

hereby 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.

58.8

- (a) The parties agree that the provisions of this Contract shall, subject to Clause **58.8(b) (Information and Confidentiality)**, not be treated as Confidential Information and may be disclosed without restriction.
- (b) **Clause 58.8(a) (Information and Confidentiality)** shall not apply to provisions of this Contract which are designated as Commercially Sensitive Information and listed in **Schedule V (Commercially Sensitive Information)** which shall, subject to **Clause 58 Information and Confidentiality**, be kept confidential for the periods specified of **Schedule V (Commercially Sensitive Information)**.
- (c) The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Contract or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any Person of any such Confidential Information.

58.9 **Clauses 58.8(b) (Information and Confidentiality)** and **58.8(c) (Information and Confidentiality)**, shall not apply to:

- (a) any disclosure of information that is reasonably required by any Person engaged in the performance of their obligations under this Contract for the performance of those obligations;
- (b) 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 58 (Information and Confidentiality)**;
- (c) any disclosure to enable a determination to be made under **Clause 72 (Dispute Resolution)** or in connection with a dispute between the Contractor and any of its subcontractors;
- (d) 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;

- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any provision of information to the parties' own professional advisers or insurance advisers or to the Banks or the Banks' professional 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 to enable it to carry out 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;
- (g) any registration or recording of the Planning Approvals and property registration required;
- (h) 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; or
- (i) any disclosure for the purpose of:
 - (i) the examination and certification of the Authority's or the Contractor's accounts;
 - (ii) 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,
 - (iii) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (iv) (without prejudice to the generality of **Clause 58.9 (b) (Information and Confidentiality)** compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither **Clauses 58.9 (i)(iv) (Information and Confidentiality)** or **58.9(d) (Information and Confidentiality)** shall permit disclosure of Confidential Information otherwise prohibited by **Clause 58.8(c) (Information and Confidentiality)** where that information is exempt from disclosure under section 41 of the FOIA.

- 58.10 Where disclosure is permitted under **Clause 58.9 (Information and Confidentiality)**, other than Clauses **58.9(b), 58.9(d), 58.9(e) or 58.9(h) (Information and Confidentiality)**, 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.
- 58.11 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such Documents as he 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 considers necessary. For the avoidance of doubt it is hereby 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.
- 58.12 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.
- 58.13 Where the Contractor in carrying out its obligations under the 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 prior written consent of the Authority.
- 58.14 The parties acknowledge that the National Audit Office has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 58.15 The provisions of this **Clause 58 (Information and Confidentiality)** are without prejudice to the application of the Official Secrets Acts 1911 and 1989.
- 58.16 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in **Clauses 58.17 to 58.23 (Information and Confidentiality)**.

- 58.17 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within seven (7) Days of receiving a Request for Information and the Contractor shall:
- (i) provide the Authority with a copy of all such information in the form that the Authority requires as soon as practicable and in any event within ten (10) Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
 - (ii) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 58.18 Following notification under **Clause 58.17 (Information and Confidentiality)**, and up until such time as the Contractor has provided the Authority with all the Information specified in **Clause 58.17 (Information and Confidentiality)**, the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:
- (i) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
 - (ii) whether Information is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly or allow its Sub-contractors to respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 58.19 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure at least five (5) Years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.
- 58.20 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Days of receiving it.

- 58.21 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
- 58.22 In the event of a request from the Authority pursuant to **Clause 58.17 Information and Confidentiality**) the Contractor shall as soon as practicable and in any event within five (5) Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) Day period for compliance shall be extended by such number of Days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional Days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 58.23 The Contractor acknowledges that (notwithstanding the provisions of **Clauses 58.8 (Information and Confidentiality) to 58.23 (Information and Confidentiality)** the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:
- (i) in certain circumstances without consulting with the Contractor; or
 - (ii) following consultation with the Contractor and having taken their views into account, provided always that where **Clause 58.23 (i) Information and Confidentiality**) applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

59. Intellectual Property Rights

Contractor's Work Products

- 59.1 The Contractor hereby grants to the Authority a perpetual, irrevocable non-exclusive, transferable, royalty free licence to do all acts (including to use, copy, adopt, translate, arrange and otherwise alter and to grant of sub-licences) in relation to the Contractor's Work Products (excluding any Existing Work Products to the extent they are incorporated in or form part of the Contractor's Work Products) which would otherwise be an infringement of the Intellectual Property Rights subsisting in or relating to the Contractor's Work Products for the purpose of, or in connection with the conduct of, the Services or any similar services carried out by or on behalf of the Authority at any time in connection with the Prison.
- 59.2 Without limiting the scope of the licence in **Clause 59.1 (Contractor's Work Products)**, the licence shall include the right to grant sub-licences to third parties for the purpose of the design, construction, maintenance, operation, or management of the Prison at any time on or after the occurrence of or in connection with a Relevant IP Event.
- 59.3 The Contractor shall notify the Authority in writing when the creation of any Contractor's Work Product has begun and on completion of the Contractor's Work Product.
- 59.4 Where the Contractor's Work Product is computer software which has been wholly and exclusively developed during the Contract Term:
- (a) the Contractor shall provide to the Authority or its nominee (or procure the provision to the Authority or its nominee of) such software corrections, upgrades, updates and other support services as the Authority may reasonably require on reasonable commercial terms, including a reasonable charge, or on other terms as may be agreed between the Authority and the Contractor in writing; and
 - (b) without affecting the Authority's rights under the provisions of this **Clause 59 (Contractor's Work Products)**, the Contractor shall place the source code, preparatory materials and any related Documents or information relating to the Contractor's Work Product in escrow with the National Computing Centre (or any successor in title to its source code escrow business) (the **National Computing Centre**) in the United Kingdom pursuant to a contract which entitles the Authority or its nominee (as the case may be) to have the source code released from escrow and licensed in accordance with this **Clause 59 (Contractor's**

Work Products) (as the case may be) on the occurrence of any event pursuant to which the Authority assumes control of the Prison, including, but without limitation, a termination or expiry of the Contract, or the exercise by the Authority of its powers pursuant to Section 88, and which is otherwise subject to the appropriate standard terms for a single licensee (UK) including as to allocation of costs of the National Computing Centre. The contract to which this **Clause 59.4(b) (Contractor's Work Products)** refers may also entitle the Contractor to receive a copy of the source code, but not as an alternate to, or in substitution for, the Authority or its nominee.

