AID

67.1 Application

This **clause 67 (Mutual Aid)** applies only to the provision of Mutual Aid within the terms of the Authority's Custodial Services Requirements.

67.2 Prison Officers Reporting to the Prison

67.2.1 Subject to **clause 67.2.2 (Prison Officers Reporting to the Prison)**, the Authority shall be responsible for and shall release and indemnify and keep indemnified in full and on demand the Contractor from and against all Direct Losses arising as a result of:

67.2.1.1 personal injury to any prison officer (other than a member of the Contractor's Staff) sustained during the period when such prison officer is reporting for Mutual Aid purposes to the Prison; or

67.2.1.2 injury, loss or damage to a third party (other than the Contractor or any Contractor Related Party) caused or contributed to by the act or omission of such prison officer.

67.2.2 The Authority shall not be responsible or be obliged to indemnify the Contractor if any such Direct Loss has arisen in whole or in part as a result of a command given by the Contractor or any Contractor Related Party within the command structure operating at the time for Mutual Aid purposes at the Prison and either:

67.2.2.1 a public duty defence in respect of the claim is unsuccessful; or

67.2.2.2 with the prior written approval of the Authority, such defence is not pursued,

and such Direct Loss shall be the responsibility of the Contractor and the Contractor shall indemnify and keep indemnified in full and on demand the Authority in respect of such Direct Loss.

67.3 Contractor's Staff Reporting to other Prisons

67.3.1 Subject to **clause 67.3.2 (Contractor's Staff Reporting to other Prisons)**, the Contractor shall, notwithstanding the limits set out in **clause 66.10 (Limitation of Liability under clause 66.1.1.5)** be responsible for and shall release and indemnify and keep indemnified in full and on demand the Authority from and against all Direct Losses arising as a result of:

67.3.1.1 personal injury to any member of the Contractor's Staff sustained during the period when such member of the Contractor's Staff is reporting for Mutual Aid purposes to any other prison; or

67.3.1.2 injury, loss or damage to a third party (other than the Authority and its employees) caused or contributed to by the act or omission of such member of the Contractor's Staff.

67.3.2 The Contractor shall not be responsible or be obliged to indemnify the Authority if any such Direct Loss has arisen in whole or in part as a result of a command given by an officer within the command structure operating at the time for Mutual Aid purposes at such prison and either:

67.3.2.1 a public duty defence in respect of the claim is unsuccessful; or

67.3.2.2 with the prior written approval of the Authority, such defence is not pursued,

and such Direct Loss shall be the responsibility of the Authority and the Authority shall indemnify and keep indemnified in full and on demand the Contractor in respect of such Direct Loss.

68. INSURANCE

68.1 Without prejudice to the Contractor's liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in **Schedule 19**

(**Required Insurances**) take out and maintain (or procure the taking out and maintenance of):

- 68.1.1 the insurances as set out in this **clause 68** and required to be taken out pursuant to **Schedule 19 (Required Insurances)**;
- 68.1.2 professional indemnity insurance in respect of the Property and Facilities Management Services, including any Construction Works, whether for breach of contract, negligence or otherwise in respect of defects or insufficiency in design upon customary and usual terms and conditions prevailing in the insurance market at the Services Commencement Date, and with reputable insurers licensed to carry on such insurance business in the United Kingdom, in an amount of not less than £1,000,000 (one million pounds) for any one claim or series of claims arising out of any one event and in the aggregate in any one (1) annual period of insurance for a period ending six (6) years after the Expiry Date or Termination Date of this Contract for Property and Facilities Management Services or for a period ending twelve (12) Years after the Expiry Date or Termination Date of this Contract for any Construction Works;
- 68.1.3 the additional insurances that the Authority may require the Contractor to take out in connection with any Works and Major Maintenance Works (as such term is defined in **Schedule 11 (Property and Facilities Management)**) as identified in **Part 2 of Schedule 19 (Required Insurances)** and/or as otherwise required by the Authority for the delivery of the Property and Facilities Management Services or pursuant to the process set out in **Schedule 16 (Change Protocol)**); and
- 68.1.4 any other insurances as may be required by applicable Legislation,

(together the "**Required Insurances**"). The Contractor shall ensure that each of the Required Insurances is effective in each case not later than the date on which the relevant risk commences.

- 68.2 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 68.3 Where specified in **Schedule 19 (Required Insurances)**, the Contractor shall ensure that the relevant policy of insurance:
 - 68.3.1 shall contain an indemnity to principals clause or additional insureds equivalent, under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage, and for which the Contractor is legally liable in respect of this Contract; and



- 68.3.2 names the Authority as co-insured for its separate interest with attendant non vitiation, waiver of subrogation and notice of cancellation provisions.
- 68.4 The Contractor shall discharge in full all duties and obligations in respect of the Insurance Act 2015 when procuring, maintaining or amending any insurance(s) required by this contract, including in circumstances where the Contractor is required to name the Authority on any such insurance policies to protect the Authority's separate interests.
- 68.5 The Contractor undertakes to the Authority not to permit or agree any wording in any policy of insurance which would permit:
- 68.5.1 any Commercial Insurer;
- 68.5.2 any Commercial Insurer's successors or permitted assigns; or
- 68.5.3 any other person claiming by or through a Commercial Insurer,
- to bring any claim under the Riot Compensation Act 2016 in respect of any damage to the Prison. This undertaking shall be for the benefit of any Police Authority (and any statutory successors of any such Police Authority), each of which may enforce the terms of this **clause 68.5 (Insurance)** against the Contractor and/or its successors and permitted assigns (as appropriate), This **clause 68.5 (Insurance)** shall be binding upon the Contractor and each of its successors and permitted assigns.
- 68.6 The Contractor shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 68.7 The Authority may elect (but shall not be obliged) where notice has been provided to the Contractor to purchase any insurance which the Contractor is required to maintain pursuant to this Contract but has failed to maintain in full force and effect, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 68.8 The Contractor shall from the Commencement Date and within fifteen (15) Business Days after the renewal of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in full force and effect and meet in full the requirements of this **clause 68 (Insurance)** and **Schedule 19 (Required Insurances)**. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of its liabilities and obligations under this Contract.
- 68.9 The Contractor shall notify the Authority in writing at least ten (10) Business Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.



This **clause 68.9 (Insurance)** shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this **clause 68 (Insurance)**.

- 68.10 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 68.11 Except where the Authority is the claimant party, the Contractor shall give the Authority notice within twenty (20) Business Days after any insurance claim in excess of £[REDACTED] **AMOUNT] (INSERT AMOUNT IN WORDS)** on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 68.12 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 68.13 Where any insurance referred to in this **clause 68 (Insurance)** and **Schedule 19 (Required Insurances)** is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.
- 68.14 All insurance proceeds received in respect of the Property Damage "All Risks" Insurance as specified in **Schedule 19 (Required Insurances)** shall be used to reinstate, repair or replace the insured property in respect of which the insurance proceeds were received.
- 68.15 For the avoidance of doubt, the terms of any Required Insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.

