

and 10.1 of the Schedule to the Original Planning Agreement which the Authority shall comply with.

- 12.3 The Authority shall observe and perform the agreements and obligations contained in paragraphs 2.4, 2.5, 2.6, 2.7 and 10.1 of the Schedule to the Original Planning Agreement.
- 12.4 If it is necessary to obtain planning permission in respect of Notices of Change (**Clause 9(Change to Services Required)**) the Contractor shall use its reasonable endeavours to obtain such planning permission. The Contractor's obligation to comply with the Notice of Change shall be conditional upon the grant of such planning permission at first instance free from conditions whether in the planning permission or an associated legal agreement which prevent or unduly interfere with compliance with the Notice of Change. The Contractor shall keep the Authority fully informed of the progress of any such application for planning permission.
- 12.5 Nothing in the Contract nor in any consent granted by the Authority under the Contract shall be deemed to imply or warrant that the Prison or the Land may lawfully be used under the Planning Acts (as defined in the Lease) for the purpose authorised in the Contract or the Lease (or any purpose subsequently authorised).
- 12.6 If the highway authority (for the purposes of the Highways Act 1980 (as amended)) or the relevant planning authority (for the purposes of the Town and Country Planning Act 1990 (as amended)) requires the Contractor or the owner of the Land to enter into any agreement under either Section 38 or Section 278 of the Highways Act 1980 or Section 106 of the Town and Country Planning Act 1990 in connection with the Project and the Authority is requested either to join in such agreement or enter into a separate agreement under either Section 38 or 278 of the Highways Act 1980 or Section 299A of the Town and Country Planning Act 1990 then:
- (a) insofar as it is necessary for the Authority to enter into an agreement for the purposes of the Project and subject to the approval of HM Treasury being given in relation to agreements to be entered into under the Highways Act 1980 under the provisions of Section 327 of the Highways Act 1980, the Authority shall at the cost of the Contractor also enter into the agreement or any separate consent if reasonably required to do so by the Contractor and if it is necessary for it to do so to enable the Contractor to fulfil its obligations under such agreement; and

- (b) the Contractor shall indemnify the Authority in respect of all the Authority's liability and any reasonable expenses incurred by the Authority in connection with the entering into and performance of the relevant agreement during the subsistence of the Contract, or if shorter, whilst the relevant agreement is capable of being enforced against the Authority.

For the avoidance of doubt the Contractor shall not be obliged to indemnify the Authority for any liability incurred by the Authority for any agreement entered into by the Authority with the relevant highway authority (for the purposes of the Highways Act 1980 (as amended)) or the relevant planning authority (for the purposes of the Town and Country Planning Act 1980 (as amended)) otherwise as set out in this Clause 12.6 and the indemnity referred to in this **Clause 12.6 (Planning Approval)** shall be limited as specified in **Clauses 4.2 (Indemnities), 4.3 (Indemnities)** and **4.4 (Indemnities)**.

12A Planning Approval - Increased Capacity

- 12A.1 The Contractor will note the decision of the Council dated 27 April 2007 whereby Kalyx Limited was granted full planning permission in respect of the Houseblock Works under application number 07/00120/FUL (the **"Increased Capacity Permission"**).
- 12A.2 To the extent necessary for the purposes of Planning Approval, the Contractor shall comply with the conditions and recommendations contained in the Increased Capacity Permission and, without prejudice to the generality of the foregoing, in the course of providing the Increased Capacity the Contractor shall be responsible for applying for all planning permissions and/or clearances for the reserved matters not covered by **Clause 12A.1 (Planning Approval - Increased Capacity)**.
- 12A.3 Subject to **Clause 24A (Extension of Time - Increased Capacity)**, the Contractor shall use its reasonable endeavours to obtain all necessary planning permissions and/or clearances for the development of the Houseblock upon the Land and shall bear its own costs consequent upon and caused by such application, including its costs in respect of any delay to the Houseblock Works caused by such application.
- 12A.4 Nothing in the Contract nor in any consent granted by the Authority under the Contract shall be deemed to imply or warrant that the Houseblock may lawfully be used under the Planning Acts (as defined in the Lease) for the purpose authorised in the Contract or the Lease (or any purpose subsequently authorised).

12A.5 If the Highway Authority or relevant Planning Authority requires the Contractor or the owner of the Land to enter into any agreement under either section 278 of the Highways Act 1980 or section 106 of the Town and Country Planning Act 1990, in connection with the Houseblock Works, and the Authority is requested to either join in such agreement or enter into a separate agreement under either section 278 of the Highways Act 1980 or section 299A of the Town and Country Planning Act 1990 then:

- (i) insofar as it is necessary for the Authority to enter into an agreement with either the Highway Authority under section 278 of the Highways Act 1980 or section 299A of the Town and Country Planning Act 1990 for the purposes of the Houseblock Works and subject to the approval of H.M. Treasury being given under the provisions of section 327 of the Highways Act 1980, the Authority shall at the cost of the Contractor also enter into the agreement if reasonably required to do so by the Contractor and it is necessary for it to do so to enable the Contractor to fulfil its obligations pursuant to that agreement; and
- (ii) the Contractor shall indemnify the Authority for all of the Authority's liability and any reasonable expenses incurred by it in connection with the entering into and performance of the relevant agreement during the subsistence of the Contract Term or, if shorter, whilst the relevant agreement is capable of being enforced against the Authority.

13. **Provision of the Prison**

13.1 The Contractor shall design and construct the Prison subject to and in accordance with the terms of **Schedule A (Specifications)** (as varied from time to time (pursuant to **Clause 9 (Change of Services Required)**)) and in accordance with the applicable Legislation.

13.2 The Authority hereby appoints the Contractor as the only client for the purposes of the Construction (Design & Management) Regulations 1994 (the "**Regulations**") and for the design and construction of the Prison (including any changes and/or additions to such design and construction). The Contractor agrees to accept this appointment and undertakes to deliver a duly completed declaration in the form contained in **Schedule L (Letter to Health and Safety Executive)** to The Health and Safety Executive within seven (7) Business Days from the date hereof. Failure by the Contractor to deliver such a declaration to The

Health and Safety Executive shall constitute a material failure for the purposes of **Clause 44.1(a)(i) and (ii) (Default by Contractor)**. The Contractor warrants to the Authority that it is competent to perform each and every duty imposed by the Regulations on the client (as such term is defined in the Regulations).

- 13.3 The Contractor shall (at its own cost) provide site accommodation (minimum twenty square metres (20m²) floor space) and all reasonable attendant services on the Site for the use of the Independent Engineer and its team for the duration of the Contract until such time as the Engineer's Declaration has been given in accordance with **Clause 26 (Engineer's Declaration)**, including the provision of a dedicated combined telephone/fax machine for the sole use of the Independent Engineer (in respect of which all bills, costs and expenses of whatever nature shall be borne by the Contractor).

13A Provision of Increased Capacity

- 13A.1 The Contractor shall design and construct the Houseblock subject to and in accordance with the terms of **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)** and in accordance with the applicable legislation.
- 13A.2 In accordance with the CDM Regulations, the Authority and the Contractor have elected that the Contractor shall be, and shall be treated as the only client in respect of the Houseblock Works pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Houseblock Works, seek in any way to withdraw, terminate or derogate from such election.
- 13A.3 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 Houseblock Works (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the Contractual Houseblock Opening Date, provide a draft certified copy of the Health and Safety File (as defined in the CDM Regulations) to the Authority and within thirty (30) Business Days of issue of the Engineer's Houseblock Declaration, a certified copy of the full and complete Health and Safety File.