Existing Work Products incorporated into Contractor's Work Products

59.5 Where the Contractor (or any Sub-contractor) proposes to incorporate any Existing Work Product or any part thereof into a Contractor's Work Product, the Contractor shall grant or procure the grant to the Authority or the Relevant Successor of a licence (the "**Required Licence**") in relation to the Existing Work Product in accordance with this **Clause 59.5 (Existing Work Products incorporated into Contractor's Work Products)**. If the Intellectual Property Rights in or to such Existing Work Product are owned by:

- (a) the Contractor, the Operating Sub-contractor or the Construction Sub-contractor or any of their Affiliates, then consideration for the grant of the Required Licence to the Authority shall be [REDACTED] payable by the Authority to the grantor and the terms of the Required Licence shall be the same terms as in **Clause 59.1 (Contractor's Work Products)**; and
- (b) any party other than those referred to in (a) above, then the following shall apply:
 - (i) the Contractor shall promptly notify the Authority in writing giving reasonable details of the relevant Existing Work Product and the terms (if any) on which the Contractor, a Sub-contractor or their Affiliate is entitled to use the Existing Work Product;
 - (ii) the Authority shall notify the Contractor in writing within a reasonable time whether the Authority requires the Required Licence to authorise acts to be undertaken for the purpose of, or in connection with the conduct of, the whole or part of Her Majesty's Prison Service (**Extended Licence**), and in default of a notice received by the Contractor within a reasonable time, which shall not be more than sixty (60) Days from the date the Contractor's

notice is received by the Authority, **Clause 59.5(b)(iv) (Existing Work Products incorporated into Contractor's Work Products)** shall apply;

- (iii) where the Authority requires an Extended Licence, the Extended Licence shall be granted to the Authority and the scope of the Extended Licence shall be as the Authority may reasonably require in writing provided that the Extended Licence shall not apply in relation to the design, construction, maintenance, operation or management of the Prison until a Relevant IP Event occurs. The Contractor shall propose to the Authority reasonable commercial terms for the grant of the Extended Licence. The Authority may enter into a contract with the relevant third party for the grant of the Extended Licence on such terms, but if the Authority does not do so within a reasonable time which shall not be more than sixty (60) Days from the date the offer of the Extended Licence on such terms is received by the Authority, the Contractor (having procured an offer of the Extended Licence on such terms) may proceed to incorporate the Existing Work Product or part thereof into the Contractor's Work Product. The consideration payable under that contract to the relevant third party shall be paid by the Authority;
- (iv) where the Authority does not require an Extended Licence or fails to serve a notice in accordance with **Clause 59.5(b)(ii) (Existing Work Products incorporated into Contractor's Work Products)**, and in either case where a Relevant IP Event occurs from time to time (but not otherwise), the Required Licence shall entitle the Relevant Successor to use the Existing Work Product for the purpose of the design, construction, maintenance, operation or management of the Prison and shall include the right to grant sub-licences to a Relevant Successor on substantially the same terms, and shall otherwise be on reasonable terms or such other terms as the parties may agree in writing.

Standalone Existing Work Products

- 59.6 Where the Contractor or any Sub-contractor proposes to use any Existing Work Product, the Intellectual Property Rights in or to which are owned by the Contractor or any Sub-contractor or any of their Affiliates, in connection with the Services other than by incorporating it in or making it part of any Contractor's Work Product, the Contractor shall notify the Authority accordingly.

- (a) Where a Relevant IP Event occurs from time to time, the Contractor shall grant or shall procure that there shall be granted to the Relevant Successor a licence to use, copy, adapt, translate, arrange and otherwise alter, or to do any of those acts as the Relevant Successor may require in relation to, all such Existing Work Products then used or which have been used for the purpose of the Services and which may be required thereafter by the Relevant Successor; any such licence being limited to such acts for the purpose of the design, construction, maintenance, operation or management of the Prison by the Relevant Successor.
 - (b) The licence to which **Clause 59.6(a) (Standalone Existing Work Products)** refers shall include the right to grant sub-licences to a nominee of the Authority on substantially the same terms.
 - (c) The licence to be granted to the Relevant Successor under **Clause 59.6(a) (Standalone Existing Work Products)** shall be non-exclusive and otherwise on reasonable terms, or such other terms as the parties may agree in writing.
- 59.7 Where the Contractor or any Sub-contractor proposes to use any Existing Work Product to which **Clause 59.7(d) (Standalone Existing Work Products)** refers in connection with the Services other than by incorporating it in or making it part of any Contractor's Work Product, the Contractor shall notify the Authority accordingly.
- (a) Where a Relevant IP Event occurs from time to time, the Contractor shall use all best endeavours to procure for the Relevant Successor a licence to use all such Existing Work Products then used or which have been used for the purpose of the Services and which may reasonably be required thereafter by the Relevant Successor; any such licence being limited for the purpose of the design, construction, maintenance, operation or management of the Prison.
 - (b) The licence to which **Clause 59.7(a) (Standalone Existing Work Products)** refers shall include the right to grant sub-licences to a Relevant Successor on substantially the same terms, and shall otherwise be on reasonable terms or such other terms as the parties may agree in writing.
 - (c) Where the Contractor is in breach of **Clause 59.7(a) (Standalone Existing Work Products)** or the Contractor is otherwise unable to procure the licence within a reasonable time (such time to be determined taking into account the effect which the absence of the licence will have, or may reasonably be expected to have, on the design, construction,

maintenance, operation or management of the Prison), without affecting the Authority's other rights, the Authority shall be entitled to procure for the Relevant Successor its own such licence.

