



Dated	2025
(1)	The Secretary of State for Justice
(2)	Serco Limited
Prison Operating Contract HMP Dovegate	

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THIS CONTRACT is made on

2025

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) **SERCO LIMITED**, registered in England and Wales with company number 00242246, whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way Hook, Hampshire RG27 9UY (the "**Contractor**"),

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

BACKGROUND

- (A) On 10 December 2024 the Authority issued an invitation to tender for the procurement of the Authority's custodial and property and facilities management services requirements for the Prison.
- (B) On 23 April 2025 the Contractor submitted a response to the Authority's Competition and was subsequently selected by the Authority to provide the Services (as defined herein).
- (C) The Authority now wishes to enter into a contract for the provision of the Services (as defined herein) at HMP Dovegate.
- (D) The Prison under this Contract is an Existing Prison (as defined herein).
- (E) The Prison under this Contract is a Category 'B' prison with a 'Reception' and 'Training' Prison Function (as defined herein).
- (F) For the purposes of this Contract, it is not anticipated that there will be a Relevant Transfer at the Services Commencement Date (each term as defined herein).

PART I – PRELIMINARY

1. INTERPRETATION

In this Contract and in the Background, unless the context otherwise requires, capitalised expressions shall have the meaning set out in **Annex 1 (Definitions)**.

1.1 Interpretation

In this Contract, except where the context otherwise requires:

- 1.1.1 the masculine includes the feminine and vice versa;
- 1.1.2 the singular includes the plural and vice versa;
- 1.1.3 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;
- 1.1.4 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;
- 1.1.5 any reference to any Legislation, order, regulation, code or other similar instrument shall be construed as a reference to the Legislation, order, regulation or instrument as modified, amended, replaced, consolidated or re-enacted (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023) from time to time before or after the date of this Contract and any prior or subsequent legislation under it;
- 1.1.6 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;
- 1.1.7 any reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.1.8 headings are for convenience of reference only;
- 1.1.9 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;

- 1.1.10 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;
- 1.1.11 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; and
- 1.1.12 where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Contractor shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.

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

1.3 Annexes and Schedules

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

1.4 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)** and for the purposes of **clauses 66.5.2 and 66.5.4.2 (Conduct of Claims)** and of the Parent Company Guarantee specifically, this shall be a reference to the relevant amounts as indexed using the Consumer Price Index in accordance with the calculations and other provisions set out in **paragraph 3.2 (Indexation of Operational Services Non-Staff Costs) of Schedule 14 (Payment Mechanism)**, with the necessary changes.

1.5 Precedence of Documentation

1.5.1 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:

1.5.1.1 the main body of this Contract (which shall be deemed to include the recitals, **clauses 1 (Interpretation) to 29.13 (Conflicts of Interest)** (inclusive) and **Annex 1 (Definitions)**);

1.5.1.2 the Authority's Requirements;



- 1.5.1.3 any other Schedules and their Appendices (other than **Schedule 7 (Contractor's Proposal)**); and
- 1.5.1.4 **Schedule 7 (Contractor's Proposal)** unless any part of **Schedule 7 (Contractor's Proposal)** offers a better commercial position for the Authority (as decided by the Authority, in its absolute discretion), in which case that part of **Schedule 7 (Contractor's Proposal)** will take precedence over the documents above.
- 1.5.2 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 again unless any part of **Schedule 7 (Contractor's Proposal)** or such documents offers a better commercial position for the Authority (as decided by the Authority, in its absolute discretion), in which case that part of **Schedule 7 (Contractor's Proposal)** or such documents will take precedence.
- 1.5.3 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.
- 1.5.4 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.
- 1.5.5 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.
- 1.5.6 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.

1.5.7 Notwithstanding **clause 1.5.1 (Precedence of Documentation)**, 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.

1.5.8 In the event of any inconsistency or conflict between one part or provision of **Schedule 7 (Contractor's Proposal)** and another, the Authority shall, in its absolute discretion, determine which part or provision offers a better commercial position for the Authority, in which case that part or provision of **Schedule 7 (Contractor's Proposal)** will take precedence.

1.6 **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.

1.7 **Approval**

None of the following:

1.7.1 the giving of any approval or consent;

1.7.2 the examination, acknowledgement and/or knowledge of the provisions of any agreement or document; or

1.7.3 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.

1.8 **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.

1.9 **Condition Precedent**

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

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

1.9.1.2 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)**; and (if applicable)

1.9.1.3 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)**.

1.9.2 If the Condition Precedent has not been satisfied before the Longstop Date then either:

1.9.2.1 this Contract shall terminate on the Longstop Date; or

1.9.2.2 the Parties may waive the Condition Precedent in accordance with **clause 1.9.3 (Condition Precedent)**.

1.9.3 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 1.9.1 (Condition Precedent)**) 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:

2.1.1 the end of the Initial Contract Period; or

2.1.2 the end of the relevant Extension Period as determined by the Authority in accordance with **clause 2.6 (Duration of Contract)**.

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 Mobilisation Commencement Date in accordance with the provisions of **Schedule 5 (Mobilisation, Transition and Transformation)**.

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 aggregate of the Early Termination Redundancy Costs and Early Termination Lifecycle 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 of this 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)**.

2.6 The Authority may extend the duration of this Contract by serving no less than six (6) Months' written notice prior to the end of the Initial Contract Period or any subsequent Extension Period. The Authority shall specify the duration of each Extension Period in the notice and shall be permitted to extend the Initial Contract Period by up to three (3) Extension Periods provided that the aggregate extensions shall not exceed thirty-six (36) months from the end of the Initial Contract Period in total.

2.7 Any Extension Period elected by the Authority pursuant to **clause 2.6 (Duration of Contract)** and pursuant to **Schedule 24 (Handover and Exit Management)** shall be on the same terms, including as to Contract Price, as set out in this Contract.

3. **PARENT COMPANY GUARANTEE AND FINANCIAL STANDING**

3.1 The Contractor shall procure on or before the Commencement Date the entering into 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 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:

3.2.1 ceases to be its ultimate Holding Company; and/or

3.2.2 becomes incorporated or has its centre of main interest located outside the United Kingdom.

In such circumstances, the Contractor shall at its own cost:

3.2.3 in respect of **clause 3.2.1 (Parent Company Guarantee and Financial Standing)**, 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; and/or

3.2.4 in respect of **clause 3.2.2 (Parent Company Guarantee and Financial Standing)**, within fourteen (14) Days of the relevant event, procure 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 has now become established or has its centre of main interest.

- 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 (Matters Relating to Leases) of Schedule 23 (Parent Company Guarantee)**.
- 3.4 Where the Contractor:
- 3.4.1 is incorporated outside of the United Kingdom as at the Commencement Date; and/or
- 3.4.2 at any time becomes incorporated or has its centre of main interest located outside of the United Kingdom,
- the Contractor shall at its own cost:
- 3.4.3 in respect of **clause 3.4.1 (Parent Company Guarantee and Financial Standing)**, 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; and/or
- 3.4.4 in respect of **clause 3.4.2 (Parent Company Guarantee and Financial Standing)**, notify the Authority forthwith in writing and shall, within fourteen (14) Days of the relevant event, procure a legal opinion as to its capacity and ability to have entered into this Contract and continued capacity and ability to 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 has now become established or has centre of main interest.
- 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 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 3.8 (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 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; and
- 3.8.3.5 the process referred to in **clause 3.8.3.4 (Parent Company Guarantee and Financial Standing)** shall be repeated until such time as the Financial Distress Continuity Plan is either:
- (a) approved by the Authority;
 - (b) referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Continuity Plan has not been approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Continuity Plan to be held with twenty-eight (28) Days of the date of the notice; or
 - (c) finally rejected by the Authority;
- 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, any Key Sub-Contractor or any other party listed under paragraph (a) of the definition of Financial Distress Event (as applicable) that the Contractor or the Guarantor (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 (Parent**

Company Guarantee and Financial Standing) 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)**.

Resolution Information

- 3.11 The Contractor shall provide CRP Information to the Authority in accordance with **Part 2 (Corporate Resolution Planning)** of **Schedule 26 (Continuity Planning)**.

Onerous Contracts

- 3.12 If the Contractor publicly designates the Contract as an Onerous Contract (including where the Contractor has identified the Contract as such in any published accounts or public reports and announcements), the Contractor shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than sixty (60) Days following the publication of the designation) a draft Onerous Contract Report which includes the following:

- 3.12.1 an initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
- 3.12.2 an initial risk analysis and impact assessment on the provision of the Services as a result of the Contractor's designation of the Contract as an Onerous Contract;
- 3.12.3 the measures which the Contractor intends to put in place to minimise and mitigate any adverse impact on the provision on the Services; and
- 3.12.4 details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.

- 3.13 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, such final form report to be agreed no later than thirty (30) Days following the Authority's receipt of the draft Onerous Contract Report.

- 3.14 The Contractor acknowledges and agrees that the report is submitted to the Authority on an information only basis and the Authority's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the

Contractor of any liability under this Contract. **Schedule 16 (Change Protocol)** shall apply to any Changes proposed by either Party pursuant to the report.

3.15 The Contractor shall immediately notify the Authority in writing if it or the Guarantor or any Key Sub-Contractor:

3.15.1 is or becomes constituted or organised under the law of Russia or Belarus; or

3.15.2 is registered in the UK or with substantive business operations in the UK, or another country but:

3.15.2.1 is or becomes controlled (including through a Change of Control) by an entity based in Russia or Belarus (including a Holding Company); or

3.15.2.2 the person(s) with 'significant control' of such entity have their place of residency listed as Russia or Belarus (and the phrase 'significant control' shall have the meaning given to it under the Companies Act 2006 and as further described in the 'PSC requirements for companies and limited liability partnerships' guidance (available online at: <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>, as updated from time to time)),

and shall provide sufficient detail so as to allow the Authority to make an accurate assessment of the matter and consider any steps or other action to be taken.

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 entered into 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 Competition 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 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.
- 5.3.6 If at any time the Contractor becomes aware that a representation or warranty given by it under **clause 5.1 (Contractor Warranties)** has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

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)**, the Contractor acknowledges and warrants:

6.5.1 that the Authority has delivered or made available to the Contractor on or before the Commencement Date 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 that it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority or by reviewing information delivered or made available to the Contractor, in each case on or before the Commencement Date) of all relevant details relating to:

6.5.2.1 the Authority's Requirements; and

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

6.5.3 that, provided the process in **paragraphs 4.3 to 4.5 (Built Environment and M&E Assets Condition Verification)** of **Schedule 11 (Property and Facilities Management)** (inclusive) is completed and any Existing Works are addressed in accordance with **paragraph 10 (Construction Works)** of **Schedule 11 (Property and Facilities Management)**:

6.5.3.1 the Contractor is satisfied as to all relevant details relating to:

- (a) the Site and the Contractor's ability to provide the Services in accordance with the Contract thereupon;
- (b) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
- (c) the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract;

6.5.3.2 it is able to fully provide the Services and perform its other obligations in accordance with this Contract; and

6.5.3.3 each aspect of the Operating Environment will be suitable for the provision of the Services.

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

7.1.1 On and from the Mobilisation Commencement Date until the date of grant of the Lease the Contractor shall be entitled to access the Site as permitted in writing by the Authority from time to time for the purpose only of:

7.1.1.1 during the Mobilisation Period, implementation of the Mobilisation and Transition Plan and the Transformation Plan (where relevant); and

7.1.1.2 in relation to any period following the Services Commencement Date, to operate the Prison in accordance with this Contract.

7.1.2 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 the Prison. In relation to any such access the Contractor shall:

7.1.2.1 not cause any damage or disrepair to the Site nor make any alterations to it;

7.1.2.2 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);

7.1.2.3 not cause any disturbance or disrupt the operation of the Site;

7.1.2.4 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); and

7.1.2.5 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.