14. **Supply of Equipment**

- 14.1 Prior to the Actual Opening Date, the Contractor shall supply and install at the Prison all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the Prison on the Actual Opening Date in the lists, FF&E Schedule by room and/or room data sheets agreed between the Contractor and the Authority and as referred to in **Part 1 of Schedule B (Equipment)**. Subject to **Clauses 14.2 (Supply of Equipment)** and **14.3 (Supply of Equipment)**, all equipment referred to in **Part 1 of Schedule B (Equipment)** shall be the property of the Contractor and shall be in good and serviceable condition for the period it is in the Prison or on the Site (or, if it is not capable of being kept in good and serviceable condition, shall be replaced as required by the Contractor at its own cost with like equipment which is the property of the Contractor (subject to **Clause 14.2 (Supply of Equipment)**) and in good and serviceable condition) in order to allow the Contractor to comply with the standards set out in **Schedule C (Maintenance Management)**, and shall not be removed by the Contractor from the Prison except with the written consent of the Authority.
- 14.1A Prior to the Actual Houseblock Opening Date the Contractor shall supply and install at the Houseblock all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the Houseblock prior to the Contractual Houseblock Opening Date in **Part 4 of Schedule B (Equipment)**. All equipment referred to in **Part 4 of Schedule B (Equipment)** shall be the property of the Contractor (subject to **Clause 14.2 (Supply of Equipment)** and **Clause 14.3 (Supply of Equipment)**) and all the equipment referred to in **Part 4 of Schedule B (Equipment)** shall be in good and serviceable condition for the period it is in the Prison or on the Site (or, if it is not capable of being kept in good and serviceable condition, shall be replaced as required with like equipment which is the property of the Contractor (subject to **Clause 14.2 (Supply of Equipment)** and **Clause 14.3 (Supply of Equipment)**) and in good and serviceable condition) in order to allow the Contractor to comply with the standards set out in **Schedule C (Maintenance Management)**, and shall not be removed by the Contractor from the Prison except with the consent of the Authority.
- 14.2 Subject to **Clause 14.3 (Supply of Equipment)** and except as provided in **Clause 59A (Procurement of IP and IT)** at the end of the Contract Term, any property in such fixtures, fittings, furnishings, chattels, and other equipment referred to in **Clause 14.1 (Supply of Equipment)**

and **Clause 14.1A (Supply of Equipment)** (including any replacement property or equipment) or which is otherwise used or present in the Prison or on the Site (other than Personal possessions of Construction Staff or Operational Staff or Prisoners) shall pass to the Authority by delivery and the Contractor shall use all reasonable endeavours to procure that the benefit of all guarantees, warranties, documentation and service agreements then in force relating to the said fixtures, furniture, furnishings, chattels, and other equipment, and relating to any part of the Prison which is referred to in **Schedule A (Specifications)** is assigned to the Authority or, to the extent not assignable, is transferred in a manner agreed between the Contractor and Authority at the time.

- 14.3 Notwithstanding **Clause 14.1 (Supply of Equipment)** and **Clause 14.1A (Supply of Equipment)**, the Contractor may lease any equipment referred to in **Part 3 of Schedule B (Equipment)**, provided that the Contractor shall ensure that any lease entered into in respect of any such equipment shall be on such terms as to allow the Authority to use such equipment as if it were the Contractor on any occasion where it exercises its powers under Section 88 of the Criminal Justice Act 1991 or the Contract terminates before the Expiry Date. If the Contractor wishes to lease any equipment in **Part 1 of Schedule B (Equipment)** and/or **Part 4 of Schedule B (Equipment)** which is not referred to in **Part 3 of Schedule B (Equipment)**, it must obtain the Authority's prior written consent.
- 14.4 The Contractor shall at the request of the Authority from time to time provide the Authority with details of all equipment referred to in **Part 3 of Schedule B (Equipment)** that is for the time being leased, together with copies of the relevant leases and other relevant documentation to enable the Authority to satisfy itself that the provisions of this **Clause 14 (Supply of Equipment)** are being complied with.
- 14.5 The Contractor agrees that it shall at all times comply with its obligations under the Fixed Charge.
- 14.6 The Contractor agrees that it shall at all times comply with its obligations under the Supplemental Fixed Charge.
15. **Issue of Information Technology Equipment**
- 15.1 The Authority or its appointed agents shall supply, install, configure, test and commission (i) the Inmate Related System(s) as specified in **Part 2 of Schedule B (Inmate Related System(s))** of this Contract to the Prison on or prior to the date falling no later than ten (10) weeks before

the Estimated Opening Date; and (ii) any replacement, upgrade or modification as may from time to time be made to or incorporated into the Inmate Related System(s). Notwithstanding any other provision of the Contract, all equipment which the Authority has supplied related to the Inmate Related System(s) and all information which is stored on or which is required as an input to or an output from the Inmate Related System(s) shall remain the property of the Authority or other nominated agents to whom the Authority has for any reason transferred ownership. Such equipment shall be used only in respect of the Services and for no other purpose whatsoever.

15.1A The Authority or its appointed agents shall supply, install, configure, test and commission (i) the Inmate Related System(s) as specified in **Part 2 of Schedule B (Inmate Related System(s))** of this Contract to the Houseblock on or prior to the date falling no later than ten (10) weeks before the Contractual Houseblock Opening Date; and (ii) any replacement, upgrade or modification as may from time to time be made to or incorporated into the Inmate Related System(s). Notwithstanding any other provision of the Contract, all equipment which the Authority has supplied related to the Inmate Related System(s) and all information which is stored on or which is required as an input to or an output from the Inmate Related System(s) shall remain the property of the Authority or other nominated agents to whom the Authority has for any reason transferred ownership. Such equipment shall be used only in respect of the Services and for no other purpose whatsoever.

15.2 The Contractor shall:

- (a) at its own expense provide, install and maintain all necessary ducts, wireways and category 5 network cabling and such cabling and ancillary fixtures and fittings and power supplies as the Authority may require for the purpose of supplying, installing, maintaining, configuring, testing, commissioning and operating the Inmate Related System(s); and
- (b) at the Authority's request, make available appropriately qualified Personnel to consult with the Authority, its nominated agents or their authorised engineers about the installation, configuration, testing, commissioning, maintenance, operation, upgrading, modification or replacement of any Inmate Related System(s); and
- (c) ensure that the Authority has the opportunity, for a reasonable time prior to any Inmate Related System going on line, to test such Inmate Related System's ability to send and receive data via the Data Network Access Point; and

- (d) use the Inmate Related System(s) provided by the Authority;
 - (e) procure and provide free access to the Authority, its nominated agents or their authorised service engineers at any reasonable time on reasonable notice for the purpose of (i) routine maintenance and fault resolution of the Inmate Related System(s) and the Data Network Access Point and (ii) upgrading or replacing any Inmate Related System(s) and/or the Data Network Access Point.
- 15.3 Notwithstanding **Clause 15.2 (Issue of Information Technology Equipment)** the Contractor may seek approval from the Authority to use an Inmate Related System(s) or systems other than the one(s) provided by the Authority. In the event that such approval is granted in principle the Contractor shall agree with the Authority a testing and implementation programme to ensure that the system(s) meet all the interface and information requirements of the Authority and, in such event, the Contractor's Inmate Related System shall be deemed to be and remain the property of the Contractor. The testing and implementation programme shall apply to a new Inmate Related System or to any modifications or upgrades to an existing Inmate Related System. Notwithstanding the provisions in this **Clause 15.3 (Issue of Information Technology Equipment)**, the Authority shall retain the right to require the Contractor to use the Authority's Inmate Related System(s) at any stage.
- 15.4 The Authority or its appointed agents will supply and install the equipment for the Data Network Access Point in the Prison following receipt of a written request therefor from the Contractor provided that the following provisions are met:
- (a) the Contractor's written request to the Authority to supply and install the Data Network Access Point is delivered to the Authority at least sixteen (16) weeks in advance of the proposed date for its installation; and
 - (b) the installation date for the Data Network Access Point shall be at least twelve (12) weeks prior to the Estimated Opening Date.
- 15.5 The Authority or its appointed agents shall be responsible for the provision, installation, maintenance and operation of the Data Network Access Point. The Contractor shall communicate with the Authority's or its appointed agents' service Personnel by telephone on it becoming aware of any perceived faults in the operation of any Inmate Related System(s) or the Data Network Access Point and shall take such action in connection with such perceived fault as the Authority's or its appointed

agents' service Personnel reasonably instruct (including, without limitation, the taking of readings), provided that the Contractor shall not be liable to the Authority for any losses whatsoever arising from such action as is carried out on the instructions of the Authority's or its appointed agents' service Personnel.