- (d) This **Clause 59.7 (Standalone Existing Work Products)** applies to all Existing Work Products, the Intellectual Property Rights which are owned by a third party other than a Sub-contractor or any Affiliate of the Contractor or any Sub-contractor, and which are licensed to the Contractor or any Sub-contractor or any Affiliate at the date of the Contract.

Miscellaneous

- 59.8 The Contractor shall notify any proposed assignee of any Intellectual Property Rights subsisting in or relating to the Contractor's Work Products (other than Existing Work Products, the Intellectual Property Rights in or to which are owned by a Person other than the Contractor, a Sub-contractor or any of their Affiliates) of the existence of the Contract and of the licences granted under or in accordance with the Contract and shall otherwise ensure that any such assignment is subject to such licences.
- 59.9 Subject to the limits of the Contractor's liability in the Contract, the Contractor warrants and undertakes that no act of the Authority or any sub-licensee within the scope of the licences granted under or in accordance with the previous terms of this **Clause 59 (Intellectual Property Rights)**, or any permitted sub-licence granted by the Authority or a Relevant Successor, shall infringe the Intellectual Property Rights of any third party.
- 59.10 All Intellectual Property Rights in Work Products produced by the Authority shall vest in and be the property of the Crown (the **"Authority's Work Products"**).
- 59.11 The Authority hereby grants to the Contractor from the date hereof until the expiry of the Contract Term a non-exclusive free of charge licence to use such of the Authority's Work Products as are necessary to perform the Services for use in connection with the design, construction, maintenance, operation or management of the Prison in accordance with the Contract together with the right to grant sub-licences to Sub-contractors.
- 59.12 If the Contractor employs or engages a Prisoner to work in return for financial consideration, no property or Intellectual Property Rights

relating to the Product of a Prisoner's Labour shall vest in the Authority, and the **Product of a Prisoner's Labour** shall be those things resulting directly from the paid employment or engagement.

59.13 If a Prisoner creates or produces a work or an invention or a performance, and the said work or invention or performance is not a Product of a Prisoner's Labour within the meaning of **Clause 59.12 (Miscellaneous)** no Intellectual Property Rights shall vest in the Authority or the Contractor in relation to the said work, invention or performance.

59.14 The Contractor shall hold harmless and indemnify the Authority for any and all liability, loss, damages, costs (including but without limitation, reasonable legal and other professional costs (in the case of legal costs, on a solicitor client basis)) and expenses incurred or suffered by the Authority (including, but without limitation, losses arising out of or connected with the Authority's inability to continue using any part of the Services and any requirement for the Authority to procure a replacement for any part of the Services) arising out of or connected with any claim or proceedings brought against the Authority that the provision of the Services or the manner in which they are provided or the Authority's use of any of the Services or the Contractor's Work Products or the obtaining of the benefit of any IT/IP Contracts infringes the Intellectual Property Rights or any other rights of any third party.

59.15 In circumstances where an infringement as referred to in **Clause 59.14 (Miscellaneous)** occurs:

- (a) the Authority shall notify the Contractor in writing of any relevant claim or proceedings brought against the Authority promptly after becoming aware of any such claim or proceedings;
- (b) the Contractor shall have sole control over the defence of any such claim or proceedings and over all negotiation in relation thereto and, in particular, the Authority shall not make or attempt to make any settlement or admit any liability in relation to such claim or proceedings;
- (c) the Authority shall provide all such Documents, information and assistance and do all such acts and things as the Contractor may reasonably require to assist it in relation to any such claim proceedings; and
- (d) the Authority shall take all steps which may be reasonably necessary to mitigate its loss in respect of such claim or proceedings which include,

without limitation, the exercise of any of its rights under **Clause 59.16 (Miscellaneous)**.

59.16 If the Authority is prohibited by a court order from using any of the Services, or if any such infringement as referred to in **Clause 59.14 (Miscellaneous)** above occurs, or in the Authority's reasonable opinion may occur, then the Authority may require the Contractor to:

- (a) procure for the Authority the right to continue using the Services in question;
- (b) modify or amend the Services in question so that the same become non-infringing without substantially reducing the functionality or performance thereof; and
- (c) replace all or part of the Services in question with deliverables of similar capability and functionality,

and shall fulfil one of these options as soon as reasonably practicable. The indemnity contained in **Clause 59.14 (Miscellaneous)** shall apply in respect of any period during which the Authority is prevented from using the relevant Services or the Contractor's Work Products or the obtaining of the benefit of any of the IT/IP Contracts.

59.17 The provisions of **Clauses 59.14 (Miscellaneous)** to **59.17 (Miscellaneous)** shall continue in force after expiry or termination of this Contract, for whatever reason.

59A Procurement of IP and IT

59A.1 The Contractor shall enter into each IT/IP Contract with the counterparty (the "**Supplier**") or shall procure that each IT/IP Contract shall be entered into between the Operating Sub-contractor and the Supplier (and for the avoidance of doubt, except and on such terms as the Authority may specify, no other Sub-contractor shall enter into an IT/IP Contract), and except as provided in **Clause 59A.1(d)** and **(e) (Procurement of IP and IT)**, the Contractor shall procure that each IT/IP Contract shall include the terms described in **(a)** to **(c)** of this **Clause 59A.1 (Procurement of IP and IT)**.

- (a) An acknowledgement by the Supplier that the benefit and/or burden of the IT/IP Contract or any part of it shall be used by the Contractor or the Operating Sub-contractor or its successors to the IP/IT Contract from time to time, in connection with the design, construction, maintenance,

operation or management (as the case may be) of the Prison for the purposes of the Authority.