7.1.3 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:

7.1.3.1 during the Mobilisation Period, implementation of the Mobilisation and Transition Plan and the Transformation Plan (where relevant); and

7.1.3.2 in relation to any period following the Services Commencement Date, to operate the Prison in accordance with this Contract.

7.1.4 From the Services Commencement Date until grant of the Lease, the Contractor shall be fully responsible for the Building and the Site in accordance with **clause 8 (The Site), Schedule 5 (Mobilisation, Transition and Transformation) and Schedule 11 (Property and Facilities Management)** and the Contractor will observe and perform and be bound by all such covenants conditions and terms in the Lease as the Contractor would have to observe and perform or be bound by if the Lease had been granted to it.

7.2 Grant of Lease

7.2.1 On or around the date that is thirty (30) Days prior to the Services Commencement Date, the Authority shall grant to the Contractor, and the Contractor shall accept, the Lease in accordance (including as to timing) with this **clause 7 (Nature of Land Interest)**.

7.2.2 The term of the Lease shall commence on the Services Commencement Date and expire 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 Lease)**, 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 Lease)**) 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 Lease 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 Lease and prior to the date of completion of the Lease and which are revealed by the Contractor's Land Registry search carried out immediately prior to completion of the Lease.

7.3 **General Matters**

- 7.3.1 In addition to the provisions of **clause 7.2.5 (Grant of Lease)**, the Site is let subject to:
- 7.3.1.1 the matters contained or referred to in Commercial Condition 3.1.2;
 - 7.3.1.2 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;
 - 7.3.1.3 any notice, order or proposal given or made by any Relevant Authority, statutory undertaker or other competent body or person;
 - 7.3.1.4 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;
 - 7.3.1.5 all rates, charges and other outgoings which affect or are charged on the Site;
 - 7.3.1.6 any unregistered interest that overrides the disposition effected pursuant to this Contract under Schedules 1, 3 or 12 of the Land Registration Act 2002;
 - 7.3.1.7 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Site; and
 - 7.3.1.8 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 Lease pursuant to this Contract:

- 7.4.1 the Authority served on the Contractor prior to the Commencement Date a Lease Notice;

- 7.4.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Lease Notice made a Lease Declaration prior to the Commencement Date and within the time period specified within the Lease Notice;
- 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 Lease.

7.5 **Delivery of Engrossments**

At least ten (10) Business Days before the date the Lease is to be entered into, the Authority's Representative shall deliver an engrossment of the counterpart Lease to the Contractor. The Contractor shall enter into and deliver the counterpart Lease as a deed to the Authority's Representative within a further five (5) Business Days after receipt. The Authority shall enter into the original Lease as a deed and send the original Lease 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 Lease at the Land Registry as soon as reasonably practicable after the Lease is 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 Lease 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 Lease or the unexpired part of its interest as tenant on determination of the Lease 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 Lease**

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

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 (including **Schedule 11 (Property and Facilities Management)** in relation to Existing Works), following the Services Commencement Date 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 relevant part of 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 (The Site)**. 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 8.2.2.2 (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 (provided such Contractor Contamination has not been introduced by the Contractor) 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; and

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, (and without prejudice to **clause 6.5 (Contractor's Due Diligence)**), the Contractor shall, on the Services Commencement Date and provided that the process in **paragraphs 4.3 to 4.5 (Built Environment and M&E Assets Condition Verification)** of **Schedule 11 (Property and Facilities Management)** (inclusive) is completed and any Existing Works are addressed in accordance with **paragraph 10 (Construction Works)** of **Schedule 11 (Property and Facilities Management)**, take the Site in its state and condition in all respects 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 requirements contained within the Regulatory Reform (Fire Safety) Order 2005 and other applicable fire safety Legislation 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 fire safety systems in compliance with BS5306 and the LPC Technical Bulletins (or their replacement standards) and any other relevant industry 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 to quickly 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 (Health and Safety Compliance) 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 (Safety and Security on the Site)**.
- 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, test, update and invoke the Business Continuity Plan, Disaster Recovery Plan and Insolvency Continuity Plan in accordance with **Schedule 26 (Continuity Planning)**.

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 licensed 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. In line with the obligations set out in **clause 14.6 (Working with the Healthcare Provider, Social Care Service Provider and Probation Provider)** and the relevant **Parts of Schedule 1 (Authority's Custodial Service Requirements)**, the Contractor shall ensure that, under these Partnering Agreements, it can enable other named service providers to provide their relevant services by ensuring these parties can access or interface with (as relevant) the Authority's ICT System and/or Contractor's ICT System (as appropriate).

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 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 the Contractor's Staff to the Authority's eLearning management system and any replacement system.

- 9.6.2 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.

- 9.6.3 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 Annual Custodial Service Delivery Plan.

- 9.6.4 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.

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 via a secure encrypted method.
- 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 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 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 The Contractor is not entitled to delay or amend the Services Commencement Date. 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 Contractor's ability to provide the Services on and from the Services Commencement Date may be impacted or otherwise delayed; and/or

11.1.1.2 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 on and from the Services Commencement Date 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 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;

12.1.2 be unable to comply with its obligations under this Contract; and/or

12.1.3 incur costs,

then the Contractor is entitled to apply for an extension of time to the extent permitted pursuant to **clause 12.2 (Procedure for Relief and Compensation)** 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 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) any date specified in a RRAPP Band Deactivation Notice for an increase in the number of Available Prisoner Places; and/or
- (b) any date specified in a RRAPP Band Activation Notice for the reduction in the number of Available Prisoner Places; and/or
- (c) the period specified in paragraph (k) 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 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
- (c) 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

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

12.2.3.2 the Change in Costs, time lost (where relevant), 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 any date specified in a RRAPP Band Deactivation Notice for an increase in the number of any Available Prisoner Places; and/or

12.3.1.2 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;

12.3.2 the period referred to in paragraph (k) 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 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)**); and

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.

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 On and from the Mobilisation Commencement Date and until the Services Commencement Date, the Contractor shall comply with the mobilisation obligations regarding the Mobilisation Period set out in **Schedule 5 (Mobilisation, Transition and Transformation)**.

- 13.1.2 On and from the Services Commencement Date, the Contractor shall comply with the mobilisation obligations regarding the Transition Period set out in **Schedule 5 (Mobilisation, Transition and Transformation)**.
- 13.1.3 On and from the Services Commencement Date, the Contractor shall 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 enter into an Asset and Contract Transfer Contract, which shall be substantially in the form set out in **Schedule 13 (Asset and Contract Transfer)** 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 entered into, 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 **Testing of Local Operating Procedures**

- 13.3.1 The Authority's Representative may at any time notify the Contractor that it requires the Contractor to carry out a Local Operating Procedure Test whether or not such Local Operating Procedure has been approved by the Authority's Representative.
- 13.3.2 The Contractor shall:
- 13.3.2.1 give the Authority's Representative five (5) Business Days' notice of the time and location of the Local Operating Procedure Test;
 - 13.3.2.2 allow representatives of the Authority to attend the Local Operating Procedure Test; and
 - 13.3.2.3 carry out the Local Operating Procedure Test:
 - (a) in accordance with the Contractor's proposals for testing the draft Local Operating Procedure or the Local Operating Procedures set out in respect of each Local Operating Procedure in **Schedule 7 (Contractor's Proposal)**; and
 - (b) subject to **clause 13.3.2.1 (Testing of Local Operating Procedures)**, as soon as reasonably practicable after the date of

any notice pursuant to **clause 13.3.1 (Testing of Local Operating Procedures)**.

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

13.3.3.1 issue a notice confirming to the Contractor that they are satisfied that the Local Operating Procedure Test has demonstrated that the draft Local Operating Procedure or the Local Operating Procedure is satisfactory; or

13.3.3.2 issue a notice stating that the Local Operating Procedure Test has demonstrated that the draft Local Operating Procedure or the Local Operating Procedure is not satisfactory, and specifying any matters that must be attended to.

13.3.4 Following receipt of a notice pursuant to **clause 13.3.3.2 (Testing of Local Operating Procedures)**, the Contractor shall attend to the matters referred to in such notice and shall re-run the test in accordance with **clause 13.3.2 (Testing of Local 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 draft Local Operating Procedure or the Local Operating Procedure in question are attended to and the draft Local Operating Procedure or the Local Operating Procedure satisfies the test.

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 Custodial Service 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 co-operate 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, no later than the date that is sixty (60) Days prior to the Services Commencement Date, agree and enter into Partnering Agreements 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.
- 14.7 The Contractor shall, no later than the date that is sixty (60) Days prior to the Services Commencement Date, provide copies of all agreed Partnering Agreements (including those listed in **clause 14.6 (Working with the Healthcare Provider, Social Care Service Provider and Probation Provider)**) to the Authority.

Co-operation with other service providers

- 14.8 In addition to the obligation to co-operate with the Healthcare Provider, Social Care Service Provider and Probation Provider pursuant to **clause 14.4 (Working with the Healthcare Provider, Social Care Service Provider and Probation Provider)**, the Contractor shall cooperate with those and any other service providers notified to the Contractor by the Authority from time to time by providing:
- 14.8.1 reasonable information;
 - 14.8.2 advice; and

14.8.3 reasonable assistance,

in connection with the Services to any such other service provider to enable such other service provider to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any New Contractor in accordance with the following collaborative working principles:

- (a) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
- (b) being open, transparent and responsive in sharing relevant and accurate information with such other service providers;
- (c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with such other service providers;
- (d) providing reasonable cooperation, support, information and assistance to such other service providers in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- (e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

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 Local Operating Procedures;

15.1.1.6 the PPT Measures and Contract Delivery Indicators;

15.1.1.7 Good Industry Practice;

15.1.1.8 MOJ Property Services Maintenance Schedules;

15.1.1.9 all applicable Guidance;

15.1.1.10 all applicable Authority Policies; and

15.1.1.11 all applicable Legislation.

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.

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- 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 Local 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 The Contractor shall ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority.
- 15.1.7 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 **Schedule 11 (Property and Facilities Management)**), 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 Assets in order to maintain their condition for use in delivering the Services and in accordance with Good Industry Practice and the MOJ Property Services Maintenance Schedules (as applicable);
 - 15.4.1.2 replace and upgrade Assets on a regular basis and in any event in accordance with the Equipment Refresh Plan; and
 - 15.4.1.3 catalogue Assets 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 Daily Reports in respect of both the Main Prison and separately the DTC in accordance with the requirements of **paragraph 9 (Reporting) 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 **Authority Research and Evaluation**

15.6.1 The Contractor shall, and shall procure that the Contractor's Staff shall, co-operate and work collaboratively with the Authority (or any third party acting on its behalf) in respect of any research and evaluation activities undertaken by the Authority to support and inform the Authority's learnings of the operation and management of Prisons and the testing of initiatives across the wider prison estate. Any such activities undertaken by the Authority shall be at no cost to the Contractor.

15.6.2 The Authority (or any third party acting on its behalf) shall have the right to access all parts of the Prison to carry out such research and evaluation activities and invite other visitors to the Prison for such purposes.

15.6.3 The Authority shall (or shall procure any third party acting on its behalf shall) provide details of the proposed research or evaluation activities in advance and shall consult with the Contractor prior to undertaking any research or evaluation. The Authority shall make all recommendations, findings and outcomes available to the Contractor and shall be entitled to publish such information across the prison estate and/or externally (in whole or in part).

15.6.4 The Contractor shall have in place appropriate processes and tools to review and consider all recommendations, findings and outcomes and changes to its operational systems as may be appropriate. Any changes required to the Services by either Party shall be dealt with in accordance with **Schedule 16 (Change Protocol)**.

15.6.5 Nothing in this **clause 15.6 (Authority Research and Evaluation)** relates to or shall have any impact on the calculation of the Contractor's performance pursuant to **Schedule 15 (Performance Mechanism)**.

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; and
- 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 relevant contract fully 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 their 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, they 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 5 (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 5.6 (Rectification for Failure to Comply with the Minimum Requirements) of Schedule 14 (Payment Mechanism)** shall apply.