69. **LIABILITY FOR LOSS AND DAMAGE**

69.1 **Responsibility for Damage**

Without prejudice to the provisions of **clause 21.8 (Rights of Access and Inspection)** and to the obligations of the Contractor to repair, maintain and replace the Prison and subject to **clause 69.5 (Minor Damage)**, as between the Authority and the Contractor:

- 69.1.1 the Authority will only have any responsibility for the cost of damage to the

Prison to the extent that:

- 69.1.1.1 the Contractor is able to prove to the Authority's satisfaction (acting reasonably) that the damage was caused or contributed to by:
 - (a) the wilful misconduct or negligence of an Authority Related Party;
or
 - (b) the Contractor acting on the written instruction of the Authority, provided that the Contractor has implemented that instruction in a manner which is not negligent and is in accordance with Good Industry Practice;
- 69.1.1.2 such damage:
 - (a) does not constitute fair wear and tear; and
 - (b) does not arise as a result of the damaged item being used for its reasonable and proper purpose or any part of the Prison being used for its reasonable and proper purpose; and
- 69.1.1.3 the cost of such damage is either:
 - (a) of a value below the level of the deductible of the Required Insurance (up to the maximum deductible specified in the Required Insurances); or
 - (b) is not covered by the insurances taken out, or which should have been taken out by the Contractor in accordance with this Contract,

provided that the Authority shall be liable for any excess or deductible (up to the amount of any maximum deductible specified in the Required Insurances) which is payable as a result of any Authority Damage which has resulted in a Repair Cost being incurred where such Repair Cost has been funded under any such insurance; and
- 69.1.2 the Contractor shall be responsible for the cost of all damage on or to the Prison that is not the responsibility of the Authority pursuant to **clause 69.1.1 (Responsibility for Damage)**.
- 69.1.3 In respect of New Prisons for the purposes of this **clause 69.1 (Responsibility for Damage)**, Authority Damage shall include any latent defects arising from the

construction of the New Prisons by a Constructor appointed by the Authority under a Construction Contract. **[Note to Bidders: The Authority will review these requirements for each Call-off Contract and ensure a process is inserted for identifying any costs arising from latent defects and claiming such costs from the Authority where appropriate.]**

69.2 Obligation to Repair

Upon the discovery of any damage the Contractor shall:

- 69.2.1 record any relevant details of the damage (including photographs if necessary); and
- 69.2.2 as soon as is practicable, reinstate, replace or make good the damage, returning the damaged item to its original standard (or equivalent) in accordance with the relevant provisions of this Contract, including where relevant in accordance with **clause 68.14 (Insurance)**.

69.3 Obligation to Discuss

- 69.3.1 The Contractor and the Authority's Representative shall, as soon as reasonably practicable following the discovery of any damage in accordance with **clause 69.2 (Obligation to Repair)** meet to discuss whether such damage is Authority Damage and whether there should be an extension of the Rectification Period and, if so, what reasonable extension should be agreed.
- 69.3.2 If the Contractor and the Authority's Representative:
 - 69.3.2.1 agree that the relevant damage constitutes Authority Damage, the Contractor shall be entitled to issue an invoice in respect of its reasonable and demonstrable costs incurred in reinstating the damage, but only in respect of those costs that are the responsibility of the Authority under **clause 69.1 (Responsibility for Damage)**;
 - 69.3.2.2 do not agree that the relevant damage constitutes Authority Damage, the matter shall be referred to the Dispute Resolution Procedure for resolution and if the dispute is resolved in the Contractor's favour, the Contractor shall be permitted to submit an invoice in respect of its reasonable and demonstrable costs incurred in repairing the damage, but only in respect of those costs that are the responsibility of the Authority under **clause 69.1 (Responsibility for Damage)**;

69.3.2.3 agree an extension to the applicable Rectification Period in accordance with **clause 69.3 (Obligation to Discuss)**, such Rectification Period shall apply in respect of the relevant damage for the purposes of **Schedule 15 (Payment Mechanism)**; or

69.3.2.4 do not agree either that there should be an extension to the relevant Rectification Period or what the extension should be, the matter shall be referred to the Dispute Resolution Procedure.

69.4 **Supporting Information**

Any invoice submitted to the Authority pursuant to **clause 69.3 (Obligation to Discuss)** shall be supported by any relevant information recorded pursuant to **clause 69.2.1 (Obligation to Repair)**, and may be in respect of multiple incidents of damage. The Authority shall pay any such invoice within thirty (30) Days of receipt by the Authority of the invoice and supporting information.

69.5 **Minor Damage**

If any Authority Damage is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by the Contractor without incurring any additional costs through the use of its site-based resources during their normal working hours and without adversely affecting the ability of the Contractor to perform the Services, then the cost of rectifying such damage shall be for the account of the Contractor.

69.6 **Dispute Resolution**

Any disputes between the Parties arising from this **clause 69 (Liability for Loss and Damage)** shall be referred to the Dispute Resolution Procedure.

69.7 **Programmed Maintenance Costs**

69.7.1 In relation to any Repair Cost which has been funded or partly funded by the Authority or under any Required Insurance ("**Damage Funding**"), the Contractor shall take such funding and the timing of such repair or replacement into account when preparing its maintenance schedule for the Prison and any savings to the maintenance costs as shown in the Base Case shall be shared equally between the Contractor and the Authority.

69.7.2 At the end of each Contract Year the Contractor shall supply to the Authority an account of any damage and associated Repair Costs and Damage Funding, as well as money spent or saved in accordance with the maintenance costs as shown in the Base Case.



69.7.3 On every fifth (5th) anniversary of the Commencement Date the Contractor shall provide a consolidated and reconciled account of the accounts referred to in **clause 69.7.2 (Programmed Maintenance Costs)**. If such account shows that in respect of the preceding five (5) Year period there was a saving in the costs to the Contractor in complying with its obligations under this Contract because of the Damage Funding then the Contractor shall within thirty (30) Days after submission of the account pay to the Authority half of such saving.

69.8 **Time Periods**

The Contractor shall perform its obligations under **clause 69.2 (Obligation to Repair)** as soon as practicable and shall use all reasonable endeavours (where practicable and taking account of the nature of the works required) to complete any works required within forty eight (48) hours after becoming aware of the loss or damage occurring.



PART XVII - DISPUTES

70. DISPUTE RESOLUTION

70.1 Disputes

Except in respect of any Dispute which arises under or in connection with **clause 65 (Data Protection)**, and without prejudice to the Parties' right, in respect of any Disputes arising under or in connection with the Property and Facilities Management Services (including any Works), to bring adjudication proceedings (as more fully set out in **clause 70.19 (Adjudication)**), if there is any dispute under this Contract and save where expressly stated to the contrary in this Contract, any Dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this **Part XVII (Disputes)**.

70.2 Notice of Dispute

70.2.1 The Dispute Resolution Procedure shall commence with the service of a Notice of Dispute by either Party on the other Party.

70.2.2 The Notice of Dispute shall:

70.2.2.1 set out the material particulars of the Dispute; and

70.2.2.2 set out the reasons why the Party serving the Notice of Dispute believes that the Dispute has arisen.