- (b) Upon receipt of written notice from the Contractor or the Operating Sub-contractor (whichever is the party to the IT/IP Contract (being **the Relevant Party**)), the Supplier shall novate the rights and obligations of the Relevant Party under the IT/IP Contract to the Authority or its nominee, as the case may be.
- (c) An obligation on the Supplier to execute such deeds or other Documents and do such things as the Authority may reasonably require in order to effect the novation.
- (d) Where the IT/IP Contract (if entered into) would be a contractual licence relating to any off-the-shelf computer program customarily licensed by the licensor on its standard terms of business, the Contractor shall use all reasonable endeavours to procure that the IT/IP Contract contains the terms set out in (a) to (c) of this **Clause 59A.1 (Procurement of IP and IT)**.
- (e) Where the Contractor is in breach of **Clause 59A.1(d) (Procurement of IP and IT)** or the Contractor is otherwise unable to procure that the IP/IT Contract contains such terms, the Contractor shall nevertheless be entitled to enter into the IT/IP Contract and to use the subject matter of the IT/IP Contract in connection with the provision of the Services; provided that where a Relevant IP Event occurs, the Authority shall be entitled to procure a contract for the Relevant Successor either (i) with the relevant third party on substantially the same terms as the relevant IT/IP Contract, or (ii) with any other third party for the supply of technology and/or services comparable to the subject matter of the IT/IP Contract on reasonable commercial terms, in either case in connection with the design, construction, maintenance, operation or management of the Prison by the Authority or its nominee.

59A.2 Without affecting **Clause 59A.1(Procurement of IP and IT)**, the Contractor shall, and, where the Operating Sub-contractor is the Relevant Party, shall procure that the Operating Sub-contractor shall, use all reasonable endeavours to procure that any IT/IP Contract:

- (a) obliges the Supplier to place the source code of any software supplied under the IT/IP Contract in escrow with the National Computing Centre (or any successor in title to its source code escrow business) in the United Kingdom pursuant to a contract which entitles the Authority or its nominee (as the case may be) to have released from escrow, and to use

a copy of the source code for the purpose of the design, construction, maintenance, operation or management of the Prison, and which is otherwise subject to the then standard terms of the National Computing Centre (or its successor as the case may be). The contract to which this **Clause 59A.2(Procurement of IP and IT)** refers may also entitle the Contractor or Operating Sub-contractor to receive a copy of the source code, but not as an alternate to, or substitute for, the Authority or its nominee;

- (b) gives the Relevant Party (or its successor) the right to assign the benefit of the IT/IP Contract without the consent of the Supplier;
- (c) gives the Relevant Party the right to sub-license its rights without the consent of the Supplier; and
- (d) shall not be affected by any change of control of the Relevant Party (or any successor thereto).

59A.3 Save as provided in **Clause 59A.1(e) (Procurement of IP and IT)**, where any of the following occurs from time to time:

- (i) a new Operating Sub-contractor is to be introduced in accordance with **Clause 39A (Benchmarking)**; or
- (ii) the Contract expires or is terminated early; or
- (iii) there occurs a replacement of the Contractor or any Sub-contractor pursuant to the Direct Agreement or this Contract

(any such event described in **(i)** to **(iii)** being a **Relevant IP Event**), then, on receipt of the written request of the Authority, the Contractor shall procure that all Relevant IT/IP Contracts shall be novated in favour of the Relevant Successor.

For these purposes:

Relevant IT/IP Contracts means, where the Relevant IP Event is an event described in:

- (a) **Clause 59A.3(i)(Procurement of IP and IT)**, all IT/IP Contracts to which the Operating Sub-contractor is a party at the date of the Authority's written request;
- (b) **Clause 59A.3(ii)(Procurement of IP and IT)**, all IT/IP Contracts in existence at the date of the Authority's written request;

(c) **Clause 59A.3(iii) (Procurement of IP and IT)**, and:

(aa) the Contractor is replaced, all IT/IP Contracts to which the replaced Contractor is a party in existence at the date of the Authority's written request; or

(bb) a Sub-contractor is replaced, all IT/IP Contracts to which the replaced Sub-contractor is a party in existence at the date of the Authority's written request,

and in any case which IT/IP Contracts are specified by the Authority as being required for the design, construction, maintenance, operation or management of the Prison by the Relevant Successor.

For these purposes, **Relevant Successor** means, in the case of a Relevant IP Event described in **Clause 59A.3(ii) (Procurement of IP and IT)**, the Authority or its nominee, and in any other case, the replacement Contractor and/or Operating Sub-contractor.

59A.4 Where the Authority requests the novation of any IT/IP Contract under **Clause 59A.3 (Procurement of IP and IT)**:

(a) the Contractor shall, and, where the Operating Sub-contractor is the Relevant Party, shall procure that the Operating Sub-contractor shall issue the notice to the Supplier to which **Clause 59A.1(b) (Procurement of IP and IT)** refers and shall:

(i) use all reasonable endeavours to procure that the Supplier complies with its obligations under the IT/IP Contract and otherwise consents to the proposed novation; and

(ii) shall execute such deeds or other Documents and do such other things as the Authority may reasonably require in order to effect the novation;

(b) until all relevant consents or other formalities (if any) required in order to effect the novation have been obtained or complied with, the Relevant Successor shall be exclusively entitled to the benefit of the IT/IP Contract for the purposes of the design, construction, maintenance, operation or management of the Prison (as the case may be); and

(c) during the period the Relevant Successor is entitled to the benefit of any IT/IP Contract, the Authority shall, or shall procure that any Relevant

Successor shall, perform the obligations of the Relevant Party under the IT/IP Contract.

59A.5 Notwithstanding the terms of any novation to which **Clause 59A.4 (Procurement of IP and IT)** refers:

- (a) the Authority shall fully and effectively indemnify the Contractor against all Losses suffered or incurred by the Contractor or the Operating Sub-contractor by reason of the failure of the Relevant Successor to observe and perform or procure to have observed and performed all obligations of the Relevant Party under any IT/IP Contract novated in accordance with this **Clause 59A(Procurement of IP and IT)** to the extent that such Contract should have been performed on or after the date of novation (the "**Effective Date**"); and
- (b) with effect from the Effective Date, the Contractor shall keep the Authority fully and effectively indemnified against all Losses suffered or incurred by the Authority by reason of the failure before the Effective Date of the Relevant Party to perform its obligations under the novated IT/IP Contract. The Contractor acknowledges that any loss, damage, cost and/or expense to be indemnified under this **Clause 59A.5(b) (Procurement of IP and IT)** may be incurred by the Authority pursuant to an indemnity in similar terms given by the Authority to a Relevant Successor.