- 15.6 Without prejudice to any of its rights hereunder, if the Authority decides to replace the Inmate Related System(s) then installed it shall give written notice thereof to the Contractor which notice shall be deemed to be a Notice of Change for the purposes of **Clause 9: (Change to Services Required)**.
- 15.7 The information to be provided to the Authority or its appointed agents by the Contractor in accordance with this **Clause 15 (Issue of Information Technology Equipment)** and **paragraphs 5.9 and 6.41 of Part 1 of Schedule D (Operational Requirements)** shall be transmitted at all times via the Inmate Related System(s) and the Data Network Access Point.
- 15.8 The Authority shall provide, at its own expense, training on the Inmate Related System(s) for the following numbers of the Contractor's Staff in the following circumstances:
- (a) two hundred and forty (240) Staff in the operation of the Inmate Related System(s) prior to the system going live;
 - (b) twelve (12) Staff in system administration duties for the Inmate Related System(s) prior to the system going live; and
 - (c) twelve (12) Staff in respect of and at the time of an administration upgrade or change to the Inmate Related System(s), and twelve (12) Staff in respect of and at the time of an operational upgrade or change to the Inmate Related System(s).

It shall be the responsibility of the Contractor to arrange for the training, at its own expense, of any additional Staff not referred to in **(a), (b) and (c)** of this **Clause 15.8 (Issue of Information Technology Equipment)**.

- 15.9 The Contractor shall be responsible for ensuring the security of its own infrastructure, services, systems equipment, software, telecommunications and data up to the point at which there is a physical or logical interface with a system or systems provided by the Authority or its appointed agents. 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 a system or systems provided by the Contractor.

- 15.10 Notwithstanding the limitation on responsibilities in **Clause 15.9 (Issue of Information Technology Equipment)** above the Contractor shall take all reasonable steps to ensure that the security of the Authority's systems is not jeopardised including, without limitation, erecting firewalls, providing protection against viruses and ensuring security of access to the Authority's systems.

16. **Statutory Obligations, Notices, Fees and Charges**

- 16.1 The Contractor shall comply with and give all notices required by or under any Legislation, or required by any Statutory Undertaker with rights over the Site, or with whose systems the Prison is or will be connected, which may be required in relation to the Works and/or the Houseblock Works, the operation of the Prison or otherwise affecting the Contractor (the "**Statutory Obligations**").

- 16.2(a) Where the terms of the Contract conflict with the Statutory Obligations, the Contractor shall as soon as reasonably possible inform the Authority of this fact, and where in the opinion of the Authority such conflict necessitates a variation of the terms of the Contract, the Contractor shall first use all reasonable endeavours to obtain the approval of the Authority to effect the variation in accordance with **Clause 62 (Authority to Commit and Variation)** prior to carrying out such variation, save where the Contractor is obliged to effect emergency compliance with a Statutory Obligation, in which case the Authority shall be informed as soon as practicable.

- (b) The Contractor shall not otherwise be liable to the Authority for complying with the Statutory Obligations where they are in conflict with the terms hereof.

- 16.3 Without prejudice to the provisions of **Clause 39 (Variation in Price)** but subject to **Clause 16.4 (Statutory Obligations, Notices, Fees and Charges)**, the Contractor shall pay any fees or charges required to be paid under any Legislation and shall pay any licence fees or charges pertaining to the provision of utilities in respect of the Prison and/or the Houseblock Works.

- 16.4 The Contractor shall not be liable for any business rates or Council taxes payable (or any sum payable in lieu of such rates or taxes) in respect of

the Prison and the Authority hereby acknowledges its liability for such rates, taxes or sum.

PART III - MAINTENANCE

17. Maintenance of Prison

- 17.1 Subject to **Clause 17.1 (Maintenance of Prison)**, the Contractor shall maintain at its own expense the Prison, the Site and all plant, fixtures, fittings, chattels, and other equipment and software specified in **Schedule B (Equipment)** in accordance with the terms of **Schedule C (Maintenance Management)**.
- 17.2 In addition to the obligations set out in **Schedule C (Maintenance Management)**, the Contractor shall ensure that the Prison is kept in good structural and decorative order during the Contract Term, so as to allow the Contractor to comply with the standards set out in **Schedules C (Maintenance Management)** and **D (Operational Requirements)** and shall ensure that all plant, fixtures, fittings and other equipment and software are kept in good and serviceable condition so as to allow the Contractor to comply with the standards set out in **Schedule C (Maintenance Management)** or, if not capable of being kept in good and serviceable condition, shall at its own cost be replaced as required with like plant, fixtures, fittings, equipment or software which is in good and serviceable condition.
- 17.3 For the avoidance of doubt, and in addition to the requirements specifically set out in **Schedule C (Maintenance Management)**, the Contractor is obliged to maintain, replace and renew the Assets, subject to reasonable wear and tear for a prison (and whether specified in **Schedules A (Specifications)** or **B (Equipment)** or otherwise), and will ensure as appropriate that:
- 17.3.1 following the date of the Engineer's Declaration, the Existing Prison; and
- 17.3.2 following the Engineer's Houseblock Declaration, the Prison,
- is and remains in such condition as to enable the Contractor to comply with its obligations under the Contract in all respects.
- 17.4 Where any term of the Contract requires the Contractor to replace or renew any plant, fixture, fitting, furnishing, chattel or other equipment, the Contractor may retain the proceeds derived from any sale or disposal of the replaced item.

18. **Maintenance of Authority's Equipment**

- 18.1 Except where the Authority otherwise indicates in writing, the Contractor shall maintain all fixtures, fittings, furniture, other equipment or software supplied by the Authority for the purposes of the Contract to the standard such items possessed when they passed into the responsibility of the Contractor, subject to reasonable wear and tear for a prison.
- 18.2 The Contractor shall not sell, lease, assign, part with possession or otherwise dispose of the Authority's fixtures, fittings, furniture, equipment or software or any interest in the same, without the express consent in writing of the Authority.

19. **Dilapidation Survey**

- 19.1 The Authority may conduct a dilapidation survey for the purpose of determining the physical condition and state of maintenance of the Prison five (5) Years after the date hereof and thereafter every two (2) Years or any time the Authority requests such a survey as a result of **Clause 39A (Benchmarking)**. The dates of every such survey shall be notified to the Contractor not less than seven (7) Days in advance of the survey taking place. The costs of such surveys shall be borne by the Authority.
- 19.1A The surveys referred to in **Clause 19.1 (Dilapidation Survey)** above shall, from the first survey to be undertaken following the Actual Increased Capacity Date, include the Houseblock.
- 19.2 Where, following a survey referred to in **Clause 19.1 (Dilapidation Survey)** or **Clause 52.1 (Termination Survey)**, the condition of the Prison as shown by such survey is found in the opinion of the Authority to have fallen below the standards of repair and maintenance set out in **Clause 17 (Maintenance of Prison)** and **Schedule C (Maintenance Management)**, the Authority shall notify the Contractor of the work it reasonably believes is required to be done to bring the Prison to the requisite contractual standard. Within seven (7) Days of such notification (or such longer period as is reasonable in the circumstances) the Contractor shall commence such works, or procure such works to be commenced, at the Contractor's cost. The works shall be completed within such period as is reasonably set by the Authority in the notice to the Contractor (or, in the case of a final dilapidation survey carried out in accordance with **Clause 52.1 (Termination Survey)**, on or before the Termination Date or Expiry Date, as applicable).