18.4 **Refusal to Accept Prisoners**

The provisions of **paragraph 5.5 (Refusal to Accept Prisoners)** 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. **NOT USED**

20. **DILAPIDATION SURVEY**

20.1 **Right to carry out Survey**

20.1.1 The Authority may:

20.1.1.1 on or from the second (2nd) anniversary of the Services Commencement Date (but not more than once every two Years); and

20.1.1.2 at any time, if the Authority reasonably believes that the Contractor is in breach of its obligations under **clause 15.4 (Maintenance of Assets and Equipment Refresh Plan)** and/or the Authority's Property and Facilities Management Requirements,

carry out (or procure the carrying out of) a survey of the Prison and, to the extent relevant and not included in the Prison, the Site, to assess whether they 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)** and/or 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 15.4 (Maintenance of Assets and Equipment Refresh Plan)** 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, to the extent relevant and not included in the Prison, the Site and the Assets should be in to comply with its obligations under **clause 15.4 (Maintenance of Assets and Equipment Refresh Plan)** and/or 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)** 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. NOT USED

23. PERFORMANCE MONITORING

23.1 Contractor Audits

The Contractor shall audit its performance in the delivery of the Services in accordance with **paragraph 7 (Audit and Assurance) of Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Service 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 1 (Introduction) of Part 1 (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 ninety (90) Day 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 ninety (90) Day 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 ninety (90) Days after the Services Commencement Date and on or before 1 March in each subsequent Contract Year, the Contractor shall provide to the Authority's Representative an 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 an index for the ACS DP (including numbered annexes and a headline summary for the requirements in **clauses 24.1.2.2 to 24.1.2.8** (Delivery of Annual Custodial Service Delivery Plan));

24.1.2.2 a vision for the Prison, including:

- (a) a supporting narrative for the vision for the Prison (with reference to commitments set out in the Contractor's Proposals);
- (b) how the Contractor is going to achieve their strategic objectives in the applicable Contract Year (and in subsequent Contract Years);
- (c) an outline of their Prisoner participation commitments and a commitment towards delivering the HMPPS annual priorities through the Regime; and
- (d) the digital vision for the Prison;

24.1.2.3 the following documents and information relating to the delivery of Transformation:

- (a) the Transformation Plan (as further described in paragraph 13 (Transformation) of Schedule 5 (Mobilisation, Transition and Transformation));
- (b) a highlight of any new or potential improvements to the provision of the Services (outside of the Contractor's Proposals) being considered by the Contractor for the applicable Contract Year (for the avoidance of doubt this is a highlight only and the

Contractor shall continue to follow the process and requirements for continuous improvement in **clause 26.4 (Continuous Improvement)**);

- (c) an update on the realisation of measurable benefits identified by the Authority in the Contractor's Proposals (including as set out in **Appendix 2 (Realisation of Measurable Benefits)** of **Schedule 7 (Contractor's Proposal)**); and
- (d) an update on social value (including as set out in the sub-folder entitled 'Section 3 – Social Value' of the Contractor's Proposals);

24.1.2.4 the following documents and information relating to the staffing and resourcing:

- (a) an Annual Resourcing Plan for the next Contract Year;
- (b) a summary of any departure from the Annual Resourcing Plan for the preceding Contract Year, including reasons for such departure;
- (c) a senior management team structure/organogram for the Prison (with names) and a summary of any anticipated changes to the senior management of the Prison in the forthcoming Contract Year and/or any changes agreed by the Parties since the last ACS DP;
- (d) an overview of the resource required for the Prison detailing the total number of Contractor's Staff required to deliver the Services ('Target Staffing Figures'), include outlying areas and nights etc.;
- (e) a summary of any new roles currently required at the Prison and target dates for when they will be in post, together with any anticipated changes to these in the forthcoming Contract Year and/or any changes agreed by the Parties since the last ACS DP; and
- (f) the staff handbook and professional standards statements (unless the Authority has confirmed in writing that, for any particular Contract Year, it does not require the Contractor review and update these documents);

24.1.2.5 an Annual Contracted Regime Delivery Plan, including:

- (a) a narrative on the update and refresh of the needs analysis for Prisoners and an overarching strategy for delivering the Regime that meets the needs of all Prisoners by providing ‘the right thing at the right time’ to enable the rehabilitative progress (which should be continuation of the vision for the Prison (as set out in **clause 24.1.2.2 (Delivery of Annual Custodial Service Delivery Plan)**));
- (b) a summary of any departure from the Annual Contracted Regime Delivery Plan for the preceding Contract Year, including reasons for such departure;
- (c) the Annual Purposeful Activity Plan, including as a minimum:
 - (1) a description of all Purposeful Activities provided by the Contractor, including a plan for how these activities will be delivered to Prisoners and a rationale explaining why such activities constitute Purposeful Activity in accordance with the Tiered Regime Model and **paragraph 4 (Purposeful Activity) of Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Service Requirements)**;
 - (2) a description of how the volume of Purposeful Activity per Prisoner will be monitored to demonstrate compliance with the requirements of **paragraph 4 (Purposeful Activity) of Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Service Requirements)**;
 - (3) targets for measuring progress against the Annual Purposeful Activity Plan which shall be incorporated in accordance with **Schedule 15 (Performance Mechanism)**; and
 - (4) a summary of any areas within the Prison that are used for delivery Purposeful Activity which are currently out of use, including the reasons why and the Contractor’ s plans to rectify the issues;

- (d) the following plans, which shall each be an annex to the Annual Purposeful Activity Plan;
- (1) the Annual Education Delivery Plan (as further described in paragraph 1.2.3 (Requirements) of Part 2 (Prisoner Education Services) of Schedule 1 (Authority's Custodial Service Requirements));
 - (2) the Annual Prison Industries, Prison Work and Training Delivery Plan (including details on the minimum number of Work Places) as further detailed in **paragraph 3 (Prisoner Work) of Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements)**);
 - (3) the Annual Interventions Cost (as approved in accordance with paragraph 4.4 (Annual Interventions Cost) of Part 4 (Interventions) of Schedule 1 (Authority's Custodial Service Requirements)); and
 - (4) the OSP Partnership and Enabling Plan, including copies of any relevant Partnering Agreements;
- (e) the Contractor's plans for delivering the Incentives Scheme and how this supports engagement and outcomes for Prisoners (as further described in **paragraph 4 (Performance Management and Incentivisation) of Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements)**);
- (f) a core day summary (including details of unlock, move to activities, mealtimes, visits etc.);
- (g) the Contractor's plans for providing the Democratic Therapeutic Community in accordance with **Part 7 (Democratic Therapeutic Community) of Schedule 1 (Authority's Custodial Service Requirements)**; and
- (h) the template Information and Referral Package and DTC Information Guide (if updated) in accordance with **paragraph 2 (Conditions of Application for Referral) of Part 7**

**(Democratic Therapeutic Community) of Schedule 1
(Authority's Custodial Service Requirements);**

24.1.2.6 the key strategies for the Prison, including:

- (a) an updated version of the peer support strategy, the safety strategy and the culture strategy that were included in the Contractor's Proposals;
- (b) the Annual Search Risk Assessment and Search Strategy; and
- (c) the Annual Drug Strategy;

24.1.2.7 the following documents and information relating to facilities management and sustainability including:

- (a) the Sustainability Plan;
- (b) the Ecological Management Plan;
- (c) the Contractor's plans in respect of the Property and Facilities Management Services; and
- (d) the Annual Fire Risk Assessment; and

24.1.2.8 other key information, including:

- (a) an index and covering statement detailing any updates and/or amendments to the Local Operating Procedures based on the publication of new Policy Frameworks or updates to existing Policy Frameworks;
- (b) all of the Local Operating Procedures;
- (c) the Contractor's proposed review dates for each of the Local 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);
- (d) the public relations procedures; and

(e) a copy of the updated draft Exit Plan.

24.1.3 Unless otherwise agreed and subject to **clause 24.1.4 (Delivery of Annual Custodial Service Delivery Plan)**, the Contractor shall provide to the Authority's Representative a draft Annual Custodial Service Delivery Plan covering each of the items set out in **clause 24.1.2 (Delivery of Annual Custodial Service Delivery Plan)** at least ninety (90) Days before the due date for the Annual Custodial Service Delivery Plan as specified in **clause 24.1.1 (Delivery of Annual Custodial Service Delivery Plan)**. The Parties shall review and discuss the draft Annual Custodial Service Delivery Plan at the next Contract Review Meeting and the Contractor shall make any agreed changes to the draft Annual Custodial Service Delivery Plan in advance of submitting the Annual Custodial Service Delivery Plan for approval.

24.1.4 **Clause 24.1.3 (Delivery of Annual Custodial Service Delivery Plan)** shall not apply in respect of the draft Annual Custodial Service Delivery Plan provided by the Contractor in the first Contract Year, on the basis that instead the Parties will have followed the cyclical review process pursuant to **paragraph 6 (Preparation of the Annual Custodial Service Delivery Plan)** of **Schedule 5 (Mobilisation, Transition and Transformation)**.

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, in accordance with **clause 24.1.1 (Delivery of Annual Custodial Service Delivery Plan)**, the Authority's Representative shall either:

24.2.1.1 issue an ACSDP Approval Certificate confirming that they are satisfied that the Annual Custodial Service Delivery Plan is in accordance with the requirements of the Contract; or

24.2.1.2 issue 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 (Grounds of Objection)** 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 Notwithstanding the procedure in **clause 24.2.1 (Approval of Annual Custodial Service Delivery Plan)**, the Parties acknowledge that any failure by the Authority to issue an ACSDP Approval Certificate or ACSDP Notice of Non-Compliance

shall not constitute a deemed acceptance of the Annual Custodial Service Delivery Plan. Following receipt of each Annual Custodial Service Delivery Plan, in accordance with **clause 24.1.1 (Delivery of Annual Custodial Service Delivery Plan)**, the Annual Custodial Service Delivery Plan used by the Parties prior to such receipt shall continue to be followed until such time as an ACSDP Approval Certificate is issued by the Authority.

- 24.2.3 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)**.
- 24.2.4 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 Service Delivery Plan pursuant to **clause 24.2.3 (Approval of Annual Custodial Service Delivery Plan)**, provided that, following subsequent agreement of the Annual Custodial Service Delivery Plan pursuant to **clause 24.2.5 (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 24.2.4 (Approval of Annual Custodial Service Delivery Plan)**.
- 24.2.5 Subject to **clause 24.2.4 (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.
- 24.2.6 Subject to **clause 24.2.4 (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 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 ACSDP Reports 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 In accordance with the requirements of the "HMPPS National Regime Model (NRM) Policy Framework", the Contractor shall ensure that ACSDP Reports, on at least a quarterly basis, include the latest information on Prisoner needs and interests and any proposed amendments to:

24.3.2.1 the Regime and Business Plan;

24.3.2.2 the Annual Purposeful Activity Plan;

24.3.2.3 the Annual Education Delivery Plan; and

24.3.2.4 the Annual Interventions Plan,

to address or meet these needs and interests.

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

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

24.3.4.1 amend the Annual Custodial Service Delivery Plan accordingly; and

24.3.4.2 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 Mobilisation 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 Local 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 AND CONTINUOUS IMPROVEMENT**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 and by the Mobilisation Commencement Date, the Quality Management Officer 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 **clauses 26.1 to 26.3 (Quality Assurance and Continuous Improvement)**.