59A.6 The Contractor undertakes that all computer and communications systems used by the Contractor or any Sub-contractor in connection with the Services when they are accepted or (if earlier) first used by the Contractor or Sub-contractor shall be, and thereafter shall be maintained (subject to reasonable wear and tear), free from Operating Defects in design materials and workmanship, and programming errors in the case of software. An **Operating Defect** for the purpose of this **Clause 59A.6 (Procurement of IP and IT)** means a defect or error which prevents the system from performing substantially in accordance with its specifications in any respects.

59A.7 The Contractor shall take all reasonable care to ensure the computer and communications used by the Contractor or any Sub-contractor are free of Viruses including using good quality up-to-date, commercially available virus checking software.

59A.8 The Contractor shall create and maintain a register containing the following information:

- (a) details of all licences of Intellectual Property Rights to which the Contractor or any Sub-contractor is a party and contracts for the procurement of computer or communications technology and/or services or other services concerning information or communications technology, the benefit of which is to be used in connection with the Services, including the date of the licence or contract, the parties, a description of the relevant hardware, software or service, the purpose for which the software is used or capable of use, the platform on which the software is licensed to run, the duration, the parties licensed to use the relevant software and the assignability of the licence;
- (b) any other relevant consents relating to any software used by or on behalf of the Contractor or any Sub-contractor in providing the Services;
- (c) details of all existing and planned Contractor's Work Products required to be notified under **clause 59A.3 (Contractor's Work Products)**, including (where appropriate) a description of any software, the purpose for which such software is used or capable of use; and
- (d) details of all hardware leases.

59A.9 The Contractor shall allow the Authority or its representative access to such register at all reasonable times and permit the Authority or its representative to take, or at the Authority's request, provide, copies of all or part of the register or its contents. The Authority shall reimburse the Contractor its reasonable costs incurred in taking or providing such copies.

IP and IT Costs

- 59B.1 Except as provided otherwise in the Contract, where a Relevant IP Event occurs, any costs incurred by the Authority from time to time in connection with the grant of a Required Licence under **Clause 59.5(b)(iv)(Existing Work Products incorporated in to Contractor's Work Products)** or a licence under **Clauses 59.7(a) or (c) (Standalone Existing Work Products)**, or under a contract to which the Authority is a party under **Clause 59A.1(e) (Procurement of IP and IT)**, in any case including payment of fees or charges to a third party, shall be recoverable from the Contractor as a liability due to the Authority.
- 59B.2 The terms for the grant to the Authority of the licences to which **Clause 59.6 (Standalone Existing Work Products)** refers shall include a reasonable fee payable by the Authority only where the Relevant IP

Event is the introduction of a new Operating Sub-contractor in accordance with **Clause 39A (Benchmarking)**, but in any other case, the licence shall be free of charge.

60. **Contractor's Records**

60.1 The Contractor shall at all times:

- (a) maintain a full record of particulars of the costs of performing the Services, including those relating to design, build, maintenance and operation. Such records shall further include details of any commitments made by the Contractor for future expenditure and details of any funds held by the Contractor; and
- (b) when requested by the Authority, furnish the summary of any of the aforementioned costs in such form and detail as the Authority may reasonably require; and
- (c) afford such facilities as the Authority may reasonably require for its representatives to visit the Site (or any other place where the records are held) and examine the records maintained under this **Clause 60 (Contractor's Records)**,

and shall procure that the Operating Sub-contractor shall maintain a full record of particulars of the costs of performing its obligations under the Sub-contract between itself and the Contractor and that the Authority shall on request be furnished with details thereof in such form and detail as the Authority may reasonably require.

60.2 For the duration of the Contract, the Contractor:

- (a) shall furnish to the Authority:
 - (i) as soon as they become available (and in any event within ninety (90) Days of the end of each of its financial periods) copies of its audited financial statements for that period which shall contain an income statement and a balance sheet and a cash flow statement and be audited and certified without qualification by a firm of independent accountants;
 - (ii) as soon as they become available (and in any event within thirty (30) Days of the end of each of its financial half-years and within thirty (30) Days of each Review Date) copies of its unaudited financial statements for that half-year or year (as the case may be)

which shall contain an income statement, a balance sheet and a cash flow statement; and

- (b) will prepare the financial statements referred to in **Clause 60.2(a) (Contractor's Records)** on a basis consistently applied in accordance with generally accepted accounting principles in England and Wales and those financial statements shall give a true and fair view of the results of its operations for the period in question and the state of its affairs as at the date to which the financial statements are made up and shall disclose or reserve against all the liabilities (actual or contingent) of the Contractor;
- (c) at the request of the Authority, shall furnish the Authority with any and all information provided by it to the Banks during the term of the Contract.

60.3 The Contractor shall keep (and where appropriate shall procure that the Operating Sub-contractor shall keep) books of account in accordance with best accountancy practice with respect to the Contract showing in detail:

- (a) expenditure on wages and salaries;
- (b) administrative overheads;
- (c) expenditure on consumable items;
- (d) payments made to Sub-contractors;
- (e) capital and revenue expenditure; and
- (f) such other items as the Authority may reasonably require,

and the Contractor shall have (and procure that the Operating Sub-contractor shall have) items **(a)** to **(f)** available for inspection by the Authority upon reasonable notice, and shall present a report of the same to the Authority as and when requested.

60.4 The Authority's right of access to records of account shall include cost audits for verification of cost expenditure, for the purpose of **Clause 39 (Variation of Price)**.