- 19.3 Where, following any survey, the Contractor fails to effect any and all repairs and/or maintenance required pursuant to **Clause 19.2 (Dilapidation Survey)** or required following resolution of any dispute regarding the same pursuant to **Clause 72 (Dispute Resolution)** to the reasonable satisfaction of the Authority, within the reasonable time specified (or, in the case of a final dilapidation survey carried out in accordance with **Clause 52.1 (Termination Survey)**, on or before the Termination Date or Expiry Date, as applicable), the Authority shall be entitled to carry out such unremedied repairs and/or maintenance itself, or to procure the same, at the Contractor's cost and shall be entitled to set off its costs against any amounts payable to the Contractor hereunder.

PART IV - PRE-OPERATION PERIOD

20. Preparation for Operation of the Prison

- 20.1 The Contractor shall provide to the Authority the following matters in relation to the Contractor's proposed performance (which matters shall where the Authority considers appropriate provide for adequate testing procedures) (the "**Operational Proposals**"):
- (a) each item listed in the table in **paragraph 5.4 of Part 1 of Schedule D (Operational Requirements)**, by no later than the date specified in that table in relation to that item;
 - (b) at least three (3) months prior to the Estimated Opening Date and to the extent not previously provided to the Authority under **Clause 20.1(a) (Preparation for the Operation of the Prison)**:
 - (i) the operating procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the staff handbook; and
 - (iv) the public relations procedures; and
 - (c) a reasonable period in advance of the Estimated Opening Date, such other information as the Authority reasonably requests including, but not limited to, all the Documents listed in **Schedule D (Operational Requirements)** as requiring submission before the Actual Full Operation Date.

- 20.2 The Contractor shall make any amendments as the Authority may reasonably require for the purpose of ensuring that the Operational Proposals are in accordance with the terms of the Contract. The Authority shall be entitled to refuse to approve all or any part of the Operational Proposals until the Contractor has made such amendments.
- 20.3 When the Contractor considers that it has prepared the Operational Proposals it shall give written notice to the Authority. Within thirty (30) Days (in respect of the Operational Proposals provided under **Clause 20.1(b) (Preparation for the Operation of the Prison)** and **20.1(c) (Preparation for the Operation of the Prison)**) and within sixty (60) Days (in respect of the Operational Proposals provided under **Clause 20.1(a) (Preparation for the Operation of the Prison)**), in each case of receipt of the written notice, the Authority shall either approve the Operational Proposals or shall provide the Contractor with a written record of the reasons why the Operational Proposals are not in accordance with the terms of the Contract.
- 20.4 If the Contractor is refused approval and a written record of the reasons has been provided by the Authority in accordance with **Clause 20.3 (Preparation for the Operation of the Prison)**, the Contractor shall amend the Operational Proposals in accordance with the Authority's reasons as set out in the written record and shall then comply with the requirements of **Clause 20.3 (Preparation for the Operation of the Prison)**. When seeking any new approval of the Operational Proposals save that the notice period shall be fourteen (14) Days instead of the thirty (30) Days and sixty (60) Days respectively specified in **Clause 20.3 (Preparation for the Operation of the Prison)**.
- 20.5 When the Authority approves the Operational Proposals, the Authority shall promptly issue to the Contractor a certificate certifying that the Operational Proposals are approved, subject to satisfactory completion of the tests in accordance with **Clause 20.6 (Preparation for the Operation of the Prison)**.
- 20.6 Once the Authority has issued a certificate under **Clause 20.5 (Preparation for the Operation of the Prison)**, the Operational Proposals shall be tested in accordance with the proposals for testing in the Operational Proposals. The Contractor shall give the Authority fourteen (14) Days' notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within seven (7) Days of such tests, the Authority shall either finally approve the Operational Proposals (by giving written notice to that effect) or shall provide the Contractor with a written record of the reasons why the Operational

Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re-run the tests in accordance with the above provisions except that the notice period to the Authority in respect of the time and location of such tests shall be two (2) Days instead of the fourteen (14) Days specified above.

20.7 Once approved by the Authority under **Clauses 20.3 (Preparation for the Operation of the Prison)** and **20.6 (Preparation for the Operation of the Prison)**, the Operational Proposals shall remain under review in accordance with **Clause 35.3 (Preparation for the Operation of the Prison)**.

20.8 At least three (3) months prior to the Estimated Opening Date, the Contractor will submit to the Authority the names of, and such other information as the Authority may require about, the proposed Director, the members of the senior management of the Prison and all other Persons requiring certification or approval, as specified in **Clauses 32 (Prisoner Custody Officers)** and **33 (The Operational Staff)**.

The Authority shall use the said information to carry out the requirements of **Clauses 31 (Director)**, **32 (Prisoner Custody Officers)** and **33 (The Operational Staff)**.

20A Preparation for Operation of the Increased Capacity

20A.1 The Contractor shall provide to the Authority, by way of amendment to the Operation Proposals referred to in **Clause 20 (Preparation for Operation of the Prison)**, the following matters in relation to the Contractor's proposed performance (which matters shall provide for adequate testing procedures) (the "**Increased Capacity Operational Proposals**"):

- (a) at least three (3) months prior to the Contractual Houseblock Opening Date:
 - (i) the operating procedures, including the inspection procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the staff handbook; and
 - (iv) the public relations procedures; and

- (b) a reasonable period in advance of the Contractual Houseblock Opening Date such other information as the Authority reasonably requests.
- 20A.2 The Contractor shall make any amendments as the Authority may reasonably require for the purpose of ensuring that the Increased Capacity Operational Proposals are in accordance with the terms of the Contract. The Authority shall be entitled to refuse to approve all or any part of the Increased Capacity Operational Proposals until the Contractor has made such amendments.
- 20A.3 When the Contractor considers that it has prepared the Increased Capacity Operational Proposals it shall give written notice to the Authority. Within thirty (30) Days of receipt of the written notice, the Authority shall either approve the Increased Capacity Operational Proposals or shall provide the Contractor with a written record of the reasons why the Increased Capacity Operational Proposals are not in accordance with the terms of the Contract.
- 20A.4 If the Contractor is refused approval and a written record of the reasons has been provided by the Authority in accordance with **Clause 20A.3 (Preparation for Operation of the Increased Capacity)**, the Contractor shall amend the Increased Capacity Operational Proposals in accordance with the Authority's reasons as set out in the written record and shall then comply with the requirements of **Clause 20A.3 (Preparation for Operation of the Increased Capacity)** when seeking any new approval of the Increased Capacity Operational Proposals save that the notice period shall be fourteen (14) Days instead of the thirty (30) Days specified in **Clause 20A.3 (Preparation for Operation of the Increased Capacity)**.
- 20A.5 When the Authority approves the Increased Capacity Operational Proposals, the Authority shall promptly issue to the Contractor a certificate certifying that the Increased Capacity Operational Proposals are approved, subject to satisfactory completion of the tests in accordance with **Clause 20A.6 (Preparation for Operation of the Increased Capacity)**.
- 20A.6 Once the Authority has issued a certificate under **Clause 20A.5 (Preparation for Operation of the Increased Capacity)**, the Increased Capacity Operational Proposals shall be tested in accordance with the proposals for testing in the Increased Capacity Operational Proposals. The Contractor shall give the Authority fourteen (14) Days' notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within seven (7) Days of

such tests, the Authority shall either finally approve the Increased Capacity Operational Proposals or shall provide the Contractor with a written record of the reasons why the Increased Capacity Operational Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re run the tests in accordance with the above provisions except that the notice period to the Authority shall be two (2) Days instead of the fourteen (14) Days specified above.