26.4 **Continuous Improvement**

- 26.4.1 The Contractor shall have an ongoing obligation throughout the Service Period to identify new or potential improvements to the provision of the Services, in accordance with this **clause 26.4 (Continuous Improvement)**, with a view to reducing the Authority's costs and/or improving the quality and efficiency of the Services and their supply to the Authority.
- 26.4.2 As part of this obligation the Contractor shall identify and report on:
 - 26.4.2.1 changes in business processes of the Contractor or the Authority and ways of working that would provide cost savings and/or enhanced benefits to the Authority;



- 26.4.2.2 new or potential improvements to the provision of the Services including but not limited to improvements relating to quality, outcomes, responsiveness, procedures, efficacy and/or efficiencies;
- 26.4.2.3 the emergence of new and evolving relevant technologies which could improve the ICT Systems, ICT Equipment and/or the Services, and those technological advances potentially available to the Contractor and the Authority which the Parties may wish to adopt;
- 26.4.2.4 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains, reduction of operational risk or improvement of the Services; and
- 26.4.2.5 changes to the ICT Systems, ICT Equipment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 26.4.3 The Contractor shall report on any proposed improvements, and such improvements shall be monitored, as part of the Contract Review Meetings in accordance with **Part 1 (Custodial Services) of Schedule 1 (Authority's Custodial Service Requirements)**.
- 26.4.4 Any proposed improvement shall have a clear action, measure and outcome and the Contractor shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Contractor shall provide any further information that the Authority requests.
- 26.4.5 If the Authority wishes to incorporate any improvement identified by the Contractor, the Authority shall:
- 26.4.5.1 inform the Contractor that such improvement should be incorporated into the Transformation Plan as part of the next Annual Custodial Service Delivery Plan prepared in accordance with the process in **clause 24 (Annual Custodial Service Delivery Plan)**; or
- 26.4.5.2 request that the Contractor provide the Authority with a Change Notice to incorporate the improvement and the Authority may agree a Change in accordance with **Schedule 16 (Change Protocol)**.

The Parties shall discuss and agree who shall bear the costs of incorporating any improvement and shall do so, if required, in accordance with **Schedule 16 (Change Protocol)**.

- 26.4.6 The Authority may at its sole discretion decide whether to incorporate or reject any improvement proposed by the Contractor in accordance with this **clause 26.4 (Continuous Improvement)**, including at any stage of the processes referred to in **clause 26.4.5 (Continuous Improvement)**.

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 ninety (90) Days 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 thirty (30) Days 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.

28.1.6 The Authority shall have regard to the following matters when performing a comparative assessment of a Tested Service and an equivalent service pursuant to this **clause 28.1 (Benchmarking)**:

28.1.6.1 the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);

28.1.6.2 any front-end investment and development costs of the Contractor;

28.1.6.3 the Contractor's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;

28.1.6.4 the extent of the Contractor's management and contract governance responsibilities; and

28.1.6.5 any other reasonable factors demonstrated by the Contractor, which, if not taken into consideration, could unfairly cause the Contractor's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

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 Testing 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 Annual 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 Testing 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. COMPLIANCE****29.1 Health and Safety**

29.1.1 The Contractor shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:

29.1.1.1 all applicable Legislation regarding health and safety; and

29.1.1.2 the Authority Policies whilst at the Site.

29.1.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Site of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Contractor shall instruct the Contractor's Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

29.2 Employment Law

29.2.1 The Contractor must perform its obligations meeting the requirements of all applicable Law regarding employment.

29.3 Equality and Diversity

29.3.1 The Contractor shall:

29.3.1.1 perform its obligations under this Contract (including those in relation to the Services) in accordance with:

- (a) all applicable equality Legislation (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (b) the Authority's equality and diversity policy as provided to the Contractor from time to time; and
- (c) 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; and

29.3.1.2 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 the Equality and Human Rights Commission or (any successor organisation).

29.3.2 Where the Contractor is providing a Service to which the public sector equality duty applies, the Contractor shall support the Authority in fulfilling its public sector equality duty under section 149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Contract in a way that seeks to:

29.3.2.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

29.3.2.2 advance:

- (a) equality of opportunity; and
- (b) good relations,

between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

29.3.3 The Contractor shall ensure that it fulfils its obligations under this Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.

29.4 **Promotion and Engagement**

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

29.5 **Monitoring**

The Contractor shall:

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

29.5.1.1 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));



29.5.1.2 persons with disabilities (which may include but is not limited to physical disabilities such as vision, mobility, hearing impairment and cognitive and learning disabilities); and

29.5.1.3 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;

29.5.2 where it appears to the Contractor, in relation to particular work of the Contractor's Staff, that members of an ethnic minority 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:

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

29.5.2.2 the use of employment agencies and careers offices;

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

29.5.2.4 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;

29.5.2.5 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; and

29.5.2.6 engaging with specialist local third sector community organisations to help reach underrepresented groups,

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; and

- 29.5.3 ensure 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.

29.6 **Equality Duties**

The Contractor acknowledges that the Authority is subject to 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.

29.7 **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:

- 29.7.1 enable the Authority to conduct reviews of the Contractor's performance in relation to compliance with **clauses 29.3 (Equality and Diversity) to 29.11 (Non-compliance and Investigations)** (inclusive);
- 29.7.2 facilitate the Authority in preparing any report or statement to the Equality and Human Rights Commission or any other Relevant Authority;
- 29.7.3 enable the Authority to comply with equality Legislation including the Equality Act 2010, any direction of the Equality and Human Rights Commission or any other Relevant Authority; and/or
- 29.7.4 carry out and provide to the Authority risk assessments and Equality Analysis (or any other similar instruments required by the Authority) in relation to the Equality Duties and the Contractor's compliance with **clauses 29.3 (Equality and Diversity) to 29.11 (Non-compliance and Investigations)** (inclusive).

29.8 **Sub-Contractors**

The Contractor shall procure that its Sub-Contractors comply with the obligations set out in **clause 29.3 (Equality and Diversity) to 29.7 (Provision of Information and Assistance)** (inclusive).

29.9 **Equality, Diversity and Inclusion Officer**

The Contractor shall nominate, as soon as reasonably practicable and by the Mobilisation Commencement Date, an individual who will be responsible for managing and promoting equality, diversity and inclusion in respect of the Contractor's Staff and the Services and for the implementation of all equality, diversity and inclusion arrangements and the monitoring and reporting of the Contractor's compliance with **clauses 29.3 (Equality and Diversity) to 29.11 (Non-compliance and Investigations)** (inclusive). The Contractor shall ensure that the individual nominated shall have completed all relevant training (to a comparable standard to that which is provided by the Authority) on equality, diversity and inclusion and shall be sufficiently experienced and appropriately qualified to collect and present the information set out in **clause 29.10 (Equality and Diversity Reports)** at Contract Review Meetings and management meetings as required by the Authority pursuant to the Authority Policies. For the avoidance of doubt, the role set out in this **clause 29.9 (Equality, Diversity and Inclusion Officer)** is a standalone role, and the nominated individual shall not be entitled to occupy any other role in the Prison for the duration of their appointment.

29.10 **Equality and Diversity Reports**

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

29.10.1.1 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;

29.10.1.2 details of any complaints and/or investigations in relation to equality and diversity and details of any action taken;

29.10.1.3 data and analysis of any allegations of discrimination and/or harassment relating to race, gender, age, disability, religious belief, sexual orientation or otherwise;

29.10.1.4 information on training provided by or for the Contractor to the Contractor's Staff in relation to equality and diversity;

29.10.1.5 details of recruitment, retention and attrition during the period covered by the report including details of roles and seniority;

29.10.1.6 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

29.10.1.7 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.

29.10.2 The Contractor shall twelve (12) Months after the Mobilisation Commencement Date and on each twelve (12) Month anniversary of such date, submit a report to the Authority demonstrating its compliance with **clauses 29.3 (Equality and Diversity) to 29.8 (Sub-Contractors)** (inclusive) and its proposals in respect of equality, diversity and inclusion for the following twelve (12) Months.

29.10.3 The Contractor shall provide the Authority with Equality Analysis (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.

29.11 **Non-compliance and Investigations**

29.11.1 If, in the reasonable opinion of the Authority, the Contractor fails to comply with its obligations in **clauses 29.3 (Equality and Diversity) to 29.8 (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.

29.11.2 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 **clauses 29.3 (Equality and Diversity) to 29.11 (Non-compliance and Investigations)** (inclusive), the Contractor shall (and shall ensure that its Sub-Contractors shall):

29.11.2.1 provide any information requested in the timescale allotted;

29.11.2.2 attend and permit members of the Contractor's Staff to attend any meetings as required;

29.11.2.3 allow itself and any member of the Contractor's Staff to appear as witnesses in any ensuing proceedings; and



29.11.2.4 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.

29.11.3 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:

29.11.3.1 take all reasonable steps to eliminate such unlawful discrimination and shall otherwise comply with all the requirements and recommendations of such Relevant Authority; and

29.11.3.2 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.

29.12 **Security and Vetting**

29.12.1 The Contractor shall comply with the provisions of:

29.12.1.1 the Official Secrets Act 1989 and the National Security Act 2023; and

29.12.1.2 section 182 of the Finance Act 1989.

29.12.2 The Contractor shall take all reasonable steps to ensure that each of the Contractor's Staff:

29.12.2.1 are aware that the Official Secrets Act 1989 and the National Security Act 2023 apply to it and will continue to apply to it after the expiry or earlier termination of this Contract; and

29.12.2.2 comply with the Official Secrets Act 1989 and the National Security Act 2023 in the performance of its obligations and duties under or in connection with this Contract.

29.12.3 The Contractor shall if requested by the Authority in writing from time to time, ensure that any of its Contractor's Staff sign a statement acknowledging that, both during the Term and after its expiry or termination, it is bound by the Official Secrets Act 1989 and the National Security Act 2023.

29.12.4 The Contractor shall comply with, and shall ensure that its Contractor's Staff comply with, any security, safeguarding and/or vetting requirements and/or instructions

contained in the Authority Policies or notified to the Contractor by the Authority in writing from time to time.

29.13 Conflicts of Interest

29.13.1 The Contractor:

29.13.1.1 must take action to ensure that neither the Contractor nor the Contractor's Staff are placed in the position of an actual, potential or perceived Conflict of Interest.

29.13.1.2 must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

29.13.2 The Authority will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Authority, such measures do not or will not resolve an actual or potential Conflict of Interest, the Authority may terminate this Contract immediately by giving notice in writing to the Contractor where there is or may be an actual or potential Conflict of Interest.

29.14 Modern Slavery

29.14.1 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:

29.14.1.1 not use, or allow its Contractor's Staff to use, forced, bonded or involuntary prison labour;

29.14.1.2 not require any Contractor's Staff to lodge deposits or identity papers with their employer or deny Contractor's Staff freedom to leave their employer after reasonable notice;

29.14.1.3 make reasonable enquiries to ensure that its officers and its Contractor's Staff have not been convicted of slavery or human trafficking offences anywhere around the world;

29.14.1.4 have and maintain throughout the Contract Period its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;



- 29.14.1.5 implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Contract;
- 29.14.1.6 shall prepare and deliver to the Authority within ninety (90) Days of the Commencement Date and updated on a frequency defined by the Authority, a slavery and human trafficking report (in respect of which a statement under section 54 of the Modern Slavery Act would be sufficient) setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- 29.14.1.7 not use, or allow its Contractor's Staff to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its Contractor's Staff;
- 29.14.1.8 not use, or allow its Contractor's Staff to use, child or slave labour;
- 29.14.1.9 report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its Contractor's Staff to the Authority and the Modern Slavery Helpline and any relevant national or local law enforcement agencies;
- 29.14.1.10 comply with any request by the Authority to complete the Modern Slavery Assessment Tool within sixty (60) Days of such request;
- 29.14.1.11 if the Contractor or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority to submit a remedial plan (within any timescales set out by the Authority) which follows the form set out in Annex D of the guidance 'Tackling Modern Slavery in Government Supply Chains', which can be found at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1135523/PPN_02_23_-_Update_to_Tackling_Modern_Slavery_in_Government_Supply_Chains_2023_-_Guidance.pdf;
- 29.14.1.12 comply with any request by the Authority to provide a Supply Chain Map within fourteen (14) Days of such request;

- 29.14.1.13 comply with any request by the Authority to provide a copy of any reports of any Sub-Contractor regarding any or all of workforce conditions, working or employment practices and recruitment practices within fourteen (14) Days of such request; and
- 29.14.1.14 carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied.
- 29.14.2 The Authority shall be entitled to carry out an unannounced or semi-announced audit of the Prison and Site and speak directly to any Contractor's Staff in a confidential manner and in the native language of such Contractor's Staff in respect of workforce conditions, working or employment practices and recruitment practices. The Authority may carry out this audit itself or through an Audit Agent. For the purposes of any audit carried out pursuant to this **clause 29.14.1.2 (Modern Slavery)**, in addition to any other rights under this Contract, the Authority may instruct the Contractor to carry out such an audit of any Sub-Contractor by an independent third party and, if so instructed, the Contractor shall deliver a report to the Authority within ninety (90) Days of such instruction (or such other timescale as the Authority may specify).
- 29.14.3 If the Contractor notifies the Authority pursuant to **clause 29.15 (Whistleblowing)** it shall respond promptly to the Authority's enquiries, cooperate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with this Contract.
- 29.14.4 If the Contractor breaches the provisions of this **clause 29.14 (Modern Slavery)**, the Authority may:
- 29.14.4.1 by notice require the Contractor to remove from performance of this Contract any Sub-Contractor, Contractor's Staff or other persons associated with it whose acts or omissions have caused the breach; or
- 29.14.4.2 as this is a Contractor Default falling within paragraph (c) of the definition of Contractor Default, terminate this Contract immediately in accordance with **clause 44 (Termination on Contractor Default)**.