60.5 The Contractor shall maintain or procure that the following are maintained:

- (a) a full record of all incidents relating to health, safety and security which occur during the term of the Contract;

- (b) full records of all maintenance procedures carried out during the term of the Contract;
- (c) an annual report reviewing the medical work and practice of the Prison; and
- (d) a health and hygiene report to be completed every six (6) months;

and the Contractor shall have items **(a)** to **(d)** available for inspection by the Authority upon reasonable notice, and shall present a report of the same to the Authority as and when requested.

60.6 The Contractor shall maintain such other records relating to the Services and make the same available to the Authority as the Authority may reasonably require.

60.7 The Contractor shall permit records referred to in this **Clause 60 (Contractor's Records)** to be examined and copied by the Controller and other representatives of the Authority, and by the Comptroller and Auditor General and his representatives.

60.8 The records referred to in this **Clause 60 (Contractor's Records)** shall be retained by the Contractor (or where appropriate shall procure that the Operating Sub-contractor, Construction Contractor, or Houseblock Construction Sub-Contractor shall retain) for a period of at least five (5) Years after the Contractor's obligations under the Contract have come to an end. Records relating to the construction of the Prison will be retained and provided to the Authority as set out in **Schedule N (Management and Control of documentation)**.

60.9 Upon termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the Prison, and without prejudice to the identity of any new Contractor or replacement Operating Sub-contractor, the Contractor shall (and shall ensure that the Operating Sub-contractor will) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Prison. Such information shall include information relating to the anticipated cost of a transfer of the Prison to a new Contractor.

60.10 The Contractor will control the Documents referred to in **Schedule N (Management and Control of documentation)** in the manner set out in that **Schedule N (Management and Control of documentation)**.

61. **Independent Contractor**

The Contractor shall at all times be an independent contractor and nothing in the Contract shall be construed as creating the relationship of employer and employee between the Authority and the Contractor or any of the Contractor's employees. Neither the Contractor nor any of its employees shall at any time hold itself or themselves out to be the employee of the Authority and neither the Contractor nor any of its employees shall be entitled to any of the benefits provided by the Authority to its established or unestablished officers and Staff.

62. **Authority to Commit and Variation**

62.1 There shall be Named Representatives of the Authority, whose names shall appear at **Part I of Schedule J (Named Representatives)**, and in the event of any change to the Named Representatives of the Authority, the Authority shall give written notice of the change to the Contractor. A change in the Named Representatives of the Authority does not constitute a variation of the Contract.

62.2 Only the Named Representatives of the Authority, or their formally nominated officers, have the power to vary the terms and conditions of the Contract, or to commit the Authority to additional expenditure (including pursuant to **Clause 9 (Change to Services Required)**).

62.3 Any variation of any provision of the Contract must be effected in writing issued by the Authority or a Named Representative of the Authority and no purported variation by any other means shall bind the Authority.

62.4 For the avoidance of doubt, any agreement between the Authority and the Contractor to change the Estimated Opening Date is without prejudice to any of the Contractor's or the Authority's obligations hereunder in respect of Actual Opening Date, Contractual Opening Date, Full Operation Date and Actual Full Operation Date

63. **Service of Notices**

63.1 Any notice or consent which the Authority is required to give to the Contractor under the terms of the Contract shall be sufficiently given if it is sent by recorded or registered post addressed to the Contractor at its registered office. Such notice or consent shall be deemed to have been given at the time at which that letter would in the ordinary course of post be delivered, save where there is express contractual provision to the contrary.

63.2 Any notice or consent which the Contractor is required to give to the Authority under the terms of the Contract shall be sufficiently given if it is sent by recorded or registered post addressed to the Contracts and Competition Group of HM Prison Service or its successors. Such notice or consent shall be deemed to have been given at the time at which that letter would in the ordinary course of post be delivered, save where there is express contractual provision to the contrary.

64. **Race and Sex Discrimination**

64.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, or the Sex Discrimination Acts 1975 and 1986.

64.2 The Contractor shall take all reasonable steps to secure that all servants, agents and Sub-contractors do not unlawfully discriminate within the meaning and scope of the above-mentioned Legislation.

65. **Data Protection**

65.1 In this **Clause 65 (Data Protection)** *data subject* and *Personal data* shall have the meaning given in the DPA.

65.2 The Contractor shall only act on instructions from the Authority regarding the processing of Personal data pursuant to this Contract and the Contractor shall ensure that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of Personal data and against accidental loss or destruction of, or damage to, Personal data. The Contractor shall, from time to time, comply with any reasonable request made by the Authority to ensure compliance with the measures mentioned above in this **Clause 65 (Data Protection)**. The Authority hereby instructs the Contractor to carry out any processing of Personal data reasonably necessary for the performance of the Services.

65.3 The Contractor shall take the measures mentioned above in this **Clause 65 (Data Protection)**, having regard to the state of technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to (a) the harm that may result from breach of such measures and (b) the nature of Personal data to be protected. The Contractor shall take reasonable steps to ensure the reliability of any of its employees who have access to the Personal data.

65.4 The Contractor shall indemnify and keep indemnified the Authority and any officer or employee of the Authority from time to time, against all

costs, claims, damages and expenses (including legal costs) arising out of, or in connection with any breach of the DPA, including the data protection principles contained in that Act, (in each case, whether made by the Contractor or the Authority) caused by an act or omission of the Contractor, save that this indemnity shall not apply to any acts or criminal offences committed by the Authority or its officers and employees.

65.5 The Contractor shall provide full co-operation and assistance to the Authority in allowing data subjects to exercise their rights under the DPA at no charge to the Authority.

65.6 The Contractor shall ensure that all Operational Staff of the Contractor or any Sub-contractor having access to Personal Data shall be reliable and responsible Persons who appreciate the confidentiality of the Personal Data and the need to guard against unauthorised or unlawful processing of Personal data and against accidental loss or destruction of, or damage to, Personal data.

66. **Health and Safety**

66.1 All plant, fixtures, fittings, furniture chattels and other equipment supplied by the Contractor in performance of the Contract shall comply with all provisions of any Legislation relating to health and/or safety from time to time in force. Crown immunity will not apply to the Contractor, who shall be liable for any failure to meet statutory requirements in respect of these items.