- 20A.7 Once approved by the Authority under **Clauses 20A.3 (Preparation for Operation of the Increased Capacity)** and **20A.6 (Preparation for Operation of the Increased Capacity)**, the Increased Capacity Operational Proposals shall remain under review in accordance with **Clause 35.3 (Monitoring and Inspection)**.

21. **Contractual Opening Date**

Upon the Contractual Opening Date the Contractor will provide the Authority with fifty (50) Available Prisoner Places of which six (6) will be in the Mother and Baby Unit. In the event that the Contractor does not provide fifty (50) Available Prisoner Places, including six (6) in the Mother and Baby Unit, to the Authority on the Contractual Opening Date (and without prejudice to the Authority's rights under **Clause 25 (Liquidated Damages)** and **Clause 44 (Default by Contractor)**) the Contractor shall provide fifty (50) Available Prisoner Places, including six (6) in the Mother and Baby Unit, as soon as possible thereafter.

21A. **Contractual Houseblock Opening Date**

Upon the Contractual Houseblock Opening Date the Contractor will provide the Authority with twenty five (25) Available Prisoner Places. In the event that the Contractor does not provide twenty five (25) Available Prisoner Places to the Authority on the Contractual Houseblock Opening Date (and without prejudice to the Authority's rights under **Clause 25A (Liquidated Damages - Increased Capacity)** and **Clause 44A (Houseblock Default)**) the Contractor shall provide twenty five (25) Available Prisoner Places as soon as possible thereafter.

22. **Phase-in Period**

- 22.1 On and from each date listed in the first column of the Phase-in Timetable the Contractor will provide to the Authority at least the number of Available Prisoner Places shown in the **corresponding** row of the second column of that timetable (each Available Prisoner Place

provided on and from any such date in excess of the number of Available Prisoner Places shown in that row of the third column being a ***Further Prisoner Place***).

22.2 Subject to **Clause 38.2 (Price)**, the amount payable by the Authority to the Contractor in respect of any particular Day during the Phase-in Period shall be calculated by reference to the aggregate of:

- (a) the number of Available Prisoner Places shown in the row of the third column of the Phase-in Timetable which corresponds with the ***relevant*** date; and
- (b) the number of Further Prisoner Places occupied on such Day.

22.3 For the purposes of this **Clause 22 (Phase-in Period)**:

- (a) a date in the first column of a Phase-in Timetable ***corresponds*** with a number of Available Prisoner Places if that date is in the same row of that Phase-in Timetable;
- (b) a date in the first column of a Phase-in Timetable is ***relevant*** to a particular Day if it is the date in that column which first precedes such Day; and
- (c) all references to payments are to payments which are to be made in accordance with **Schedule E (Payment Mechanism)**.

22A. Increased Capacity Phase-in Period

22A.1 On and from each date listed in the first column of the Increased Capacity Phase-in Period Timetable the Contractor will provide to the Authority at least the number of Available Prisoner Places shown in the corresponding row of the second column of that timetable (each Available Prisoner Place provided on and from any such date in excess of the number of Available Prisoner Places shown in that row of the third column being a ***Further Prisoner Place***).

22A.2 Subject to **Clause 38.2 (Price)**, the amount payable by the Authority to the Contractor in respect of any particular Day during the Increased Capacity Phase-in Period shall be calculated by reference to the aggregate of:

- (a) the number of Available Prisoner Places shown in the row of the third column of the Increased Capacity Phase-in Timetable which corresponds with the relevant date;

(b) the number of Available Prisoner Places shown in the row of the third column of the Phase-in Period Timetable which corresponds with the relevant date; and

(c) the number of Further Prisoner Places occupied on such Day.

22A.3 For the purposes of this **Clause 22A (Increased Capacity Phase-in Period)**:

(a) a date in the first column of the Increased Capacity Phase-in Period Timetable corresponds with a number of Available Prisoner Places if that date is in the same row of that Increased Capacity Phase-in Period Timetable;

(b) a date in the first column of the Increased Capacity Phase-in Period Timetable is relevant to a particular Day if it is the date in that column which first precedes such Day; and

(c) all references to payments are to payments which are to be made in accordance with **Schedule E (Payment Mechanism)**.

23. **Full Operation Date**

23.1 Subject to **Clause 40A (Available Prisoner Places)** at all times on and from the Full Operation Date, the Contractor shall provide to the Authority four hundred and fifty (450) Available Prisoner Places, of which twelve (12) will be in the Mother and Baby Unit and ten (10) will be in the High Dependency Unit.

23.2 Subject to **Clause 40A (Available Prisoner Places)**, at no time shall the Authority be liable to make any payment in respect of more than four hundred and fifty (450) (or four hundred and thirty (430) if it has exercised the Option) Available Prisoner Places, except to the extent of its obligations under **Clause 40A (Available Prisoner Places)**.

23A. **Actual Increased Capacity Date**

23A.1 Subject to **Clause 40A (Available Prisoner Places)** at all times on and from the Actual Increased Capacity Date, the Contractor shall provide to the Authority five hundred and twenty seven (527) Available Prisoner Places, of which twelve (12) will be in the Mother and Baby Unit and ten (10) will be in the High Dependency Unit.

23A.2 Subject to **Clause 40A (Available Prisoner Places)**, at no time shall the Authority be liable to make any payment in respect of more than five

hundred and twenty seven (527) Available Prisoner Places, except to the extent of its obligations under **Clause 40A (Available Prisoner Places)**.

24. Extension of Time

24.1 If and whenever it becomes apparent to the Contractor that the fulfilment of its obligations under the Contract is being or is likely to be delayed, such that the Contractor will not meet its obligations under the Contract which are to be met on or before the Contractual Opening Date, any date in the Phase-in Timetable or the Full Operation Date, the Contractor shall forthwith give written notice to the Authority (a **Delay Notice**) of the relevant circumstances.

24.2 The Delay Notice shall:

- (a) identify the cause or causes of the delay;
- (b) state whether and to what extent the delay is caused by a Relevant Event;
- (c) provide details of the nature of the Relevant Event and its duration (or the Contractor's estimate (with supporting reasons) of its likely continued duration);
- (d) identify clearly which of the Contractual Opening Date, the Full Operation Date, or the date(s) in the Phase-in Timetable are to be affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Relevant Event;
- (e) in the case of a Relevant Event being claimed under paragraphs (a) or (c) of the definition of Relevant Event, contain the Contractor's estimate (with supporting reasons) of the costs it is likely to incur directly as a result of such Relevant Event; and
- (f) in the case of a Relevant Event being claimed under paragraph (k) of the definition of Relevant Event, be received by the Authority on or prior to the date falling nine (9) months before the Contractual Opening Date.

If the Contractor serves a Delay Notice while a Relevant Event is continuing, the Contractor shall provide the Authority periodically (and at least on a weekly basis) with details of the Relevant Event and the Contractor's reasonable estimate of its impact on the Project or the provision of the Prison. The Contractor shall afford the Authority such access to the Site and Documents of the Contractor as the Authority may

consider necessary and appropriate for the purposes of establishing the accuracy of any Delay Notice.