70.2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

70.2.4 The Parties shall seek to resolve Disputes firstly by consultation (in accordance with **clause 70.3 (Consultation)**), then by Mediation (at the Authority's sole election in accordance with **clause 70.4 (Mediation)**) and lastly by recourse to Arbitration (in accordance with **clause 70.14 (Arbitration)**) noting that either Party may seek urgent injunctive relief at any time in accordance with **clause 70.18 (Urgent Relief)**.

70.3 Consultation

If a Dispute arises in relation to any aspect of this Contract, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.



70.4 **Mediation**

- 70.4.1 In the event that a Dispute between the Parties cannot be resolved by consultation in accordance with **clause 70.3 (Consultation)** within thirty (30) Days of the request by either Party for such consultation, the Authority may, at its sole election, require the Parties to participate in a Mediation in accordance with this **clause 70.4 (Mediation)** and CEDR's model mediation procedure.
- 70.4.2 If the Parties are unable to agree on the joint appointment of a Mediator within a reasonable time they shall make a joint application to CEDR to nominate the Mediator.
- 70.4.3 The Parties shall use all reasonable endeavours to ensure that the Mediator, after consultation with the Parties where appropriate, shall:
- 70.4.3.1 attend any meetings with either or both of the Parties preceding the Mediation, if requested or if the Mediator decides this is appropriate and the Parties agree;
 - 70.4.3.2 read before the Mediation each Case Summary and all the documents sent to him or her;
 - 70.4.3.3 chair, and determine the procedure for the Mediation;
 - 70.4.3.4 assist the Parties in drawing up any written settlement agreement; and
 - 70.4.3.5 abide by the terms of CEDR's model mediation procedure and CEDR's code of conduct for mediators.
- 70.4.4 The Parties shall ensure that the Mediator (and any member of the Mediator's firm or company) shall not act for either of the Parties individually in connection with the Dispute in any capacity during the Service Period. The Parties accept that in relation to the Dispute neither the Mediator nor CEDR is an agent of, or acting in any capacity for, any of the Parties. Furthermore, the Parties and the Mediator accept that the Mediator (unless an employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

70.5 **CEDR**

- 70.5.1 The Parties shall ensure that CEDR, in conjunction with the Mediator, shall make the necessary arrangements for the Mediation including, as necessary:

- 70.5.1.1 nominating, and obtaining the agreement of the Parties to the Mediator;
- 70.5.1.2 organising a suitable venue and dates;
- 70.5.1.3 organising exchange of the Case Summaries and documents;
- 70.5.1.4 meeting with either or both of the Parties (and the Mediator if appointed), either together or separately, to discuss any matters or concerns relating to the Mediation; and
- 70.5.1.5 general administration in relation to the Mediation.

70.5.2 If there is any issue about the conduct of the Mediation upon which the Parties cannot agree within a reasonable time, CEDR shall, at the request of any Party, decide the issue for the Parties, having consulted with them.

70.6 Participants

- 70.6.1 Each Party shall state the names of:
 - 70.6.1.1 the person(s) who shall be the lead negotiator(s) for that Party, who must have full authority to settle the Dispute for the purpose of the Mediation; and
 - 70.6.1.2 any other person(s) (such as professional advisers, colleagues or sub-contractors) who shall also be present at, and/or participating in, the Mediation on that Party's behalf.

70.7 Exchange of Information

- 70.7.1 Each Party shall send to CEDR at least two (2) weeks before the Mediation, or such other date as may be agreed between the Parties and CEDR, sufficient copies of:
 - 70.7.1.1 its Case Summary; and
 - 70.7.1.2 all the documents to which the Case Summary refers and any others to which it may want to refer in the Mediation.
- 70.7.2 In addition, each Party may send to the Mediator (through CEDR) and/or bring to the Mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator and CEDR.

70.7.3 The Parties shall procure that the Mediator shall be responsible for sending a copy of each Party's Case Summary and supporting documents (pursuant to **clause 70.7.1 (Exchange of Information)**) to the other simultaneously.

70.7.4 The Parties should seek to agree:

70.7.4.1 the maximum number of pages of each Case Summary; and

70.7.4.2 a joint set of supporting documents or the maximum length of each set of supporting documents.

70.8 The Mediation

70.8.1 The Mediation shall take place at the time and place arranged by CEDR. The Parties agree to request that CEDR arrange the time and place for the Mediation.

70.8.2 The Parties shall procure that the Mediator shall chair, and determine the procedure at, the Mediation.

70.8.3 No recording or transcript of the Mediation shall be made.

70.9 Settlement Agreement

70.9.1 Any settlement reached in the Mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties and in accordance with **Schedule 16 (Change Protocol)** where changes are required to this Contract.

70.10 Termination of Mediation

70.10.1 The Mediation shall terminate when:

70.10.1.1 a Party withdraws from the Mediation;

70.10.1.2 a written settlement agreement is concluded;

70.10.1.3 the Mediator decides that continuing the Mediation is unlikely to result in a settlement; or

70.10.1.4 the Mediator decides he or she should retire for any of the reasons in CEDR's code of conduct.

70.11 Confidentiality



- 70.11.1 Each of the Parties shall use all their respective reasonable endeavours to ensure that every person involved in the Mediation shall keep confidential and not use for any collateral or ulterior purpose:
- 70.11.1.1 information that the Mediation is to take place or has taken place, other than to inform a court or tribunal dealing with any litigation relating to the Dispute of that information; and
- 70.11.1.2 all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the Mediation including the fact of any settlement and its terms.
- 70.11.2 All information (whether oral or documentary and on any media) arising out of, or in connection with, the Mediation shall be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever. This does not apply to any information, which would have been admissible or disclosable in any such proceedings but for its use in the Mediation.
- 70.11.3 **Clause 70.11.1 and 70.11.2 (Confidentiality)** shall not apply insofar as any such information is necessary to implement and enforce any settlement agreement arising out of the Mediation.
- 70.11.4 None of the Parties to the Mediation shall call the Mediator or CEDR (or any employee, consultant, officer or representative of CEDR) as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever. The Mediator and CEDR shall not voluntarily act in any such capacity without the written agreement of the Parties.

70.12 Mediator's fees and expenses

- 70.12.1 CEDR's fees (which include the Mediator's fees) and the other expenses of the Mediation shall be borne equally by the Parties. Payment of these fees and expenses shall be made to CEDR in accordance with its fee schedule and terms and conditions of business.
- 70.12.2 Each Party shall bear its own costs and expenses of its participation in the Mediation.

70.13 Exclusion of Liability

70.13.1 Neither the Mediator nor CEDR shall be liable to the Parties for any act or omission in connection with the services provided by them in, or in relation to, the Mediation, unless the act or omission is shown to have been in bad faith.

70.14 Arbitration

70.14.1 Either Party may notify the other Party of its intention to refer a Dispute to Arbitration (the "**Notice of Arbitration**"). The Notice of Arbitration shall include a brief statement of the issue being referred and the redress sought provided that, if the Authority has elected to commence the Mediation process, the Contractor may not commence Arbitration until the Mediation has concluded.

70.14.2 The Arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules in force at the Commencement Date shall be applied.

70.14.3 The decision of the Arbitrator shall be binding on the Parties (in the absence of any material failure by the Arbitrator to comply with the LCIA procedural rules).