66.2 The Contractor shall be responsible for the observance by itself, its Construction and/or Operational Staff and Sub-contractors of all current and relevant health and safety precautions necessary for the protection of itself, its Construction and/or Operational Staff, Sub-contractors and any other Persons invited onto or visiting the Site, including all precautions required to be taken by or under any Legislation.

66.3 The Contractor shall be responsible for the observance by itself, its Staff and Sub-contractors of all current and relevant rules, regulations and requirements of statutory or regulatory authorities concerning building works and fire prevention.

67. **Duty of Care**

The Contractor shall carry out its obligations under the Contract in accordance with Good Industry Practice.

68. **Waiver**

The failure of either party at any one time to enforce any provision of the Contract shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision, or be a waiver of the provision itself.

69. **Severability**

In the event that any term, condition, Clause or provision contained herein 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 Clauses.

70. **Counterparts**

This Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

71. **Governing Law and Jurisdiction**

The Contract shall be governed by and construed in accordance with the laws of England, and subject to **Clause 72 (Dispute Resolution)** the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

72. **Dispute Resolution**

- 72.1 Unless the Authority and the Contractor agree to a Dispute being referred to arbitration in accordance with **Clause 72.3 (Dispute Resolution)**, either party shall have the right at any time to refer any Dispute to adjudication in accordance with this Clause by giving a notice of adjudication to the other party (a "**Notice of Adjudication**"). The Notice of Adjudication shall set out in general terms the nature of the Dispute and the redress sought. Should either party give a Notice of Adjudication, immediately thereafter the parties shall endeavour to agree, from the list of Adjudicators in **Schedule S (List of Adjudicators)**, a shortlist of Persons whom they would consider suitable to act as the Adjudicator and invite them (in turn) to accept the reference of the Dispute referred to in the Notice of Adjudication. In the event of the parties failing to jointly appoint a Person willing and suitable to act as Adjudicator within three (3) Days of the Notice of Adjudication,

either party may apply to the Chartered Institute of Arbitrators to appoint an Adjudicator. The Chartered Institute of Arbitrators shall endeavour to appoint the Adjudicator within four (4) Days of receiving the application. The Adjudicator shall be appointed on the terms of appointment (the "**Appointment**") appended at **Schedule T (Terms of Appointment of Adjudicator)**. The fees of the Adjudicator shall be agreed by the parties and the Adjudicator as soon as is reasonably practicable after the Notice of Adjudication is given pursuant to this **Clause 72.1 (Dispute Resolution)** and with the object of securing the appointment of the Adjudicator within seven (7) Days of the Notice of Adjudication. In the event that either party (but not both) rejects the fees proposed such issue shall be referred to the President for the time being of the Chartered Institute of Arbitrators and his decision shall be binding on the parties (provided that the level of fees does not exceed the level originally proposed to the parties by the Adjudicator). If both parties reject the fees proposed by the Adjudicator or if no resolution is achieved by the President for the time being of the Chartered Institute of Arbitrators within fourteen (14) Days of the matter being referred to him another Person shall be appointed Adjudicator in accordance with the provisions of this **Clause 72 (Dispute Resolution)**. In the event that the Adjudicator's appointment is terminated in accordance with the provisions of the Appointment a Person shall be appointed to replace the Adjudicator in accordance with the provisions of this **Clause 72 (Dispute Resolution)**.

- 72.2 The Dispute shall be deemed to be referred to the Adjudicator on his acceptance of the appointment by written notice to the parties ("**Notice of Acceptance**"). The referring party shall provide to the Adjudicator and the responding party within seven (7) Days of the Notice of Acceptance a full statement of its case. Within seven (7) Days of such submission the responding party shall provide the Adjudicator and the referring party with a full response to the referring party's statement of case. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute, and shall, in any event within twenty eight (28) Days of referral of the Dispute to him (or such other period as the parties may agree after the referral of the Dispute to adjudication, or forty two (42) Days from the referral of the Dispute if the Adjudicator requests such an extension and the party referring the Dispute to adjudication agrees), provide to both parties his written decision on the Dispute. The Adjudicator shall state the reasons for his decision, and unless and until revised, cancelled or varied by the Arbitral Tribunal pursuant to **Clause 72.3 (Dispute Resolution)**, it shall be binding on both parties who shall forthwith give effect to the

decision. The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses. The Adjudicator shall be deemed not to be an arbitrator and the provisions of the Arbitration Act 1996 (as amended from time to time) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination. The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made pursuant hereto. All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator hereunder shall be treated as confidential and the Adjudicator shall not, save as permitted by this **Clause 72 (Dispute Resolution)**, or as required by law, disclose to any Person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies thereof shall be returned to such party on completion of the Adjudicator's work. The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

72.3 In the case of:

- (a) either party being dissatisfied with or otherwise wishing to challenge the Adjudicator's decision made in accordance with **Clause 72.2 (Dispute Resolution)**; or
- (b) both parties agreeing so to do,

either party may (within twenty eight (28) Days of receipt of the Adjudicator's decision, where appropriate), notify the other party of its intention to refer a Dispute to arbitration and to invite the other party to concur in the appointment of an arbitral panel (the "**Arbitral Tribunal**"). The Arbitral Tribunal shall comprise three (3) individuals who shall be solicitors, barristers or arbitrators recognised by the Chartered Institute of Arbitrators of not less than ten (10) Years' standing, or by agreement between the parties, one such individual. If the parties are unable within fourteen (14) Days to agree the identity of the Arbitral Tribunal either party may request the President of the Law Society to make the appointment. The Arbitral Tribunal shall have the

power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made pursuant hereto, to vary or cancel the decision of the Adjudicator and, where appropriate, to order financial compensation to be paid by one party to the other. The arbitration shall take place in London.