24.3 If a Relevant Event is the cause of any delay to the Contractual Opening Date, the Full Operation Date or any date in the Phase-in Timetable, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Opening Date or the relevant date in the Phase-in Timetable and/or the Full Operation Date as is reasonable taking into account the effect of the Relevant Event (whereupon such other dates shall become the Contractual Opening Date, the Full Operation Date or the relevant date in the Phase-in Timetable for the purposes of this Contract). In the case of an event within paragraph (i) of the definition of Relevant Event, the extension shall be consistent with the relevant arbitral award and/or as determined by the Arbitrator (as appropriate) or the relevant adjudication award and/or as determined by the Adjudicator (as appropriate but in either case only where such award or determination is not referred to arbitration).

24.4 Without prejudice to the Contractor's rights to bring claims for damages in respect of any breach of this Contract by the Authority, where a Relevant Event has caused or will cause a delay and such Relevant Event is one of the events referred to in paragraphs (a) or (c) of the definition of Relevant Event, the Authority shall on written demand supported by particulars of the loss or expenses claimed (within thirty (30) Days of such written demand) reimburse to the Contractor any reasonable loss or expenses incurred by the Contractor as a result of such Relevant Event.

24A Extension Of Time - Increased Capacity

24A.1 If and whenever it becomes reasonably apparent to the Contractor that the fulfilment of his obligations in respect of the Houseblock Works are being or are likely to be delayed, such that the Contractor will not meet its obligations under the Contract which are to be met on or before the Contractual Houseblock Opening Date or on or before any date in the Increased Capacity Phase-in Period Timetable or the Contractual Increased Capacity Date, the Contractor shall forthwith give written notice to the Authority (the "**Increased Capacity Delay Notice**") of the relevant circumstances.

24A.2 The Increased Capacity Delay Notice shall:

(a) identify the cause or causes of the delay;

- (b) state whether and to what extent the delay is caused by a Houseblock Relevant Event;
- (c) provide details of the nature of the Houseblock Relevant Event and its duration (or the Contractor's reasonable estimate of its likely continued duration);
- (d) identify clearly which of the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date and the dates in the Increased Capacity Phase-in Period Timetable are to be affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Houseblock Relevant Event; and
- (e) in the case of a Houseblock Relevant Event being claimed under Paragraphs (a) or (b) of the definition of Houseblock Relevant Event, the Contractor's estimate of the costs it is likely to incur directly as a result of such Houseblock Relevant Event.

If the Contractor serves an Increased Capacity Delay Notice while a Houseblock Relevant Event is continuing, the Contractor shall provide the Authority periodically (and at least on a weekly basis) with details of the Houseblock Relevant Event and the Contractor's reasonable estimate of its impact on the Project or the provision of the Houseblock. The Contractor shall afford the Authority such access to the Site and papers of the Contractor as the Authority may reasonably consider necessary and appropriate for the purposes of establishing the accuracy of any Increased Capacity Delay Notice.

- 24A.3 If a Houseblock Relevant Event is the cause of any delay to the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date or any date in the Increased Capacity Phase-in Period Timetable, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Houseblock Opening Date or the relevant date in the Increased Capacity Phase-in Period Timetable and/or the Contractual Increased Capacity Date as is reasonable taking into account the effect of the Houseblock Relevant Event (whereupon such other dates shall become the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date or the relevant date in the Increased Capacity Phase-in Period Timetable for the purposes of this Contract). In the case of an event within paragraph (i) of the definition of Houseblock Relevant Event, the extension shall be consistent with the relevant arbitral award and/or as determined by the Arbitrator (as appropriate) or the relevant adjudication award and/or as determined by the Adjudicator (as

appropriate but in either case only where such award or determination is not referred to arbitration).

24A.4 Without prejudice to the Contractor's rights to bring claims for damages in respect of any breach of this Contract by the Authority, where a Houseblock Relevant Event has caused or will cause a delay and such Houseblock Relevant Event is one of the events referred to in paragraphs (a) or (b) of the definition of Houseblock Relevant Event, the Authority shall, on written demand supported by particulars of the loss or expenses claimed (within thirty (30) Days of such written demand), reimburse to the Contractor any reasonable loss or expenses incurred by the Contractor as a result of such Houseblock Relevant Event.

24A.5 Where a Houseblock Relevant Event occurs, the Long Stop Date will be adjusted by the duration of the Houseblock Relevant Event.

25. **Liquidated Damages**

25.1 To the extent that on or before the Actual Full Operation Date the Contractor fails on any Day to provide the number of Available Prisoner Places specified in the Phase-in Timetable (including, for the avoidance of doubt, such Available Prisoner Places as required under **Clause 23.1 (Full Operation Date)**), the Contractor shall be liable to pay liquidated damages to the Authority.

25.2 Liquidated damages shall be calculated in respect of Available Prisoner Places, at the daily rate set out in **paragraph 1 of Schedule E (Payment Mechanism)** for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms hereof and set out in **Clause 25.1 (Liquidated Damages)** respectively has not been provided, and shall, subject to **Clause 25.4 (Liquidated Damages)**, be payable monthly in arrears. The parties agree that such rate represents a genuine pre-estimate of the Authority's loss arising from delay.

25.3 The maximum aggregate amount of liquidated damages which may be claimed by the Authority under this **Clause 25 (Liquidated Damages)** shall be [REDACTED].

25.4 The Authority may deduct the said sums from any monies due to the Contractor under this Contract or the Authority may recover the same from the Contractor as a debt, except to the extent that such sums have been recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor the Houseblock Construction Sub-

contractor or any other Person on the Contractor's behalf. To the extent such sums have finally and conclusively been paid to the Authority or recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor, the Houseblock Construction Sub-contractor or any other Person on the Contractor's behalf, the Contractor's obligation hereunder to pay such sums shall be discharged.

25A Liquidated Damages - Increased Capacity

- 25A.1 To the extent that on or before the Actual Increased Capacity Date the Contractor fails on any Day to provide the number of Available Prisoner Places specified in the Increased Capacity Phase in Period Timetable (including, for the avoidance of doubt, twenty five (25) Available Prisoner Places from the Contractual Houseblock Opening Date and seventy seven (77) Available Prisoner Places from the Actual Increased Capacity Date), the Contractor shall be liable to pay liquidated damages to the Authority.
- 25A.2 Liquidated damages shall be calculated at the daily rate specified in **Schedule E (Payment Mechanism)** (such rates representing a reasonable pre estimate of costs to the Authority), for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms of this Contract and set out in **Clause 25A.1 (Liquidated Damages - Increased Capacity)** has not been provided and shall, subject to **Clause 25A.4 (Liquidated Damages - Increased Capacity)**, be payable monthly in arrears.
- 25A.3 The maximum aggregate amount of liquidated damages which may be claimed by the Authority under this Clause shall be limited to [REDACTED]
[REDACTED]
[REDACTED].
- 25A.4 The Authority may deduct the said sums from any monies due to the Contractor under this Contract (provided that to the extent payments of the Houseblock Works Fee are outstanding at the time the Contractor's liability under **Clause 25A.1 (Liquidated Damages - Increased Capacity)** arises, the Authority's right to deduct such sums shall be limited to deductions to the outstanding part of the Houseblock Works Fee) or the Authority may recover the same from the Contractor as a debt, except to the extent that such sums have been recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor the Houseblock Construction Sub-contractor or any other Person on the Contractor's behalf. To the extent such sums have finally and conclusively been paid to the Authority or recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor, the

Houseblock Construction Sub-contractor or any other Person on the Contractor's behalf, the Contractor's obligation hereunder to pay such sums shall be discharged

26. **Engineer's Declaration**

26.1 The Independent Engineer shall monitor the progress of the Works upon the Site, and be entitled to exercise rights, in accordance with the provisions of **Schedule M (Compliance Monitoring)**. The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in this **Clause 26 (Engineer's Declaration)**.