70.14.4 Subject to **clause 70.14.5 (Arbitration)**, the tribunal shall consist of a sole Arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the Arbitrator within ten (10) Business Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA.

70.14.5 If the Dispute is of a complex nature, the Parties may agree, or the Authority at its sole discretion may direct, that the tribunal shall consist of three (3) Arbitrators, to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the Arbitrators within ten (10) Business Days or, if the persons appointed are unable or unwilling to act, as appointed by the LCIA.

70.14.6 The seat of the Arbitration shall be England.

70.14.7 The language of the Arbitration shall be English and the Arbitration proceedings shall take place in London unless otherwise agreed between the Parties.

70.15 Arbitrator's Powers

The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract and, where appropriate, to order financial compensation to be paid by one (1) Party to the other.



70.16 **Arbitrator's Decision**

The Arbitrator shall deliver his or her decision on any matter referred to him or her within three (3) Months (or such other period as the Parties may agree) after concluding any hearings which may have been held in connection with the matter. The Arbitrator's decision shall be in writing and shall state his or her reasons for his or her decision. The decision of the Arbitrator shall be final and binding on both Parties. The costs of the Arbitration will be at the discretion of the Arbitrator.

70.17 **Parties' Obligations**

The Parties shall continue to comply with, observe and perform all their obligations under this Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this **clause 70 (Dispute Resolution)** and shall give effect, as soon as reasonably practicable, to every decision of the Arbitrator, if the matter is referred to Arbitration under this **clause 70 (Dispute Resolution)**.

70.18 **Urgent Relief**

Nothing in this **Part XVII (Disputes)** shall prevent either Party from seeking injunctive relief at any time.

70.19 **Adjudication**

70.19.1 This **clause 70.19 (Adjudication)** shall apply to any Dispute that arises under or in connection with the Property and Facilities Management Services (including any Works).

70.19.2 If a Dispute arises under this Contract either Party may give notice of its intention to refer such Dispute to adjudication at any time and shall within seven (7) Days thereafter refer the same to the decision of an adjudicator. For the purposes of the remainder of this **clause 70.19 (Adjudication)**, the Party referring such dispute shall be called the "**Referrer**" and the Party responding shall be called the "**Respondent**".

70.19.3 Where either Party has given notice of his intention to refer a Dispute to adjudication then:

70.19.3.1 any agreement by the Parties on the appointment of the adjudicator must be reached and the appointment made in sufficient time so that the Dispute can be referred to the adjudicator within seven (7) Days of the date of the notice of intention to refer; and

- 70.19.3.2 if the Parties are unable to agree on the appointment of the adjudicator then application to the Royal Institution of Chartered Surveyors for the appointment of the adjudicator must be made with the object of securing the appointment of and the referral of the dispute or difference to the adjudicator within seven (7) Days of the date of the intention to refer.
- 70.19.4 Upon the appointment of the adjudicator the Parties shall comply with all the directions which he or she may issue for the purposes of fairly and expeditiously considering the facts and issues in the dispute and so that the adjudicator shall reach a decision within twenty-eight (28) Days of the date of referral to him or her under **clause 70.19.3 (Adjudication)** or such longer period as is agreed by the Parties after the dispute has been referred and the adjudicator may extend the period of twenty-eight (28) Days by up to fourteen (14) Days with the Referrer's consent.
- 70.19.5 The adjudicator shall act fairly and impartially and shall take the initiative in ascertaining the facts and the law and shall reach his or her decision in accordance with the applicable Legislation in relation to this Contract and shall publish his or her decision simultaneously to both Parties.
- 70.19.6 In determining any dispute referred to him or her for a decision, the adjudicator shall:
- 70.19.6.1 consider any written representations, statements and expert's reports submitted to him or her by the Parties (which shall be exchanged between the Parties when the same are supplied to the adjudicator);
 - 70.19.6.2 afford the Parties the opportunity to address him or her in a meeting or meetings at which both Parties must be present;
 - 70.19.6.3 permit the Parties to be represented by such legal or other representatives as they shall see fit;
 - 70.19.6.4 have the power to require the Parties to produce to him or her and to the other Party copies of any documents they are able to produce which may assist in the reference (save any which would be privileged from production in court proceedings) between the Parties relating to the dispute; and
 - 70.19.6.5 be entitled to instruct an expert and to take counsel's opinion as to any matter within their field of expertise raised by the reference, but

shall not be entitled to delegate any decision to such expert or counsel.

- 70.19.7 The adjudicator may in his or her decision allocate his fees and expenses between the Parties.
- 70.19.8 The adjudicator's decision is binding upon the Parties until finally determined by legal proceedings or by agreement.
- 70.19.9 The adjudicator may, within five (5) Days of giving his decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.
- 70.19.10 The Parties hereby agree that the adjudicator (including any employee or agent of the adjudicator) appointed in accordance with this **clause 70.19 (Adjudication)** shall not be liable for anything done or omitted in the discharge or purported discharge of his or her functions as adjudicator unless the act or omission is in bad faith.
- 70.19.11 If either Party does not comply with the decision of the adjudicator the other Party shall be entitled to take proceedings in the courts to secure such compliance pending any final determination of the referred dispute or difference pursuant to this **clause 70.19 (Adjudication)**.
- 70.19.12 Subject to the provisions of **clauses 70.19.4, 70.19.6 and 70.19.14 (Adjudication)**, in deciding any dispute referred to him or her, the adjudicator shall determine and take into account any matter (a "**Cross claim**") raised by the Respondent to the notice to refer by way of defence or set off or counter claim, provided such Cross claim arises under this Contract.
- 70.19.13 **Clauses 70.19.4 to 70.19.11 (Adjudication)** (inclusive) shall apply to any Cross claim as they apply to any Dispute referred to the adjudicator pursuant to this **clause 70.19 (Adjudication)**.
- 70.19.14 **Clauses 70.19.12 and 70.19.13 (Adjudication)** shall not apply to any Cross claim if such Cross claim is being decided or has been decided by an adjudicator other than the adjudicator appointed pursuant to **clauses 70.19.1 to 70.19.4 (Adjudication)** (inclusive) to determine the relevant Dispute.

70.20 Joinder of Disputes

- 70.20.1 The Contractor and Authority agree that if a dispute arises which raises issues that are substantially the same as or connected with issues raised in a dispute



between the Authority and a Third Party (the "**Related Dispute**"), the Related Dispute may, at the option of the Authority (and to the extent that the relevant parties to the Related Dispute under any of the dispute resolution mechanisms under the relevant contract with the Third Party agree and as any adjudicator, arbitrator or expert as the case may be agrees) be referred to the same adjudicator, arbitrator or expert and be determined in the same adjudication, arbitration or expert proceedings so that the dispute and the Related Dispute are consolidated or heard concurrently or consecutively.

- 70.20.2 If the Authority exercises its right to procure the consolidation of the dispute and the Related Dispute the parties agree that the powers of the adjudicator, arbitrator or expert as the case may be shall include the power to make any directions and all necessary directions in the same way as if the procedure of the High Court as to the joining of one or more defendants or co-defendants or third parties was available to the parties.