- 72.4 The Arbitral Tribunal shall in its absolute discretion, make such procedural directions as it considers necessary such as ordering the parties to provide written submissions within such time period as it considers appropriate and/or to attend such hearings as it deems necessary. The Arbitral Tribunal's decision shall be in writing and shall state its reasons for its decision. The decision of the Arbitral Tribunal shall be final and binding on both parties. The costs of the arbitration will be in the discretion of the Arbitral Tribunal.
- 72.5 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this **Clause 72 (Dispute Resolution)** and shall give effect forthwith to every decision of the Adjudicator and the Arbitral Tribunal delivered pursuant to this **Clause 72 (Dispute Resolution)**.
- 72.6 If any Dispute arising under this Contract raises issues which relate to any dispute between (a) the Contractor and the Construction Sub-contractor arising under the Construction Sub-contract or otherwise affects the relationship or rights of the Contractor and/or the Construction Sub-contractor under the Construction Sub-contract, (the "**Construction Sub-contract Dispute**"), or (b) the Contractor and the Operating Sub-contractor arising under the Operating Sub-contract or otherwise affects the relationship or rights of the Contractor and/or the Operating Sub-contractor under the Operating Sub-contract (the "**Operating Sub-contract Dispute**"), or (c) the Contractor and the Houseblock Construction Sub-contractor under the Houseblock Construction Sub-contract or otherwise affects the relationship or rights of the Contractor and/or the Houseblock Construction Sub-contractor under the Houseblock Construction Sub-contract (the (the "**Houseblock Construction Sub-contract Dispute**")) the Contractor may include as part of its submissions made to the Adjudicator pursuant to **Clause 72.2 (Dispute Resolution)** or to the Arbitral Tribunal, where the Dispute is referred to arbitration pursuant to **Clause 72.3 (Dispute Resolution)**, submissions made by the Construction Sub-contractor or by the Operating Sub-contractor as appropriate.

- 72.7 The Adjudicator or the Arbitral Tribunal, as appropriate, shall not have jurisdiction to determine the Construction Sub-contract Dispute, Operating Sub-contract Dispute or the Houseblock Construction Sub-contract Dispute but where submissions made by the Construction Sub-contractor, or by the Operating Sub-contractor or by the Houseblock Construction Sub-contractor as appropriate have been submitted to the Adjudicator or the Arbitral Tribunal as provided for in **Clause 72.6 (Dispute Resolution)** the decision of the Adjudicator or the Arbitral Tribunal shall be binding on the Contractor and the Construction Sub-contractor insofar as it determines the issues relating to the Construction Sub-contract Dispute and on the Contractor and Operating Sub-Contractor in so far as it determines the issues relating to the Operating Sub-contract Dispute and on the Contractor and the Houseblock Construction Sub-contractor insofar as it determines the issues relating to the Houseblock Construction Sub-contract Dispute.
- 72.8 Any submissions made by the Construction Sub-contractor or the Operating Sub-contractor or the Houseblock Construction Sub-contractor as part of the Contractor's case shall:
- (a) be made within the time limits applicable to the delivery of submissions by the Contractor; and
 - (b) concern only those matters which relate to the Dispute between the Authority and the Contractor under this Contract.
- 72.9 Where the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor makes submissions in any reference (i) before the Adjudicator, the Adjudicator's fees for such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds by the Contractor; (ii) before the Arbitral Tribunal, the costs of the arbitration shall be in the discretion of the Arbitral Tribunal. For the avoidance of doubt, the Authority shall have no liability to the Construction Sub-contractor arising out of or in connection with any decision of the Adjudicator or Arbitral Tribunal or in respect of the costs of the Construction Sub-contractor or the Operating Sub-contractor or the Houseblock Construction Sub-contractor in participating in the resolution of any Dispute under this Contract.
- 72.10 The Contractor shall not allow the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor access to any Document relevant to the issues in Dispute between the Authority and the Contractor save where:

- (a) the Document is relevant also to the issues relating to the Construction Sub-contract Dispute, the Operating Sub-contract Dispute or the Houseblock Construction Sub-contract Dispute as the case may be; and
- (b) the Contractor has first delivered to the Authority a written undertaking from the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor as appropriate addressed to the Authority that it shall not use any such Document otherwise than for the purpose of the Dispute resolution proceedings under this Contract and that it shall not disclose such Documents or any information contained therein to any third party other than the Adjudicator or Arbitral Tribunal or any professional adviser engaged by the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor as appropriate to advise in connection with the Dispute.

73. **Precedence of Terms**

In the event of any discrepancy arising between the provisions of Parts I to VIII of the Contract and the Schedules, Appendices and any other Document forming part of the Contract, the provisions of Parts I to VIII shall prevail, unless the inconsistent provision is expressed to be, or if the Contract indicates it to be, an amendment of the Parts I to VIII, in accordance with **Clause 62 (Authority to Commit and Variation)**.

74. **Third Parties**

A Person who is not a party to this Contract shall have no rights to enforce any of its terms.

75. **Entire Agreement**

This Contract and the Direct Agreement and all other agreements, including the two (2) side letters signed by the parties as at the date hereof, sets out the entire agreement and understanding between the parties in respect of the design, construction, management and financing of a Custodial Service at Ashford, Middlesex. It is agreed that:

- (a) no party has entered into this Contract in reliance upon any representation, warranty or undertaking of any other party which is not expressly set out or referred to in this Contract or the Direct Agreement;
- (b) no party shall have any claim or remedy in respect of misrepresentation (whether negligent or otherwise, and whether

made prior to, and/or in, this Contract) or untrue statement made by any other party;

- (c) this **Clause 75 (Entire Agreement)** shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation; and
- (d) save as expressly set out in this Contract, no party shall owe any duty of care to any Person.

SIGNED by)
for and on behalf of)
H.M. PRINCIPAL SECRETARY)
OF STATE FOR THE HOME)
DEPARTMENT)
in the presence of:)

EXECUTED by)
for and on behalf of)
ASHFORD PRISON SERVICES)
LIMITED)
acting by two Directors/a Director)
and the Secretary)

Director

Director/Secretary