29.14.5 The Contractor:

29.14.5.1 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world; and

29.14.5.2 warrants to the best of its knowledge that it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery and human trafficking offences anywhere around the world.

29.15 **Whistleblowing**

29.15.1 As soon as it is aware of it the Contractor and Contractor's Staff must report to the Authority any:

29.15.1.1 Prohibited Equality and Diversity Act;

29.15.1.2 actual or suspected breach of:

- (a) Legislation;
- (b) **clause 8.10 (Safety and Security on the Site);**
- (c) **clause 29 (Compliance); and**
- (d) **clause 48.1 (Prohibited Act).**

29.15.2 The Contractor must not retaliate against any of the Contractor's Staff who in good faith reports a breach listed in **clause 29.15.1 (Whistleblowing)** to the Authority or a Prescribed Person.

29.16 **Supplier Code of Conduct**

In February 2019, HM Government published a 'Supplier Code of Conduct' setting out the standards and behaviours expected of suppliers who work with government, the current version of which can be found online at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf, and the Authority expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

30. **NOT USED**

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, Welsh Language (Wales) Measure 2011, 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 Service 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 Officers)**.

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 as part of the Contractor's Staff Information in accordance with **paragraph 2.6 (Mobilisation Period) of Schedule 5 (Mobilisation, Transition and Transformation)** 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 they think fit. The Contractor shall submit to the Authority's Representative such further particulars of the proposed Director and the terms of their 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 their 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 their certification has been revoked or during any period when their 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 their fitness for certification as a Prisoner Custody Officer, including if any member of the Contractor's Staff receives a police caution, a Conviction, a Civil Injunction, a CPN 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:
 - 36.1.2.1 question each such person as to whether they have any police cautions, Convictions, a Civil Injunction, a CPN 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, a Civil Injunction, a CPN 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 their commencement of employment as a member of the Contractor's Staff receives a Conviction, a Civil Injunction, a CPN or ASBO or whose previous Convictions, Civil Injunctions, CPNs or ASBOs become known to the Contractor (or any Sub-Contractor); and
- 36.1.5 ensure that all members of the Contractor's Staff:
 - 36.1.5.1 are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence; and
 - 36.1.5.2 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 one hundred and twenty (120) Days 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 Local 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 Local 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 their 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 their 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 their 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 their duties at the Prison, it shall issue a Cessation of Suspension Notice to the Authority's Representative.
- 36.8.5 Following receipt of any Cessation of Suspension Notice by the Authority's Representative, the Authority's Representative shall be entitled, by issuing 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 their 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 36.11.2.3 (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 ninety (90) Days 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)** 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 (Not Used)** and **Part D (Pensions)** of **Part 1 (Staff Transfer on Commencement)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply;

37.1.1.2 where the Relevant Transfer involves the transfer of Transferring Previous Contractor Employees, **Part B (Transferring Previous Contractor Employees at Commencement of Services)** and **Part D (Pensions)** of **Part 1 (Staff Transfer on Commencement)** 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 4 (Employment Exit Provisions)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply;

37.1.1.4 **Part 2 (TUPE Surcharge and Redundancy Cost Adjustment)** and **Part 3 (Redundancy Surcharge)** of **Schedule 18 (TUPE, Employees and Pensions)** shall apply; and

37.1.1.5 **Part C (Not Used) of Part 1 (Staff Transfer on Commencement) 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 (Not Used) of Part 1 (Staff Transfer on Commencement) of Schedule 18 (TUPE, Employees and Pensions)** shall apply;

37.1.2.2 **Part D (Pensions) of Part 1 (Staff Transfer on Commencement) of Schedule 18 (TUPE, Employees and Pensions)** may apply;

37.1.2.3 upon the expiry or termination of the Services (or any part of the Services), **Part 4 (Employment Exit Provisions) of Schedule 18 (TUPE, Employees and Pensions)** shall apply;

37.1.2.4 **Part 3 (Redundancy Surcharge) of Schedule 18 (TUPE, Employees and Pensions)** shall apply; and

37.1.2.5 **Parts A (Not Used) and B (Transferring Previous Contractor Employees at Commencement of Services) of Part 1 (Staff Transfer on Commencement) 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 and Redundancy Cost Adjustment) of Part 1 (Staff Transfer on Commencement) 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 (directly or indirectly and at any tier) 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 ITEPA 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 (including secondary contributions), apprenticeship levies, social security contributions and any other liability, deduction, contribution, assessment or claim (including any interest, fines, penalties and/or expenses thereon) arising from or made in connection with the provision of the Services and/or any other activities performed under this Contract by the Contractor or any Contractor's Staff (directly or indirectly and at any tier), including where the Authority is required to pay or account for to HMRC any sums (of whatever type and nature) due to the engagement by the Contractor of any individual(s) engaged through a limited company or partnership which meets the conditions specified in sections 61O or 61P of ITEPA.

37.2.2 For the purposes of the off-payroll working rules ("**IR35**") in Chapter 2, Part 10 of ITEPA, the Contractor and the Authority agree that the Contractor is the "client" and shall be responsible for satisfying all legal and tax requirements imposed on the "client" under IR35. Notably, as the "client", the Contractor agrees that it will be responsible for undertaking assessments in respect of any individual person engaged through a limited company or partnership, which meets the conditions specified in sections 61O or 61P of ITEPA, and is engaged to provide Services under the Contract, to determine whether if the Services were provided directly by the individual to the client, the individual would be regarded for income tax purposes as an employee of the client, or the holder of an office under the client.

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 their 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, 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 Provisions)**.

39.1.2 The Monthly Payment for each Month 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 the Monthly Mobilisation Payment and any applicable Monthly Pass-through Costs in accordance with the provisions of **Schedule 14 (Payment Mechanism)**.

39.1.3 For the avoidance of doubt, the Contract Price represents all of the charges that can be levied by the Contractor in respect of the provision of the Services in accordance with this Contract, and the Contractor shall, at no additional cost to the Authority, be responsible for providing any services, functions and responsibilities that are both necessary for and incidental to the proper performance by the Contractor of the Services, unless there is an express right for the Contractor to vary or levy additional charges.

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 an Application for Payment; accompanied by

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.

An Application for Payment shall not be valid unless it is accompanied by/or includes a valid VAT invoice for the amount claimed in the Application for Payment. Without prejudice to that requirement, if no invoice for the relevant amount is issued with an Application for Payment, then (notwithstanding any provision to the contrary) the Authority shall (at its sole discretion) be entitled to value the amount due at £nil in any subsequent Payment Notice and/or Pay Less Notice in accordance with **clause 39.3 (Payment)**.

39.3 **Payment**

- 39.3.1 No later than five (5) Days after the Payment Due Date the Authority shall submit to the Contractor a Payment Notice with the Notified Amount. It is immaterial that the amount referred to in the Payment Notice may be zero. Should the Authority fail to issue a Payment Notice, the Notified Amount shall be the amount set out in the Application for Payment.
- 39.3.2 Where the Notified Amount set out in the Payment Notice differs from the amount set out in the Application for Payment, the Contractor shall within five (5) Days of receipt of the Payment Notice, cancel the invoice submitted with the Application for Payment and submit to the Authority an invoice for the amount (if any) shown in the Payment Notice as owed by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount. If no such invoice is issued by the Contractor in accordance with this **clause 39.3.2 (Payment)**, the Authority shall be entitled (at its sole discretion, and notwithstanding any provision to the contrary) to value the amount due in respect of:
- 39.3.2.1 the Application for Payment at £nil in any subsequent Pay Less Notice in accordance with **clause 39.3.4 (Payment)**; and/or
- 39.3.2.2 the amount due in respect of any subsequent Application for Payment at £nil in any subsequent Payment Notice and/or Pay Less Notice in accordance with **clause 39.3 (Payment)**.
- 39.3.3 The Authority shall, subject to any Pay Less Notice issued under **clause 39.3.4 (Payment)**, pay the Notified Amount by 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 five (5) Day before the Final Date for Payment, give the Contractor notice of that intention by issuing 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.
- 39.3.5 The Contractor shall within five (5) Days of receipt of the Pay Less Notice, cancel any previous invoice submitted in respect of the relevant Monthly Payment and submit to the Authority an invoice for the amount (if any) shown in the Pay Less Notice as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount. If no such invoice is issued by the Contractor in accordance with this **clause 39.3.5 (Payment)**, the Authority shall be entitled (at

its sole discretion, and notwithstanding any provision to the contrary) to value the amount due in respect of any subsequent Application for Payment at £nil in any subsequent Payment Notice and/or Pay Less Notice in accordance with **clause 39.3 (Payment)**.

39.3.6 Where the Authority fails to issue a Pay Less Notice within the periods required by this **clause 39.3 (Payment)** the Notified Amount shall be paid by the Authority by the Final Date for Payment. Should the Authority determine the Notified Amount to be incorrect the Authority shall be entitled to take this into account in Payment Notices and/or Pay Less Notices in respect of subsequent Applications for Payment.

39.3.7 Where a report, Payment Notice or Pay Less Notice 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.

39.3.8 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)**).

39.3.9 For the avoidance of doubt, notwithstanding any disputed amounts referred for resolution pursuant to **clause 39.3.8 (Payment)**, 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 VAT Recipient shall in addition pay the VAT Supplier the amount of that VAT (added at the prevailing rate) against receipt by the VAT Recipient from the VAT 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:
- 40.1.5.1 the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract; and
- 40.1.5.2 any amounts in respect of VAT paid by the Authority for which the Authority is unable to obtain credit or reimbursement from HM Revenue & Customs as a result of a failure by the Contractor to issue a proper and valid VAT invoice (along with any other amounts incurred by the Authority arising out of or connected with the Contractor's failure to issue a proper and valid VAT invoice).
- 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.
- 40.1.6 The Parties acknowledge that the Works are expected to include "specified services" (within the meaning of Article 4 of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019/892 (the "**Reverse Charge Order**")) and will be "excepted supplies" (within the meaning of Article 8 of the Reverse Charge Order) on the basis that the Authority is an end user for the purposes of section 55A of VATA in respect of such specified services. Accordingly, the Reverse Charge Order will not apply and the Authority will not be required to account to HMRC for VAT in respect of such supplies under section 55A of VATA.

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 Authority may set off any amount owed by the Contractor to the Crown or any part of the Crown (including the Authority) against any amount due to the Contractor under this Contract or under any other agreement between the Contractor and the Authority.

41.1.2 If the Authority wishes to set off any amount owed by the Contractor to the Crown or any part of the Crown (including 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 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.