PART XVIII - INTELLECTUAL PROPERTY

71. INTELLECTUAL PROPERTY RIGHTS

71.1 Intellectual Property Rights

Except as expressly set out in this Contract:

71.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contractor or its licensors, namely:

71.1.1.1 the Contractor Software;

71.1.1.2 the Third Party Software;

71.1.1.3 the Third Party IPRs; and

71.1.1.4 the Contractor Background IPRs;

71.1.2 the Contractor shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

71.1.2.1 the Authority Software;

71.1.2.2 the Authority Data; and

71.1.2.3 the Authority Background IPRs.

71.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in **clause 71.7.1 (IPRs Indemnity)**, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

71.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

71.4 Unless the Authority otherwise agrees in advance in writing:

71.4.1 all Project Specific IPRs comprising Software shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and

71.4.2 where the Project Specific IPRs comprising Software are written in a format that requires conversion before publication as open source software, the Contractor shall also provide the converted format to the Authority.

71.5 Transfer and Licences Granted by the Contractor

71.5.1 The Contractor hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights in the Project Specific IPRs.

71.5.2 The Contractor shall execute all such assignments as are required to ensure that any rights in the Project Specific IPRs are properly transferred to the Authority and shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Contract.

71.5.3 The Contractor hereby grants (or shall procure the grant) to the Authority a perpetual, royalty-free and non-exclusive licence to use (including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

71.5.3.1 Contractor Software; and

71.5.3.2 Contractor Background IPRs,

for any purpose relating to the Services (or substantially similar services) or otherwise to enjoy the benefit of this Contract or for any purpose connected with the full and unrestricted use of any Project Specific IPRs the rights in which are transferred to the Authority pursuant to **clause 71.5.1**.

71.5.4 The Contractor shall not use any Third Party Software or Third Party IPRs in the provision of the Services (including in any Project Specific IPRs) unless in each case it has first granted (or procured that the owner or authorised licensor of the relevant Third Party Software or Third Party IPRs (as the case may be) has granted) a perpetual, royalty-free and non-exclusive licence to the Authority to use the Third Party Software and Third Party IPRs (including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)) for any purpose relating to the Services (or substantially similar services) or otherwise to enjoy the benefit of this Contract or for any purpose connected with the full and unrestricted use of any Project Specific IPRs the rights in which are transferred to the Authority pursuant to **clause 71.5.1**. **[Note to Bidders: The Authority will, in respect of individual Call-Offs consider alternative solutions to the licensing of third party materials where this delivers a suitable benefit to the Authority]**

71.5.5 The Contractor hereby grants to the Authority a non-exclusive licence to copy all documentation provided by it, for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority

under this Contract.

71.5.6 The Authority may sub-license the rights granted under **clauses 71.5.3 and 71.5.4 (Transfer and Licences Granted by the Contractor)** to a third party (including for the avoidance of doubt, any New Contractor) provided that:

71.5.6.1 the sub-license is on terms no broader than those granted to the Authority;

71.5.6.2 the sub-license authorises the third party to use the rights licensed in **clause 71.5.3 (Transfer and Licences Granted by the Contractor)** only for purposes relating to the Services (or substantially equivalent services) or otherwise to enable the Authority to enjoy the benefit of this Contract or for any purpose connected with the full and unrestricted use of any Project Specific IPRs the rights in which are transferred to the Authority pursuant to **clause 71.5.1**;

71.5.6.3 sub-license authorises the third party to use the rights licensed in **clause 71.5.4 (Transfer and Licences Granted by the Contractor)** only for purposes relating to the Services (or substantially similar services) or otherwise to enable the Authority to enjoy the benefit of this Contract or for any purpose connected with the full and unrestricted use of any Project Specific IPRs the rights in which are transferred to the Authority pursuant to **clause 71.5.1**; and

71.5.6.4 the sub-licensee shall have executed a confidentiality undertaking in favour of the Contractor, the form of such undertaking to be provided by the Authority.

71.5.7 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to **clauses 71.5.3 and 71.5.4 (Transfer and Licences Granted by the Contractor)** to:

71.5.7.1 a Central Government Body; or

71.5.7.2 to any body which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.

71.5.8 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in

clause 71.5.3 or 71.5.4 (Transfer and Licences Granted by the Contractor). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in **clause 71.5.3 and 71.5.4.**

71.5.9 If a licence granted in **clause 71.5.3 or 71.5.4 (Transfer and Licences Granted by the Contractor)** is novated under **clause 71.5.7 (Transfer and Licences Granted by the Contractor)** or there is a change of the Authority's status pursuant to **clause 71.5.8 (Transfer and Licences Granted by the Contractor)**, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

71.5.10 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Contractor or relevant third party pursuant to or as contemplated by this **clause 71.5.**

71.5.11 Without prejudice to the licences granted pursuant to **clauses 71.5.3 and 71.5.4 (Transfer and Licences Granted by the Contractor)**, the Contractor shall, if requested by the Authority and at the Contractor's cost under the exit and handover arrangements grant (or procure the grant) to any New Contractor of a licence to use:

71.5.11.1 any Contractor Software;

71.5.11.2 Contractor Background IPRs; and/or

71.5.11.3 Third Party Software,

on terms no less favourable (including as to price and indemnification against IPRs Claims) than those on which such software and/or Intellectual Property Rights are usually made commercially available by the Contractor. **[Note to Bidders: The Authority will, in respect of individual Call-Offs consider alternative solutions to the licensing of third party materials where this delivers a suitable benefit to the Authority]**

71.6 Licences Granted By The Authority

71.6.1 The Authority hereby grants to the Contractor a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Authority Software, the Authority Background IPRs, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:

- 71.6.1.1 any relevant Sub-Contractor has entered into a confidentiality undertaking with the Contractor, the form of such undertaking to be provided by the Authority; and
 - 71.6.1.2 the Contractor shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 71.6.2 In the event of the termination or expiry of this Contract, the licence granted pursuant to **clause 71.6.1** and any sub-licence granted by the Contractor in accordance with **clause 71.6.1** shall terminate automatically on the date of such termination or expiry and the Contractor shall:
 - 71.6.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);
 - 71.6.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) Months of the termination of the licence, the Contractor may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
 - 71.6.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Contractor computer, word processor, voicemail system or any other Contractor device containing such Authority Software, Authority Background IPRs and/or Authority Data.

71.7 IPRs Indemnity

- 71.7.1 The Contractor shall at all times, during and after the Contract Period, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 71.7.2 If an IPRs Claim is made, or the Contractor anticipates that an IPRs Claim might

be made, the Contractor may, at its own expense and sole option, either:

- 71.7.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
- 71.7.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) the replaced or modified item does not have an adverse effect on any other services or the ICT environment;
 - (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.

71.7.3 If the Contractor elects to procure a licence in accordance with **clause 71.7.2.1** or to modify or replace an item pursuant to **clause 71.7.2.2**, but this has not avoided or resolved the IPRs Claim, then:

- 71.7.3.1 the Authority may terminate this Contract (if subsisting) with immediate effect by written notice to the Contractor; and
- 71.7.3.2 without prejudice to the indemnity set out in **clause 71.7.1**, the Contractor shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

71.8 Open Source Publication

71.8.1 The Contractor agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Project Specific IPRs after the Services Commencement Date.