26.2 When the Contractor considers that the whole of the Works will be, or has been, completed in accordance with **Part 1 of Schedule A (Design and Construction Specification)** and will be, or has been, satisfactorily commissioned by passing all the tests referred to in **Part 1 of Schedule A (Design and Construction Specification)**, the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer. In the event that at the time such notice is given, the Contractor considers that the Works will be completed at a later date, the Contractor must specify such date, which shall be not less than fourteen (14) Days and not more than thirty (30) Days from the date of the notice.

26.3 The Authority shall procure that the Independent Engineer shall within twenty one (21) Days of the date of the delivery of the notice referred to in **Clause 26.2 (Engineer's Declaration)** (or, if the Works will be completed at a later date, within seven (7) Days of the date of completion specified in the notice) either issue a certificate to the Authority (signed by a director in the firm appointed as Independent Engineer) declaring that the Works have been completed in accordance with **Part 1 of Schedule A (Design and Construction Specification)** (the "**Engineer's Declaration**") or give notice to the Contractor in writing specifying all the matters which must be satisfied before the Engineer's Declaration can be issued. If such notice is given by the Independent Engineer, the Contractor shall carry out such works as may be required to obtain the Engineer's Declaration and the requirements of **Clause 26.2 (Engineer's Declaration)** and **26.3 (Engineer's Declaration)** shall apply except that the Independent Engineer will respond as soon as reasonably practicable following completion of the required works.

- 26.4 The Authority shall use its best endeavours to procure that the Monitoring Contract contains obligations on the Independent Engineer to carry out the acts attributed to him in this **Clause 26 (Engineer's Declaration)**. The Authority agrees that it will not amend or waive any of its rights under the Monitoring Contract in a manner that could reasonably be expected to be adverse to the interests of the Contractor or the Construction Sub-contractor. The Authority agrees that at the request of the Contractor from time to time, it will use reasonable endeavours to enforce the terms of the Monitoring Contract at all times up to and including the date of issue of the Engineer's Declaration.
- 26.5 Nothing in this Contract shall be deemed to imply that the Authority makes any representation or warranty of whatsoever nature as to the value, design, construction, maintenance, operation or fitness for use of the Prison or any of the equipment referred to in **Schedule B (Equipment)** except in the case of the equipment referred to in **Part 2 of Schedule B (The Inmate Related System(s))**, in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract that unavoidably require use of such equipment for such period as such lack of fitness continues.
- 26.6 If (in accordance with his obligations under the Monitoring Contract) the Independent Engineer gives written notice to the Authority that a matter has come to his attention in the course of any inspection by him of the Works which may adversely affect his decision to issue the Engineer's Declaration, the Authority shall, without unreasonable delay, notify the Contractor in writing of such matter.
- 26.7 For the avoidance of doubt, nothing done by the Authority or the Independent Engineer in accordance with this **Clause 26 (Engineer's Declaration)**, **Clause 13 (Provision of the Prison)** or **Schedule M (Compliance Monitoring)** shall in any respect relieve or absolve the Contractor from its responsibility for the design or construction of the Works under or in connection with the Contract.
- 26.8 Notwithstanding the issue by the Independent Engineer of a notice pursuant to Clause 26.3 and/or the exercise by the Authority of its reasonable endeavours under **Clause 26.4 (Engineer's Declaration)**, where the Contractor considers that the whole of the Works have been completed in accordance with **Part 1 of Schedule A (Design and Construction Specification)** and have been satisfactorily commissioned by passing all the tests referred to in **Part 1 of Schedule A (Design and Construction Specification)** and no Engineer's Declaration has been issued, the Contractor may refer such matter for resolution

pursuant to **Clause 72 (Dispute Resolution)** and the Adjudicator or Arbitrator, as the case may be, shall be entitled to award the Engineer's Declaration where the whole of the Works have been completed in accordance with **Part 1 of Schedule A (Design and Construction Specification)** and have been satisfactorily commissioned by passing all the tests referred to in **Part 1 of Schedule A (Design and Construction Specification)**.

26A Engineer's Houseblock Declaration

- 26A.1 The Independent Engineer shall monitor the progress of the Houseblock Works upon the Site, and be entitled to exercise rights, in accordance with the provisions of **Schedule M (Compliance Monitoring)**. The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in this **Clause 26A (Engineer's Houseblock Declaration)**.
- 26A.2 When the Contractor considers that the whole of the Houseblock Works (other than the Completion Works, Houseblock Planting and Lock Works) will be, or has been, completed in accordance with **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)** and will be, or has been, satisfactorily commissioned by passing all the tests referred to in **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)**, the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer. In the event that at the time such notice is given, the Contractor considers that the Houseblock Works will be completed at a later date, the Contractor must specify such date, which shall be not less than fourteen (14) Days and not more than thirty (30) Days from the date of the notice.
- 26A.3 The Authority shall procure that the Independent Engineer shall within twenty one (21) Days of the date of the delivery of the notice referred to in **Clause 26.2A (Engineer's Houseblock Declaration)** (or, if the Houseblock Works will be completed at a later date, within seven (7) Days of the date of completion specified in the notice) either issue a certificate to the Authority (signed by a director in the firm appointed as Independent Engineer) declaring that the Houseblock Works have been completed in accordance with **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)** (the "**Engineer's Houseblock Declaration**") or give notice to the Contractor in writing specifying all the matters which must be satisfied before the Engineer's Houseblock Declaration can be issued. If such notice is given by the

Independent Engineer, the Contractor shall carry out such works as may be required to obtain the Engineer's Houseblock Declaration and the requirements of **Clause 26.2A (Engineer's Houseblock Declaration)** and **26A.3 (Engineer's Houseblock Declaration)** shall apply except that the Independent Engineer will respond as soon as reasonably practicable following completion of the required works.

- 26A.4 The Authority shall use its best endeavours to procure that the Houseblock Works Monitoring Contract contains obligations on the Independent Engineer to carry out the acts attributed to him in this **Clause 26A (Engineer's Houseblock Declaration)**. The Authority agrees that it will not amend or waive any of its rights under the Houseblock Works Monitoring Contract in a manner that could reasonably be expected to be adverse to the interests of the Contractor or the Houseblock Construction Sub-contractor. The Authority agrees that at the request of the Contractor from time to time, it will use reasonable endeavours to enforce the terms of the Houseblock Works Monitoring Contract at all times up to and including the date of issue of the Engineer's Houseblock Declaration.
- 26A.5 Nothing in this Contract shall be deemed to imply that the Authority makes any representation or warranty of whatsoever nature as to the value, design, construction, maintenance, operation or fitness for use of the Prison or any of the equipment referred to in **Schedule B (Equipment)** except in the case of the equipment referred to in **Part 2 of Schedule B (The Inmate Related System(s))**, in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract that unavoidably require use of such equipment for such period as such lack of fitness continues.
- 26A.6 If (in accordance with his obligations under the Houseblock Works Monitoring Contract) the Independent Engineer gives written notice to the Authority that a matter has come to his attention in the course of any inspection by him of the Houseblock Works which may adversely affect his decision to issue the Engineer's Houseblock Declaration, the Authority shall, without unreasonable delay, notify the Contractor in writing of such matter.
- 26A.7 For the avoidance of doubt, nothing done by the Authority or the Independent Engineer in accordance with this **Clause 26A (Engineer's Houseblock Declaration)**, **Clause 13A (Provision of the Increased Capacity)** or **Schedule M (Compliance Monitoring)** shall in any respect relieve or absolve the Contractor from its responsibility for the

design or construction of the Houseblock Works under or in connection with the Contract.