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 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;

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; and

43.2.1.4 the amounts set out in **paragraph 11.3.2 (Adjustments to the Base Case and/or Contract Price Following Changes)** of **Schedule 16 (Change Protocol)** and any costs associated with a Change to the Base Case agreed in accordance with **paragraph 11.3.1 (Adjustments to the Base Case and/or Contract Price Following Changes)** of **Schedule 16 (Change Protocol)** to the extent that such costs remain at the Termination Date to be recoverable through Charges that but for the termination of this Contract would have been recoverable after the Termination Date through the Change to the Base Case (Unrecovered Costs),

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 an Unavailability Deduction and/or a Performance Point 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 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**

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 (n) 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 (n) 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 (n) 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 (n), 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 (n) 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 the circumstances outlined in **paragraph 14.5.3 (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 (including any damages or other remedies arising from the termination or the Contractor's breach of the obligations 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)**, the Authority shall pay to the Contractor the Force Majeure Termination Sum in accordance with **clause 50 (Date for Payment)**.

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. **NOT USED**

47. **TERMINATION IN ACCORDANCE WITH THE REGULATIONS**

47.1 The Authority may terminate this Contract 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. The Contract will terminate immediately on the date specified in the Authority's notice.

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;

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; or

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.

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 Finances 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 (Compensation on Voluntary Termination)**.

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 (Compensation on Termination for 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**

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 39.3 (Payment)** 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 1.16.3 (Monthly Lifecycle Transfer) 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 Interest), 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), 53 (Consequences of Termination), 54 (Surveys on Expiry or Termination and Retention Fund), 55 (Transition to Another Contractor), 61 (Information and Confidentiality), 62 (Publicity and Branding), 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), 77 (Entire Agreement), 78 (Third Party Rights), 80 (Notices), 81 (Severability), 83 (Governing Law and Jurisdiction) and 87 (Capacity) or under Schedules 14 (Payment Mechanism), 18 (TUPE, Employees and Pensions), 22 (Notices), 24 (Handover and Exit Management) and 25 (Data Protection) or under any other provision of this Contract which is expressed or implied 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 that is 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 and not included in the Prison, the Site, to audit and assess whether they and the Assets have been and are being maintained by the Contractor in accordance with the Required Condition Standard.

54.1.2 No later than the date that is 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 the Required Condition Standard, 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 **paragraph 4 (Asset Maintenance and Replacement)** of **Schedule 11 (Property and Facilities Management)**;
- 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 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 the Authority shall withhold payment of such amount in a Retention Fund.
- 54.5.2 The Retention Fund 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, the Authority shall reimburse the Contractor's costs of so doing from the Retention Fund. If the amount in the Retention Fund 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; or

54.7.2 where there are insufficient funds in the Retention Fund, 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 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 Recompensation Data) as specified in **Schedule 24 (Handover and Exit Management)**.

55.3 Notwithstanding any of the other provisions of this Contract, including **clause 2 (Duration of Contract)** and this **Part XI (Arrangements on Termination or Expiry)**, the Expiry Date, Early Termination Date and any Termination Date may be extended by the Authority as set out in **paragraph 4.1 (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 **clause 14.8 (Co-operation with other service providers)** and **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 (where practicable) given at least eighteen (18) Months' notice to its Sub-Contractors of the expiry or termination 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;

56.3.2 the period referred to in paragraph (k) 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 (k) 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, transition and transformation approach and the associated activities to be performed under this Contract, including under **Schedule 5 (Mobilisation, Transition and Transformation)**;

57.2.2.3 arising from Works to be undertaken, including any Major Maintenance Work and any Construction Works;

57.2.2.4 pursuant to the requirements of the Lease (including pursuant to amendments to the Lease or new Lease), 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 sectional completion arrangements;

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 **Schedule 11 (Property and Facilities Management)** and **clause 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 Local 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; and

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 in 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 (Authority Step-In)** 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 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.

This clause is without prejudice to any deductions from the Contract Price in accordance with **clause 60.6.2.3 (Intervention under Section 88)**.

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.

The parties' remedies for breach of contract, including (but not limited to) damages, shall not be affected by this **clause 60.5 (Step-In on Contractor Breach)**. This **clause 60.5 (Step-In on Contractor Breach)** is also without prejudice to any deductions from the Contract Price in accordance with **clause 60.6.2.3 (Intervention under Section 88)**.

60.6 Intervention under Section 88

60.6.1 Without prejudice to any other provision of this Contract, including **clause 60.1 (Right to Step-In)**, 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 their 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)**.

This **clause 60.6.2 (Intervention under Section 88)** is without prejudice to any deductions from the Contract Price in accordance with **clause 60.5.2 (Step-In on Contractor Breach)**.

60.7 Step-Out

60.7.1 The Authority may, at any time during the period of the Required Action, provide a Step-Out Notice to the Contractor stating that the Authority wishes to cease the Required Action with effect from the 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 Early Termination Date or Termination Date (as applicable) and after termination of their employment.

61.3 Confidentiality

61.3.1 Except to the extent set out in this **clause 61.3 (Confidentiality)** or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:

61.3.1.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

61.3.1.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;

61.3.1.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and

61.3.1.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

- 61.3.2 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 61.3.2.1 the Recipient is required to disclose the Confidential Information by Law, provided that **clause 61.10 (Transparency and Freedom of Information)** shall apply to disclosures required under the FOIA or the EIRs;
- 61.3.2.2 the need for such disclosure arises out of or in connection with:
- (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
 - (b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
 - (c) the conduct of a Central Government Body review in respect of this Contract; or
- 61.3.2.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 61.3.3 If the Recipient is required by Legislation to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Legislation notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Legislation and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 61.3.4 The Contractor may disclose the Confidential Information of the Authority on a confidential basis only to:
- 61.3.4.1 Contractor's Staff who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Contractor's obligations under this Contract;

61.3.4.2 its auditors; and

61.3.4.3 its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Contractor discloses Confidential Information of the Authority pursuant to this **clause 61.3.4 (Confidentiality)**, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

61.3.5 The Authority may disclose the Confidential Information of the Contractor:

61.3.5.1 on a confidential basis to a Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;

61.3.5.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

61.3.5.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

61.3.5.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in **clause 61.3.5.1 (Confidentiality)** (including any benchmarking organisation) for any purpose relating to or connected with this Contract;

61.3.5.5 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)**;

61.3.5.6 to an actual or prospective New Contractor or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this **clause 61.3.5.6 (Confidentiality)** disclose the Contractor's Confidential Information which is information relating to the Contractor's or its Sub-Contractors' prices or costs, other than where such information constitutes Transparency Information); or

61.3.5.7 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 this **clause 61.3 (Confidentiality)**.

61.4 Audit

61.4.1 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.

61.4.2 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such Documents as they 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 they consider 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.

61.5 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.

61.6 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.

61.7 Expiry and Termination

On or before the Expiry Date or the Early Termination Date or Termination Date (as applicable), 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.

61.8 **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.

61.9 **Official Secrets Acts**

The provisions of this **clause 61 (Information and Confidentiality)** are without prejudice to the application of the Official Secrets Act 1989, the National Security Act 2023 and section 182 of the Finance Act 1989.

61.10 **Transparency and Freedom of Information**

61.10.1 The Parties acknowledge that Transparency Information is not Confidential Information.

61.10.2 Notwithstanding any other provision of this Contract, the Contractor hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Contractor on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

61.10.3 The Contractor shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.

61.10.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.

61.10.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the

information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Contractor.

61.10.6 The Contractor agrees that any Information it holds that is reasonably relevant to, or that arises from, the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information (subject to **clause 61.3.5.3 (Confidentiality)**)) publish such Information. The Contractor shall provide to the Authority within five (5) Business Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

61.10.7 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Contractor shall:

61.10.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

61.10.7.2 transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Business Days of receipt;

61.10.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Business Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

61.10.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

61.10.8 The Contractor acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but

(notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

62. PUBLICITY AND BRANDING

62.1 The Contractor shall not, and shall procure that its Contractor's Staff shall not,:

62.1.1 make any press announcements or publicise this Contract or its contents in any way;

62.1.2 permit any photography or filming in or upon any property used in relation to this Contract;

62.1.3 use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

62.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Contractor's ICT System and the Authority's ICT System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

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 4.13.2 (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 and other applicable fire safety Legislation;
- 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;
- 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;
- uu Energy and sustainability records and reports (including those required pursuant to **Schedule 12 (Sustainability)**); and
- vv Records/test certificates relating to radon gas,

and the Contractor shall have the items referred to in **clause 64.3.2 (Maintenance of Records)** 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 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 their 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 Early Termination Date or Termination Date (as applicable), 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 relate to the performance of the Services 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 the Coroners and Justice Act 2009); or

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, 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 **Retention of Records**

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 Early Termination Date or Termination Date for a period of six (6) Years after the Expiry Date or Early Termination Date or Termination Date (as the case may be).

64.10.2 From the Mobilisation 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 VATA, 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 61.8 (Disclosure by the 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 or any breach by the Contractor of any applicable Legislation;
- 66.1.1.4 third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis); and
- 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 the Indemnified Party wishes to make a claim under this Contract against the Indemnifying Party in relation to 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 [Redacted under FOIA section 43, Commercial interests] 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 [Redacted under FOIA section 43, Commercial interests] 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 period between the Commencement Date and the date on which the first Contract Year commences, an amount equal to [Redacted under FOIA section 43, Commercial interests] of the anticipated Contract Price for the second Contract Year as set out in cell "F169" of workbook tab entitled "5. Total Operating Costs" of the Base Case;

66.8.1.2 during each of the first and second Contract Years, an amount equal to [Redacted under FOIA section 43, Commercial interests] of the anticipated Contract Price for the second Contract Year as set out in cell "F169" of workbook tab entitled "5. Total Operating Costs" of the Base Case;

66.8.1.3 in relation to defaults of the Authority occurring during any subsequent Contract Year (other than the final Contract Year), an amount equal to [Redacted under FOIA section 43, Commercial interests] of the total Contract Price paid and/or due to be paid to the Contractor under this Contract in that Contract Year;

- 66.8.1.4 in relation to defaults of the Authority occurring during the final Contract Year, an amount equal to one [Redacted under FOIA section 43, Commercial interests] Price paid and/or due to be paid to the Contractor under this Contract in the immediately preceding Contract Year; and
- 66.8.1.5 in relation to defaults of the Authority occurring after the Expiry Date or Early Termination Date or Termination Date (as applicable), an amount equal to [Redacted under FOIA section 43, Commercial interests] 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 period between the Commencement Date and the date on which the first Contract Year commences, an amount equal to [Redacted under

[Redacted under FOIA section 43, Commercial interests] of the anticipated Contract Price for the second Contract Year as set out in cell "F169" of workbook tab entitled "5. Total Operating Costs" of the Base Case;

66.9.1.2 during each of the first and second Contract Years, an amount equal to [Redacted under FOIA section 43, Commercial interests] of the amount of the anticipated Contract Price for the second Contract Year as set out in cell "F169" of workbook tab entitled "5. Total Operating Costs" of the Base Case;

66.9.1.3 in relation to defaults of the Contractor occurring during any subsequent Contract Year (other than the final Contract Year), an amount equal to [Redacted under FOIA section 43, Commercial interests] of the total Contract Price paid and/or due to be paid to the Contractor under this Contract in that Contract Year;

66.9.1.4 in relation to relation to defaults of the Contractor occurring during the final Contract Year, an amount equal to [Redacted under FOIA section 43, Commercial interests] 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

66.9.1.5 in relation to defaults of the Contractor occurring after the Expiry Date or Early Termination Date or Termination Date (as applicable) an amount equal to [Redacted under FOIA section 43, Commercial interests] 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 including the other provisions

of this **clause 66 (Indemnities and Liabilities)**, this **clause 66.9 (Limitation of the Contractor's Liability)** shall not apply in respect of:

66.9.3.1 any Insured Losses which fall within the minimum required financial level of the relevant insurance pursuant to **clause 68 (Insurance)** but not including any excess or deductibles that may apply to such insurance (and such excess or deductibles for which the Contractor is liable shall form part of the Contractor's liability cap in accordance with **clause 66.9.1 (Limitation of the Contractor's Liability)**); 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) bribery, 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 29.14 (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 Local 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 3.3 (Services Commencement)** of **Schedule 5 (Mobilisation, Transition and Transformation)** 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 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 (Insurance)** and required to be taken out pursuant to **Schedule 19 (Required Insurances)**;

68.1.2 the additional insurances that the Authority may require the Contractor to take out in connection with any Works and Major Maintenance Works 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

68.1.3 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 regulated, 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, 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:
- 68.8.1 on the Commencement Date (in respect of each of the Required Insurances to be held in place from the Commencement Date); and
 - 68.8.2 on the Services Commencement Date (in respect of each of the Required Insurances to be held in place from the Services Commencement Date); and
 - 68.8.3 on the date from which such insurance is required to be held in place (in respect of each of the Required Insurances in **Part 2 of Schedule 19 (Required Insurances)**); and
 - 68.8.4 within fifteen (15) Business Days after the renewal of each of the Required Insurances,
- provide evidence, in a form satisfactory to the Authority, that each of the Required Insurances are or (as relevant) shall be in full force and effect on the Commencement Date, Services Commencement Date and/or relevant renewal date 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 cooperate 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 £50,000 (fifty thousand pounds sterling) 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 the minimum limit of indemnity required in relation to any of the Required Insurances is specified as being "in the aggregate":
- 68.12.1 if a claim or claims which do not relate to this Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Contractor shall immediately submit to the Authority:
- 68.12.1.1 details of the policy concerned; and
- 68.12.1.2 its proposed solution for maintaining the minimum limit of indemnity specified; and
- 68.12.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Contract are paid by insurers, the Contractor shall:
- 68.12.2.1 ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Contract; or
- 68.12.2.2 if the Contractor is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.
- 68.13 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for such premium.
- 68.14 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.
- 68.15 All insurance proceeds received in respect of the Property Damage "All Risks" Insurance or Contractors "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.

68.16 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)**.

69.2 **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 68.15 (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 14 (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 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 a consolidated and reconciled 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 If such account shows that in respect of the preceding Contract Year 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, at the Authority's request, update the Base Case and the Contract Price to reflect such savings, and/or 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, save where the damage is Authority Damage and the Authority has agreed as part of its obligation to discuss pursuant to **clause 69.3 (Obligation to Discuss)** that the time periods under this **clause 69.8 (Time Periods)** should be extended, 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), or in respect of disputes regarding payments under **clause 39 (Payment Provisions)**, to bring adjudication proceedings at any time (as more fully set out in **clause 70.15 (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, without prejudice to the Parties' right in respect of a Dispute to which **clause 70.15.1 (Adjudication)** applies to bring adjudication proceedings at any time in accordance with **clause 70.15 (Adjudication)** by serving notice of intention to refer a Dispute in accordance with **clause 70.15.2 (Adjudication)**.

70.2.2 The Notice of Dispute shall set out in reasonable detail the matter giving rise to the Dispute, the nature of the Dispute and where the Dispute may concern financial loss or remedies, an estimate of the amount in dispute.

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 70.11 (Arbitration)**) noting that either Party may at any time seek urgent injunctive relief in accordance with **clause 70.14 (Urgent Relief)** or give notice of its intention to refer a Dispute to which **clause 70.15.1 (Adjudication)** applies to adjudication (in accordance with **clause 70.15 (Adjudication)**).

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 for a period of thirty (30) days.

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, serve an ADR Notice requiring the Parties to participate in a Mediation in accordance with this **clause 70.4 (Mediation)** and CEDR's model mediation procedure (as applicable at the time of the Authority's election to mediate). In the event of any conflict between this Contract and CEDR's model mediation procedure (or any mediation agreement entered in respect of the Mediation), this Contract shall take precedence.

70.4.2 If the Parties are unable to agree on the joint appointment of a Mediator within a reasonable time (and in any event within fourteen (14) days of the date of the ADR Notice), they shall make a joint application to CEDR to nominate the Mediator.

70.4.3 If there is any point on the logistical arrangements of the Mediation, other than the nomination of the Mediator, upon which the Parties cannot agree within fourteen (14) days from the date of the ADR Notice, where appropriate, in conjunction with the Mediator, CEDR will be requested to decide that point for the Parties having consulted with them.

70.4.4 Unless otherwise agreed, the Mediation will start not later than thirty (30) days after the date of the ADR Notice. Subject to **clause 70.1 (Disputes)** and **clause 70.14 (Urgent Relief)** or as otherwise permitted by this Contract, following the service of an ADR Notice, no Party may commence any arbitration in relation to any Dispute which is the subject of the ADR Notice until it has attempted to settle the Dispute by mediation and either the Mediation has terminated or the other Party has failed to participate in the Mediation, provided that the right to commence proceedings is not prejudiced by a delay.

70.4.5 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 accept that the Mediator

(unless an employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

70.4.6 No recording or transcript of the Mediation shall be made.

70.5 Participants

70.5.1 Each Party shall, no less than seven (7) days before the date of the Mediation, state the names of:

70.5.1.1 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

70.5.1.2 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.

70.6 Exchange of Information

70.6.1 Each Party shall exchange with each other and 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:

70.6.1.1 its Case Summary; and

70.6.1.2 all the documents to which the Case Summary refers and any others to which it may want to refer in the Mediation.

70.6.2 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.

70.6.3 The Parties should use reasonable endeavours to agree no less than two (2) weeks before the date of the Mediation:

70.6.3.1 the maximum number of pages of each Case Summary; and

70.6.3.2 a joint set of supporting documents to be provided to the Mediator in a hard copy or electronic bundle pursuant to **clause 70.6.1.2 (Exchange of Information)** above (save for any documents which are the subject of

clause 70.6.2 (Exchange of Information)) or, where a joint set cannot be agreed, the maximum length of each set of supporting documents.

70.7 Settlement Agreement

70.7.1 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.

70.8 Termination of Mediation

70.8.1 The Mediation shall terminate when:

70.8.1.1 a Party withdraws from the Mediation by serving written notice on the other Party in accordance with **clause 80 (Notices)**;

70.8.1.2 a written settlement agreement is concluded in accordance with **clause 70.7.1 (Settlement Agreement)**;

70.8.1.3 the Mediator decides that continuing the Mediation is unlikely to result in a settlement and informs the Parties that the Mediation is terminated; or

70.8.1.4 the Mediator decides they should retire for any of the reasons in CEDR's code of conduct and informs the Parties of the same.

70.9 Confidentiality

70.9.1 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:

70.9.1.1 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

70.9.1.2 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, save as expressly allowed for in any settlement agreement.

70.9.2 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.

70.9.3 **Clause 70.9.1 and 70.9.2 (Confidentiality)** shall not apply insofar as any such information is necessary to implement and enforce any settlement agreement arising out of the Mediation.

70.9.4 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.

70.10 **Mediator's fees and expenses**

70.10.1 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.

70.10.2 Each Party shall bear its own costs and expenses of its participation in the Mediation.

70.11 **Arbitration**

70.11.1 In the event that a Dispute between the Parties cannot be resolved by consultation in accordance with **clause 70.3 (Consultation)** within (30) Days of the request by either Party for such consultation, or where **clause 70.15.8 (Adjudication)** applies, any Dispute, including any question regarding the existence, validity or termination of this Agreement, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause, provided that, if the Authority has elected to commence the Mediation process, the Contractor may not commence Arbitration until the Mediation has concluded in accordance with **clause 70.8 (Termination of Mediation)**.

70.11.2 Subject to **clause 70.11.3 (Arbitration)**, the tribunal shall consist of a sole Arbitrator and in the event that the Parties fail to agree the appointment of the Arbitrator within twenty-eight (28) Days after commencement of the arbitration in accordance with the LCIA Rules or, if the person appointed is unable or unwilling to act, as appointed by the LCIA.

70.11.3 The Parties may agree, or the Authority at its sole discretion may direct within twenty-eight (28) Days after commencement of the arbitration in accordance with the LCIA Rules, that the tribunal shall consist of three (3) Arbitrators to be appointed in accordance with the LCIA Rules.

70.11.4 The seat of the Arbitration shall be England.

70.11.5 The language of the Arbitration shall be English and the Arbitration proceedings shall take place in London unless otherwise agreed between the Parties.

70.12 **Arbitrator's Powers**

The Arbitrator or Arbitrators shall, without limitation to their other powers arising under this Contract or at law 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.

70.13 **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 or Arbitrators, if the matter is referred to Arbitration under this **clause 70 (Dispute Resolution)**.

70.14 **Urgent Relief**

Nothing in this **Part XVII (Disputes)** shall prevent either Party from seeking injunctive relief, including through court proceedings, at any time.

70.15 **Adjudication**

70.15.1 This **clause 70.15 (Adjudication)** shall apply to any Dispute that arises under or in connection with the Property and Facilities Management Services (including any Works) or any dispute in relation to sums payable under this Contract.

70.15.2 If a Dispute arises under this Contract to which this **clause 70.15 (Adjudication)** applies, either Party may give notice at any time of its intention to refer such Dispute to adjudication and shall within seven (7) Days thereafter refer the same to the decision of an adjudicator.

70.15.3 Where either Party has given notice of their intention to refer a Dispute to adjudication then:

70.15.3.1 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

70.15.3.2 if the Parties are unable to agree on the appointment of the adjudicator then an 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.

70.15.4 The adjudicator shall reach a decision within twenty-eight (28) Days of the date of referral to them under **clause 70.15.3 (Adjudication)** or such longer period as is agreed by the Parties after the dispute has been referred. The adjudicator may extend the period of twenty-eight (28) Days by up to fourteen (14) Days with the Referrer's consent.

70.15.5 The adjudicator shall act fairly and impartially and shall take the initiative in ascertaining the facts and the law and shall publish their decision simultaneously to both Parties.

70.15.6 In determining any dispute referred to them for a decision, the adjudicator shall:

70.15.6.1 consider any written representations, statements and expert's reports submitted to them by the Parties (which shall be exchanged between the Parties when the same are supplied to the adjudicator);

70.15.6.2 afford the Parties the opportunity to address them in a meeting or meetings. If any such meeting or meetings are held, both Parties must be present;

70.15.6.3 permit the Parties to be represented by such legal or other representatives as they shall see fit;

70.15.6.4 have the power to require the Parties to produce to them 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

- 70.15.6.5 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.
- 70.15.7 The adjudicator may in their decision allocate their fees and expenses between the Parties. Each Party shall bear its own costs and expenses arising out of the adjudication.
- 70.15.8 The adjudicator's decision is binding upon the Parties until the Dispute is finally determined by arbitration proceedings commenced pursuant to this **clause 70 (Dispute Resolution)**, or by agreement. If there is an adjudication decision, either Party may commence arbitration proceedings following that decision without it being necessary first to serve a Notice of Dispute and to undertake Consultation.
- 70.15.9 The adjudicator may, within five (5) Days of giving their decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.
- 70.15.10 The Parties hereby agree that the adjudicator (including any employee or agent of the adjudicator) appointed in accordance with this **clause 70.15 (Adjudication)** shall not be liable for anything done or omitted in the discharge or purported discharge of their functions as adjudicator unless the act or omission is in bad faith.
- 70.15.11 Subject to the provisions of **clauses 70.15.4, 70.15.6 and 70.15.13 (Adjudication)**, in deciding any dispute referred to them, the adjudicator shall determine and take into account any Cross Claim raised by the Respondent to the notice, provided such Cross Claim arises under this Contract.
- 70.15.12 **Clauses 70.15.4 to 70.15.10 (Adjudication)** (inclusive) shall apply to any Cross Claim as they apply to any Dispute referred to the adjudicator pursuant to this **clause 70.15 (Adjudication)**.
- 70.15.13 **Clauses 70.15.11 and 70.15.12 (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 70.15.1 to 70.15.4 (Adjudication)** (inclusive) to determine the relevant Dispute.
- 70.16 **Joinder of Disputes**
- 70.16.1 The Contractor and Authority agree that if a Related Dispute arises, 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.