71.8.2 The Contractor hereby warrants that the Project Specific IPRs:

- 71.8.2.1 are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way



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compromise the operation, running or security of the Project Specific IPRs or the Authority's ICT System;

71.8.2.2 shall not cause any harm or damage to any party using anything published as Open Source and that the Project Specific IPRs do not contain any Malicious Software;

71.8.2.3 do not contain any material which would bring the Authority into disrepute upon publication as Open Source;

71.8.2.4 do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Project Specific IPRs ("**Non-Party IPRs**"); and

71.8.2.5 will be supplied in a format suitable for publication as Open source ("**the Open Source Publication Material**") no later than the date in clause 71.8.1.

71.8.3 The Contractor shall ensure that the Open Source Publication Material provided to the Authority does not include any Contractor Background IPRs save that any Contractor Background IPRs that the Contractor is willing to allow to be included in any Open Source publication can remain in the Open Source Publication Material supplied to the Authority. In such a case, the Contractor hereby acknowledges that any such Contractor Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

The Contractor hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Project Specific IPRs as Open Source under clause 71.8.1.

PART XIX - SUB-CONTRACTING, ASSIGNMENT AND CHANGE IN OWNERSHIP**72. SUB-CONTRACTING AND ASSIGNMENT****72.1 Restrictions on Transfer of this Contract by the Authority**

The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:

72.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

72.1.2 any other body which performs any of the functions that previously had been performed by the Authority,

and the Contractor shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 72.1 (**Restrictions on Transfer of this Contract by the Authority**).

72.2 Any change in the legal status of the Authority such that it ceases to be a public body shall not affect the validity of the Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Authority.

72.3 Restrictions on Transfer of this Contract by the Contractor

Subject to **clauses 72.4 (Exception)**, the Contractor shall not:

72.3.1 assign, underlet, charge, sell, bargain or otherwise deal in any way with this Contract, in whole or in part, except with the prior written consent of the Authority; or

72.3.2 sub-contract any right or obligation under this Contract in whole or in part, except with the prior written consent of the Authority (such consent not to be unreasonably withheld).

72.4 Exception

The provisions of **clause 72.3 (Restrictions on Transfer of this Contract by the Contractor)** do not apply to the entry into by the Contractor or relevant Sub-Contractor of the Approved Sub-Contracts.

72.5 Sub-Contractors

72.5.1 Subject to **clause 72.3 (Restrictions on Transfer of this Contract by the Contractor)**, nothing in this Contract shall prohibit the Contractor from providing or procuring provision of the Services from a Sub-Contractor having the legal capacity, power and authority to become a party to and perform the obligations of the relevant Sub-Contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the Sub-Contractor under the relevant Sub-Contract provided that:

72.5.1.1 the Contractor has notified the Authority of the identity of such Sub-Contractor and the proposed terms of such Sub-Contract and has provided the Authority with such other information as may be required by the Authority;

72.5.1.2 the Contractor shall remain primarily and directly liable for the Contractor's obligations;

72.5.1.3 in relation to Sub-Contractors and the procurement of Sub-Contractors, the Contractor warrants and represents to the Authority that it will follow ethical procurement practices;

72.5.1.4 the Contractor shall procure that, for each proposed Sub-Contract in respect of which the Authority has requested a collateral warranty in accordance with **clause 16.7 (Works)**, it does not enter into the Sub-Contract without the associated collateral warranty with the relevant Sub-Contractor being entered into in accordance with that clause;

72.5.1.5 the Contractor shall provide the Authority with reasonable notice of any appointments of new Sub-Contractors and any material developments or changes in relation to Sub-Contractors including:

- (a) the amounts the Contractor is paying the Sub-Contractors;
- (b) activities that could give rise to material risk, including operational risk and commercial risk, for the Authority or the Contractor;
- (c) activities relating to any aspect of security;
- (d) activities relating to construction and works;

- (e) activities relating to ICT infrastructure;
- (f) activities relating to the delivery of Education (as described in **Part 2 (Education Specification) of Schedule 1 Authority's Requirements**));
- (g) activities relating to all external providers for Prison Industries (as described in **Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Services Requirements)**);
- (h) activities relating to the delivery of Interventions (as described in **Part 4 (Interventions) of Schedule 1 (Authority's Custodial Services Requirements)**);
- (i) the impact on the delivery of healthcare, social care and probation and probation services; and
- (j) activities relating to Authority Suppliers (other than the relevant Sub-Contractor party who is being replaced).

72.5.2 By entering into this Contract, the Authority:

72.5.2.1 approves the Sub-Contractors appointed by the Contractor as at the Commencement Date (the parties to the Approved Sub-Contracts); and

72.5.2.2 for the purposes of the calculation of any Contractor Breakage Costs only, confirms that it considers the Approved Sub-Contracts provided to it by the Contractor at the Commencement Date are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms.

72.5.3 The Authority shall be deemed to have approved any amendment to any Sub-Contract which is required as a result of any change made to this Contract (provided that any changes made correspond exactly in each of the Sub-Contracts and this Contract).

72.5.4 The Contractor shall include in every Sub-Contract:

72.5.4.1 a right for the Contractor to terminate that Sub-contract if the relevant Sub-Contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law;

- 72.5.4.2 a requirement that the Sub-Contractor (and any sub-contractor of that Sub-Contractor) includes a provision having the same effect as **clause 72.5.4.1 (Sub-Contractors)** in any Sub-Contract which it awards;
- 72.5.4.3 where appointing a Sub-Contractor who will act as a processor appropriate provisions in accordance with the terms set out at **paragraph 3.5.10 of Schedule 25 (Data Protection)**; and
- 72.5.4.4 where appointing a Sub-Contractor who will act as a data controller appropriate provisions in accordance with the terms set out at **paragraph 2.4.4 of Schedule 25 (Data Protection)**.

72.6 Contractor's Obligations

72.6.1 The Contractor shall:

- 72.6.1.1 perform its obligations under and observe all the provisions of any Sub-Contract with a Sub-Contractor; and be directly responsible for the management and supervision of all Sub-Contractors,

72.6.2 In relation to this Contract the Contractor shall:

- 72.6.2.1 be responsible for all acts and omissions of each of its sub contractors (including each of the Sub-Contractors) as fully as if they were the acts and omissions of the Contractor or its employees or agents;
- 72.6.2.2 be the Authority's sole point of contact for the performance of the Contractor's obligations under this Contract; and
- 72.6.2.3 notify the Authority in the event that a Sub-Contractor encounters insolvency, liquidation, administration and shall immediately terminate the Sub-Contract and make alternative arrangements.

72.7 Management Charges and Information

- 72.7.1 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management and Charges Information Reports to the Authority which incorporate the date described in the SME Management and Charges Information Reporting Template which is:

- 72.7.1.1 the total contract revenue received directly on a specific contract;
- 72.7.1.2 the total value of sub-contracted revenues under this Contract (including revenues for non-SMEs/non-VCSEs); and
- 72.7.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.

72.7.2 The SME Management and Charges Information Reports shall be provided in the correct format as required by the SME Management and Charges Information Reporting Template and any guidance issued by the Authority from time to time. The Contractor shall use the SME Management and Charges Information Reporting Template. The Authority shall give at least thirty (30) Days' notice in writing of any such change and shall specify the date from which it must be used.

72.7.3 The Contractor further agrees and acknowledges that it may not make any amendment to the current SME Management and Charges Information Reporting Template without the prior written approval of the Authority.

72.8 Employment of Sub-Contractors by the Authority

Nothing in this Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority.

72.9 Advertising Sub-Contractor Opportunities

72.9.1 The Contractor shall:

- 72.9.1.1 subject to **clause 72.9.3 (Advertising Sub-Contractor Opportunities)**, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Contract Period;
- 72.9.1.2 within ninety (90) Days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
- 72.9.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
- 72.9.1.4 provide reports on the information at **clause 72.9.1.3 (Advertising**

Sub-Contractor Opportunities) to the Authority in the format and frequency as reasonably specified by the Authority; and

72.9.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

72.9.2 Each advert referred to at **clause 72.9.1 (Advertising Sub-Contractor Opportunities)** above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.

72.9.3 The obligation at **clause 72.9.1 (Advertising Sub-Contractor Opportunities)** shall only apply in respect of Sub-Contract opportunities arising after the contract award date.

72.9.4 Notwithstanding **clause 72.9 (Advertising Sub-Contractor Opportunities)**, the Authority may by giving its prior written approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

72.10 Flow Down and Payment Terms in Sub-Contracts

Where the Contractor enters into a Sub-Contract with a Sub-Contractor, it shall include:

72.10.1 the right for the Contractor or, as appropriate, Sub-Contractor to terminate the Sub-Contract voluntarily on terms no more onerous than the Authority's right to terminate this Contract voluntarily;

72.10.2 the right for the Authority (acting by itself or with or through a third party) to take Required Action as contemplated by **clause 60 (Authority Step-In)**;

72.10.3 the right to enable the Contractor or, as appropriate, Sub-Contractor to assign or novate its rights and obligations under the Sub-Contract to the Authority or any New Contractor free of charge in connection with the termination or expiry of this Contract pursuant to an Authority request in accordance with **Schedule 24 (Handover and Exit Management)**;

72.10.4 a provision which requires payment by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) Days from receipt of a valid invoice in respect of any amount which has fallen due and payable as required by the provisions of such Sub-Contract;

72.10.5 a requirement for a provision to be included in the contracts between the Sub-Contractor and its contractors which requires payment by the Sub-Contractor to

its contractors within a specified period not exceeding thirty (30) Days from receipt of a valid invoice in respect of any amount which has fallen due and payable as required by the provisions of such contract;

- 72.10.6 a set of performance measures that mirror that of the Authority's in relation to the Education Provider;
- 72.10.7 provisions regarding the right of Contractor to monitor the performance of the Sub-contractor that are relevant and proportionate to the particular service the particular Sub-contractor is to provide on terms based upon those performance measures placed upon the Contractor by the Authority under this Contract.;
- 72.10.8 provisions for the Sub-Contractor to provide such information as necessary for the Contractor to comply with its obligations in respect of Recompensation Data required pursuant to **Schedule 24 (Handover and Exit Management)** and employee information required pursuant to **Schedule 18 (TUPE, Employees and Pensions)**.

72.11 Authority Third Party Contracts

- 72.11.1 The Authority has in place contracts for the supply of retail, utilities, education, food and staff uniforms. In relation to such supply the Contractor shall comply with the provisions of **Schedule 3 (Authority Third Party Contracts)** and, to the extent that any such goods or services are supplied by an Authority Supplier under an Authority Third Party Contract, the Contractor is not required to supply these as part of the Services. However, the Contractor acknowledges that the availability of these Authority Third Party Contracts may change from time to time, in which case the Authority shall follow the provisions of **Schedule 16 (Change Protocol)** to agree the terms of the new provision.
- 72.11.2 To the extent that the performance of the Contractor is adversely affected by the failure of an Authority Supplier (which will not include an Education Provider) to supply goods and/or services (as applicable) in accordance with its obligations under an Authority Third Party Contract this shall be deemed a Relief Event and the Contractor shall:
 - 72.11.2.1 comply with the provisions of **clause 56 (Relief Events)** in seeking such relief;
 - 72.11.2.2 provide the Authority with any evidence it may require to establish that the Contractor has been affected by the Relief Event; and
 - 72.11.2.3 take steps to mitigate any losses suffered as a result of the Relief

Event.

For the avoidance of doubt (and without limitation) this **clause 72.11** shall not apply to the Education Providers.

72.12 Exclusion of Sub-Contractors

72.12.1 Where the Authority considers whether there are grounds for the exclusion of a Sub-Contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

72.12.1.1 if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-Contractor;

72.12.1.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-Contractor and the Contractor shall comply with such a requirement.

73. CHANGE OF CONTROL

73.1 Restriction on Change of Control

73.1.1 A Change of Control may only occur with the prior written consent of the Authority which consent shall not be unreasonably withheld in the event that such Change of Control is to a Suitable Third Party. The Contractor shall within fourteen (14) Days of receipt of request provide the Authority with all such information as it may reasonably require with regard to the Change of Control and/or the proposed acquirer(s) of Control in order for it to decide whether or not to give such consent. The Authority shall not be unreasonably withholding consent pursuant to this **clause 73.1.1 (Restriction on Change of Control)** inter alia for so long as any information reasonably requested by it is outstanding or in any event for a period of not less than thirty (30) Days following any such request.

73.1.2 Without prejudice to **clause 73.1.1 (Restriction on Change of Control)**, the Contractor shall inform the Authority as soon as reasonably practicable (and as permitted by the rules of any applicable stock exchange) when it becomes aware that there may be or will be a Change of Control and shall, in any event, inform the Authority within fourteen (14) Days of any Change of Control occurring and provide the Authority with all such information as it may request with regard to the Change of Control and the proposed acquirer(s) of Control.



73.1.3 If the supply of information required pursuant to **clause 73.1.2 (Restriction on Change of Control)** would amount to a breach of any rules and regulations of any exchange on which the shares of the Contractor are admitted for listing and/or trading, or any other rules or regulations with which the Contractor is obliged to comply as a result of that listing, the Contractor shall provide the Authority with the relevant information to the fullest extent permitted by those rules and regulations.

73.2 The Authority may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, require the Contractor to inform it, as soon as reasonably practicable and in any event within thirty (30) Days of receipt of the Authority's request for details, of any Change of Control.

73.3 PART XX - GENERAL**74. ORDERING OF GOODS AND SERVICES**

Subject to the provisions of **Schedule 3 (Authority Third Party Contracts)**, neither Party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

75. AUDIT ACCESS**75.1 Provision of Information**

The Contractor shall provide to the Authority, acting by itself or its Audit Agents' all information, documents, reports, records and the like in the possession of, or available to, the Contractor and to this end the Contractor shall procure that all such items in the possession of the Contractor or any Sub-Contractor shall be available to it and the Contractor shall (and shall procure that the Sub-Contractors shall) include appropriate terms in contracts with all Sub-Contractors to this effect as may be reasonably requested by the Authority's Representative for any purpose in connection with this Contract.