- 70.16.2 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 trademarks 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;

71.4.2 the Contractor shall procure that no Third Party IPRs or Third Party Software are embedded in or are an integral part of the Project Specific IPRs or any element of

them (except where the Contractor has procured the grant to the Authority of a licence in accordance with **clause 71.5.4 (Transfer and Licences Granted by the Contractor)** to use such Third Party IPRs and Third Party Software in connection with the Project Specific IPRs and that otherwise have been approved in advance in writing by the Authority); and

71.4.3 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 enter into 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 (Transfer and Licences Granted by the Contractor)**.

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:

71.5.4.1 the Third Party Software or Third Party IPRs (as the case may be) are generally commercially available on standard terms to the market (and

such availability is not restricted by reason of exclusive arrangements with the Contractor, a Sub-Contractor or any other customer);

71.5.4.2 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 royalty-free and non-exclusive licence to the Authority to use the Third Party Software and Third Party IPRs during the Contract Period (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 (Transfer and Licences Granted by the Contractor)**; and

71.5.4.3 the assignment and transfer rights required pursuant to **clause 72.10 (Flow Down and Payment Terms in Sub-Contracts)** have been put in place within the relevant licence.

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 but subject always to the duration of the licence granted under **clause 71.5.4 (Transfer and Licences Granted by the Contractor)**, any New Contractor) provided that:

71.5.6.1 the sub-licence is on terms no broader than those granted to the Authority;

71.5.6.2 the sub-licence 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 (Transfer and Licences Granted by the Contractor)**;

- 71.5.6.3 sub-licence 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 (Transfer and Licences Granted by the Contractor)**; and
- 71.5.6.4 the sub- licensee shall have entered into 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 (Transfer and Licences Granted by the Contractor)**.
- 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 (Transfer and Licences Granted by the Contractor)**.

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; and

71.5.11.2 Contractor Background IPRs

and, where requested by the Authority to do so as part of the exit and handover arrangements, use its reasonable endeavours to ensure that the relevant third party grants to the Authority and any New Contractor a licence to use:

71.5.11.3 Third Party IPRs; and/or

71.5.11.4 Third Party Software,

71.5.12 in either case 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 or relevant licensor (as the case may be).

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 (Licences Granted by The Authority)** and any sub-licence granted by the Contractor in accordance with **clause 71.6.1 (Licences**

Granted by The Authority) 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, Project Specific IPRs and the Authority Data (as the case may be) save for any Authority Data that (i) the Contractor is required to retain copies of by Law (ii) is Personal Data in respect of which the Contractor is a Controller or (iii) the Contractor has rights to hold independently of this Contract;

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, Project Specific 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, Project Specific 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, Project Specific 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, Project Specific 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 Authority Indemnified Party, and keep the Authority and each other Authority Indemnified Party indemnified, against all Losses incurred by, awarded against or agreed to be paid by the Authority or any other Authority Indemnified Party 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 Authority Indemnified Party 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 other relevant Authority Indemnified Party (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 (IPRs Indemnity)** or to modify or replace an item pursuant to **clause 71.7.2.2 (IPRs Indemnity)**, but this has not avoided or resolved the IPRs Claim, then:

71.7.3.1 the Authority may terminate this Contract (if subsisting) by written notice to the Contractor and the Contract will terminate immediately on the date specified in the Authority's notice; and

71.7.3.2 without prejudice to the indemnity set out in **clause 71.7.1 (IPRs Indemnity)**, 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 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 (Open Source Publication)**.
- 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.
- 71.8.4 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 (Open Source Publication)**.

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 an 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 (Prisoner Education Services) of Schedule 1 (Authority's Custodial Service Requirements));
- (g) activities relating to all external providers for Prison Industries (as described in **Part 3 (Prison Industries) of Schedule 1 (Authority's Custodial Service Requirements)**);
- (h) activities relating to the delivery of Interventions (as described in Part 4 (Interventions) of Schedule 1 (Authority's Custodial Service Requirements));
- (i) the impact on the delivery of healthcare, social care 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 Legislation;

- 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 (Processor Obligations)** 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 2.4.3 (Data Sharing Obligations)** 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
- 72.6.1.2 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 data 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)** 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 (which shall include Sub-Contracts that contain the licence for any Third Party IPRs and/or Third Party Software) 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 provisions which:

72.10.4.1 require the Contractor or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

72.10.4.2 if the Contractor or other party fails to consider and verify an invoice in accordance with **clause 72.10.4.1 (Flow Down and Payment Terms in Sub-Contracts)**, state that the invoice shall be regarded as valid and undisputed for the purpose of **clause 72.10.4.3 (Flow Down and Payment Terms in Sub-Contracts)** after a reasonable period has passed;

72.10.4.3 require payment by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) Days from verifying that the invoice is valid and undisputed. The Contractor shall include a summary of its compliance with this clause within the Sub-Contractor Payment Performance Report produced by it pursuant to **clause 72.13.2 (Prompt Payment of Supply Chain)**, such data to be certified every six (6) Months by a director of the Contractor as being accurate and not misleading;

72.10.5 a requirement for provisions with the same effect as those contained in **clause 72.10.4 (Flow Down and Payment Terms in Sub-Contracts)** to be included in the contracts entered into between the Sub-Contractor and its contractors wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this 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; and

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 (Authority Third Party Contracts)** 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; or

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.

72.13 **Prompt Payment of Supply Chain**

72.13.1 Without prejudice to **clause 72.10.4 (Flow Down and Payment Terms in Sub-Contracts)** the Contractor shall:

72.13.1.1 pay any sums which are due from it to any Sub-Contractor or Unconnected Sub-Contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:

- (a) the date set out for payment in the relevant Sub-Contract or Unconnected Sub-Contract; or
- (b) the date that falls sixty (60) Days after the day on which the Contractor receives an invoice (or otherwise has notice of an amount for payment); and

72.13.1.2 include within the Sub-Contractor Payment Performance Report a summary of its compliance with **clause 72.13.1.1 (Prompt Payment of Supply Chain)**, such data to be certified every six (6) Months by a director of the Contractor as being accurate and not misleading.

72.13.2 The Contractor shall provide the Authority with a Sub-Contractor Payment Performance Report on a Monthly basis.

72.13.3 The Sub-Contractor Payment Performance Report shall include the following information regarding the Contractor's performance, set out for the relevant Month, in such form as is agreed between the Authority and Contractor during Mobilisation:

72.13.3.1 performance against its obligations to pay its Sub-Contractors within thirty (30) Days of receipt of an undisputed invoice; and

72.13.3.2 performance against its obligations to pay its Unconnected Sub-Contractors within sixty (60) Days of receipt of an invoice.

72.13.4 The Sub-Contractor Payment Performance Report shall be made available to the Authority on a Monthly basis within ten (10) Business Days after the end of the relevant Month.

72.13.5 If any Sub-Contractor Payment Performance Report shows that in either of the last two six (6) Month periods the Contractor failed to pay ninety-five percent (95%) or above of all Sub-Contractor or Unconnected Sub-Contractor invoices (or other notice of an amount for payment) within sixty (60) Days of receipt, the Contractor

shall provide to the Authority within fifteen (15) Business Days of submission of the latest Sub-Contractor Payment Performance Report a Sub-Contractor Payment Action Plan. The Sub-Contractor Payment Action Plan shall include, but not be limited to, the following:

72.13.5.1 identification of the primary causes of failure to pay ninety-five percent (95%) or above of all Sub-Contractor or Unconnected Sub-Contractor invoices (or other notice of an amount for payment) within sixty (60) Days of receipt;

72.13.5.2 actions to address each of the causes set out in **clause 72.13.5.1 (Prompt Payment of Supply Chain)**; and

72.13.5.3 mechanism for and commitment to regular reporting on progress to the Contractor's board of directors.

72.13.6 The Sub-Contractor Payment Action Plan shall be certificated by a director of the Contractor and the Sub-Contractor Payment Action Plan or a summary of the Sub-Contractor Payment Action Plan published on the Contractor's website within ten (10) Business Days of the date on which the Sub-Contractor Payment Action Plan is provided to the Authority.

72.13.7 Where the Contractor fails to pay any sums due to any Sub-Contractor or Unconnected Sub-Contractor in accordance with the terms set out in the relevant Sub-Contract or Unconnected Sub-Contract, the Sub-Contractor Payment Action Plan shall include details of the steps the Contractor will take to address this.

72.13.8 The Contractor shall comply with the Sub-Contractor Payment Action Plan or any similar action plan connected to the payment of Sub-Contractors or Unconnected Sub-Contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Contractor's Proposals (to the extent it is not already included).

72.13.9 Notwithstanding any provision of **clauses 61 (Information and Confidentiality) and 62 (Publicity and Branding)**, if the Contractor notifies the Authority (whether in a Sub-Contractor Payment Performance Report or otherwise) that the Contractor has failed to pay a Sub-Contractor's undisputed invoice within thirty (30) Days of receipt or that it has failed to pay ninety-five percent (95%) or above of its Sub-Contractors or Unconnected Sub-Contractors within sixty (60) Days after the day on which the Contractor receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be

entitled to publish the details of the late or non-payment (including on government websites and in the press).

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.

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. RELATIONSHIP OF THE PARTIES

76.1.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a

partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

76.1.2 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 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

77.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

77.3 Nothing in this **clause 77 (Entire Agreement)** shall exclude any liability in respect of misrepresentations made fraudulently.

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:

78.2.1 **clauses 9.3.3 (Ownership and Use of Authority's ICT System) and 9.4.5 (Contractor's ICT Obligations);**

78.2.2 **clause 65 (Data Protection) and Schedule 25 (Data Protection) (including under paragraph 5 (Indemnity) of such Schedule);**

78.2.3 **clause 66.1.1 (Contractor's Indemnity);**

78.2.4 **clause 71.7 (IPRs Indemnity);**

78.2.5 **paragraphs 2.1 (Previous Contractor Indemnities), 2.7 (Previous Contractor Indemnities), 3.1 and 3.3 (Contractor Indemnities and Obligations) of Part B, Part D and paragraphs 1.4 (Pre-Service Transfer Obligations), 2.3 and 2.8**

(Employment Regulations Exit Provisions) of Part 4 of Schedule 18 (TUPE, Employees and Pensions); and

78.2.6 paragraph 8.6 (Exit Legacy Assets and Exit Legacy Contracts) of Schedule 24 (Exit Management),

confer benefits on persons named or identified in such provisions other than the Parties (each such person being a Third Party Beneficiary) and are intended to be enforceable by Third Party Beneficiaries 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, a person who is not a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

78.4 No Third Party Beneficiary may enforce, or take any step to enforce, any relevant provision of the Contract without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

78.5 Any amendments or modifications to this Contract may be made, and any rights created under this **clause 78 (Third Party Rights)** may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

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 them pursuant to this **clause 79.1.3 (Representatives of the Authority)**, 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 their 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**

If any provision or part provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.

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

82.2.1 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.

82.2.2 Nothing in this Contract is intended to abrogate and/or waive the Parties' common law right to repudiation.

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. The Parties acknowledge that nothing in this **clause 84.4 (Right to Terminate)** shall exclude either Party's right to common law remedies, including in relation to repudiation.

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 entered into in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has entered into 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 enter into all documents which may be reasonably necessary to give effect to the meaning of this Contract.



HMP Dovegate

Commercial

SIGNED by)
for and on behalf of the Secretary of State)
for Justice)
in the presence of:)

.....
Full Name (Witness)
.....
.....
.....

Address

.....
Signature of Witness

SIGNED by Serco Limited)
acting by its attorney [redacted] under a)
power of attorney dated 23 May 2025)

in the presence of:

.....
Signature of Attorney for Serco Limited

.....
Full Name (Witness)
.....
.....
.....

Address

.....
Signature of Witness