75.2 Internal and External Audits

The Contractor shall:

- 75.2.1 facilitate both internal and external audits, which shall include audits by the Authority, acting by itself or through its Audit Agents, together with the Authority's own audit and assurance requirements;
- 75.2.2 discharge all of its obligations to comply, including any associated costs, with the recommendations of internal and external audits by the Authority, acting by itself or through its Audit Agents, and any notices issued by any of the same, within a timescale agreed with the Authority, which shall include the provision of regular progress reports; and
- 75.2.3 provide the Independent Monitoring Board with administrative support so as to enable it to carry out its duties at the Prison and such support shall include the provision of a clerk at the Prison to provide administrative support.

76. NO AGENCY**76.1 No Partnership or Employment**

Save as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall be construed as creating a

partnership, joint venture or a relationship of employer and employee between the Authority and the Contractor.

76.2 Power to Bind

Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to make representations, enter into commitments or otherwise bind the Authority in any way.

76.3 Deemed Knowledge

Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of this Contract as is held (or ought reasonably to be held) by any Contractor Related Party.

77. ENTIRE AGREEMENT

77.1 Prior Representations etc Superseded

Except where expressly provided in this Contract, this Contract together with a completed, signed and dated Framework Agreement and other documents referred to in them constitute the entire agreement between the Parties in connection with the subject matter dealt with in them and supersede all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

77.2 Acknowledgements

77.2.1 Each of the Parties acknowledges that:

77.2.1.1 subject to **clause 5.1 (Contractor Warranties)**, it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy under this Contract; and

77.2.1.2 this **clause 77 (Entire Agreement)** shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies

available shall be all those available under the law governing this Contract.

78. THIRD PARTY RIGHTS

- 78.1 Any Police Authority in the United Kingdom (and the statutory successors of any Police Authority) has the right to enforce **clause 68.5 (Insurance)** only of this Contract, subject to and in accordance with **clause 68.5 (Insurance)** and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 78.2 The provisions of **clause 65 (Data Protection)** and **Schedule 25 (Data Protection)** confer benefits on Relevant Organisations and are intended to be enforceable by the Relevant Organisations by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 78.3 Except as stated in **clauses 78.1 and 78.2 (Third Party Rights)** or as otherwise expressly provided in this Contract, no term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.

79. REPRESENTATIVES

79.1 Representatives of the Authority

- 79.1.1 As at the Commencement Date, the Authority's Representative(s) shall be the person or persons appointed to act on behalf of The Secretary of State as notified in writing to the Contractor, or such other person or persons who may be appointed from time to time by the Authority pursuant to this **clause 79.1 (Representatives of the Authority)**.
- 79.1.2 The Authority's Representative shall exercise the functions and powers of the Authority in relation to this Contract which are identified in this Contract as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Contract as may be notified to the Contractor from time to time.
- 79.1.3 The Authority's Representative shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Authority delegated to him or her pursuant to this clause, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Authority's Representative and all references to the "Authority's Representative" in this Contract (apart from this **clause 79.1.3 (Representatives of the Authority)**) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

- 79.1.4 The Authority may by notice to the Contractor change the Authority's Representative. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Contract).
- 79.1.5 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his or her functions under this Contract) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.
- 79.1.6 Except where notified in writing by the Authority before such act or instruction, the Contractor and Contractor's Representative shall be entitled to treat any act or instruction of the Authority's Representative which is authorised by this Contract as being expressly authorised by the Authority and the Contractor and the Contractor's Representative shall not be required to determine whether authority has in fact been given.
- 79.1.7 Except where notified in writing by the Authority before such act or instruction, the Contractor and Contractor's Representative shall not be entitled to treat any act or instruction of the Authority's Representative or any other officer, employee or other person engaged by the Authority which is not authorised by this Contract as being authorised by the Authority and shall be required to determine by notice to the Authority whether an express authority has in fact been given.

79.2 Representatives of the Contractor

- 79.2.1 As at the Commencement Date, the Contractor's Representative shall be the person appointed to act on behalf of the Contractor as notified in writing to the Authority, or such other person who may be appointed from time to time by the Contractor pursuant to this **clause 79.2 (Representatives of the Contractor)**.
- 79.2.2 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.

79.2.3 The Contractor may by notice to the Authority, change the Contractor's Representative. Where the Contractor wishes to do so it shall, by written notice to the Authority, propose a substitute representative, taking account of the need for liaison and continuity in respect of the Contract. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

79.3 Appointment of Representatives

At any time the Authority may appoint more than one Authority's Representative and the Contractor may appoint more than one Contractor's Representative, provided in each case the appointer Party provides written confirmation to the Contractor or Authority (as appropriate) of the extent of its representative's authority.

80. NOTICES

All notices required to be issued under this Contract shall be served in accordance with the provisions of **Schedule 22 (Notices)**.

81. SEVERABILITY

81.1 If any term, condition, clause or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition, clause or provision shall, to that extent be omitted from this Contract and not affect the validity, legality or enforceability of the remaining parts of this Contract.

81.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

82. WAIVER AND CUMULATIVE REMEDIES

82.1 Waiver

The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or under applicable Legislation shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

82.2 Cumulative Remedies



Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Legislation, in equity or otherwise.

83. **GOVERNING LAW AND JURISDICTION**

83.1 This Contract any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

83.2 Subject to **clause 70 (Dispute Resolution)** (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

84. **SOLE REMEDY**

84.1 **Common Law Rights for the Contractor**

Without prejudice to any entitlement of the Contractor:

84.1.1 to specific performance of any obligation under this Contract;

84.1.2 to injunctive relief; or

84.1.3 to any other express right of the Contractor pursuant to this Contract,

the Contractor's sole remedy in relation to any Compensation Event shall be the operation of **clause 12 (Compensation Events)**.

84.2 **No Breach**

The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is a result of the Authority's breach of its obligations under this Contract.

84.3 **Indirect Losses**

Save where stated to the contrary, neither Party shall have any liability to the other (whether pursuant to an express indemnity or otherwise) in respect of any Indirect Loss.

84.4 **Right to Terminate**

Neither Party may terminate this Contract, except as expressly set out in this Contract.



85. **NO DOUBLE RECOVERY**

Notwithstanding any other provision of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

86. **COUNTERPARTS**

This Contract may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract but all the counterparts together shall constitute one and the same instrument.

87. **CAPACITY**

Without prejudice to the remedies and contractual rights of the Contractor in respect of a risk or liability or obligation expressly provided in this Contract as being a risk, liability or obligation of the Authority:

- 87.1 nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain, the Authority in any capacity other than in its capacity as a contracting counterparty; and
- 87.2 the exercise by the Authority of its duties powers and functions in any capacity other than in its capacity as a contracting counterparty shall not lead to any liability under this Contract on the part of the Authority to the Contractor.

88. **FURTHER ASSURANCE**

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.



OFFICIAL

HMP []

Commercial and Contract Management Directorate

SIGNED by)
for and on behalf of the **Secretary of State**)
for Justice)
in the presence of:)

SIGNED by [CONTRACTOR NAME])
acting by)
)
)
)

.....
Full Name (Director)

.....
Signature of Director

in the presence of:

.....
Full Name (Witness)

.....
Address

.....
Signature of Witness