- 26A.8 Notwithstanding the issue by the Independent Engineer of a notice pursuant to **Clause 26A.3 (Engineer's Houseblock Declaration)** and/or the exercise by the Authority of its reasonable endeavours under **Clause 26A.4 (Engineer's Houseblock Declaration)**, where the Contractor considers that the whole of the Houseblock Works have been completed in accordance with **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)** and have been satisfactorily commissioned by passing all the tests referred to in **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)** and no Engineer's Houseblock Declaration has been issued, the Contractor may refer such matter for resolution pursuant to **Clause 72 (Dispute Resolution)** and the Adjudicator or Arbitrator, as the case may be, shall be entitled to award the Engineer's Houseblock Declaration where the whole of the Houseblock Works have been completed in accordance with **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)** and have been satisfactorily commissioned by passing all the tests referred to in **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)**

26B Snagging Matters

- 26B.1 The Independent Engineer shall issue a certificate in accordance with **Clause 26A (Engineer's Houseblock Declaration)** notwithstanding that there are any Snagging Matters. Where there are Snagging Matters, the Independent Engineer shall, within ten (10) Days of the issue of his certificate in accordance with **Clause 26A (Engineer's Houseblock Declaration)**, issue a notice specifying the Snagging Matters together with an estimate of the cost of rectifying such Snagging Matters.
- 26B.2 Following the issue of a certificate in accordance with **Clause 26A (Engineer's Houseblock Declaration)** the Contractor shall, in consultation with the Authority and the Independent Engineer and in such manner as to cause as little disruption as reasonably practicable to the Custodial Service, rectify all Snagging Matters within a reasonable period from the issue of the certificate in accordance with **Clause 26A (Engineer's Houseblock Declaration)** and in any event before the end of the Defects Period.
- 26B.3 If, within the period referred to in **Clause 26B.2 (Snagging Matters)** the Contractor has failed to rectify the Snagging Matters specified in such

notice, the Authority may by itself or by the engagement of others carry out the works necessary to rectify the Snagging Matters at the Contractor's reasonable cost.

- 26B.4 The issue of the certificate of the Independent Engineer in accordance with **Clause 26A (Engineer's Houseblock Declaration)** shall in no way affect the obligations of the Contractor under this Contract.

27. **Cell Certification**

- 27.1 When the Contractor declares a Prison Cell to be available, and for the duration of the Contract, the Contractor shall ensure that each and every Prison Cell, and any other living accommodation to be occupied by a Prisoner, shall comply with such parts of **Schedules A(Specifications), B (Equipment) and C(Maintenance Management)** as relates to Prison Cells and such other living accommodation to be occupied by a Prisoner.

- 27.2 Prior to its first ever occupation by a Prisoner and immediately following any subsequent refurbishment or rebuilding, each and every Prison Cell shall be inspected by the Authority (which expression shall for the purposes of this **Clause 27(Cell Certification)** mean an officer of the Authority) to determine whether the Prison Cell complies with such parts of **Schedules A(Specifications), B (Equipment) and C(Maintenance Management)** as relate to Prison Cells. When an inspected Prison Cell complies with such parts of **Schedules A(Specifications), B (Equipment) and C(Maintenance Management)** as relate to Prison Cells, the Authority shall issue the Contractor with a Cell Certificate for the inspected Prison Cell, in accordance with **Clause 28 (Timetable for Cell Certification)**. For the avoidance of doubt, prior to a Prison Cell's first ever occupation by a Prisoner, in determining compliance of such Prison Cell with the relevant parts of **Schedules A(Specifications), B (Equipment) and C(Maintenance Management)**, the Authority shall rely on the Engineer's Declaration to the extent it addresses compliance with such relevant parts of **Schedules A(Specifications), B (Equipment) and C(Maintenance Management)** (except where deterioration to such Prison Cell has occurred since the issue of the Engineer's Declaration which renders the Prison Cell non-compliant with the relevant parts of **Schedules A(Specifications), B (Equipment) and/or C(Maintenance Management)**). The Contractor will promptly inform the Authority in the event of such deterioration of the condition of any Prison Cell during the period from the issue of the Engineers Declaration to COD.

27.3 Following the issue of any initial Cell Certificate in accordance with **Clause 27.2(Cell Certification)**, the Authority shall carry out such further inspections during the term of the Contract as it thinks fit, in order to reassess the certification of any Prison Cell. In the event that the Authority identifies during any such further inspection that a Prison Cell does not comply substantially with all of the requirements of such parts of **Schedules A (Specifications), B (Equipment) and C (Maintenance Management)** as relate to Prison Cells, it shall notify the Contractor in writing of the nature of the non-compliance (through a **Non-Compliance Notice**). If within ten (10) Days of service of a Non-Compliance Notice, the Contractor has not remedied the matter referred to in the Non-Compliance Notice, until such time as the Contractor has rectified the Prison Cell so that it complies with all of the requirements of such parts of **Schedules A (Specifications), B (Equipment) and C (Maintenance Management)** as relate to Prison Cells as aforesaid the Authority may (without prejudice to its other rights hereunder) withdraw the Cell Certificate. Such Cell Certificate shall be reinstated promptly after the Contractor has demonstrated to the Authority that it has rectified the Prison Cell so that it complies with such parts of **Schedules A (Specifications), B (Equipment) and C (Maintenance Management)** as relate to Prison Cells and the Authority agrees that it will, at the reasonable request of the Contractor promptly inspect any relevant Prison Cell for the purposes of ascertaining whether a Cell Certificate should be so reinstated.

28. **Timetable for Cell Certification**

28.1 A minimum of thirty (30) Days prior to any date when the Contractor considers it can provide the Authority with Available Prisoner Places as required by **Clauses 22 (Phase-in Period), 22A (Increased Capacity Phase-in Period) and 23 (Full Operation Date) and 23A (Actual Increased Capacity Date)**, it shall give written notice to the Authority of such opinion, and the said thirty (30) Days shall be the notice period. The Contractor shall specify the number of Prison Cells and Available Prisoner Places that it considers it can provide to the Authority at the expiry of the notice period.

28.2 The Authority, and such other Persons as the Authority may specify, whenever so notified, shall carry out inspections of:

28.2.1 the Prison Cells and the Prison for the purpose of granting Cell Certificates in accordance with **Clause 27 (Cell Certification)**; and

28.2.2 prior to the Contractual Houseblock Opening Date up to and including the Actual Houseblock Opening Date, the Houseblock in accordance with **Clause 27 (Cell Certification)**.

28.3 The Authority shall issue each Prison Cell with a Cell Certificate within the notice period referred to in **Clause 28.1(Timetable for Cell Certification)**, unless the Prison Cell does not comply with **Clause 27 (Cell Certification)**, in which case the Authority shall provide the Contractor with a written record of those parts of **Schedules A(Specifications), B (Equipment) and C(Maintenance Management)** that are not complied with.

28.4 In the event that:

- (a) the Authority fails to certify a Prison Cell before the expiry of the notice period set out in **Clause 28.1 (Timetable for Cell Certification)**; and
- (b) the Authority fails to provide the Contractor with a written record under **Clause 28.3 (Timetable for Cell Certification)** before the expiry of the notice period set out in **Clause 28.1 (Timetable for Cell Certification)**,

then if, but for the Authority's failure as set out in (a) or (b) above, upon expiry of the notice period referred to in **Clause 28.1 (Timetable for Cell Certification)** a Prisoner Place would have been treated as being an Available Prisoner Place, then for the sole purpose of **Clauses 25 (Liquidated Damages) and 38 (Price)**, the Prisoner Place shall be treated as an Available Prisoner Place until such time as the Authority certifies the Prison Cell so as to make it an Available Prisoner Place within the meaning of **Clause 29.1 (Available Prisoner Places)** or the Authority provides the Contractor with a written record in accordance with **Clause 28.3 (Timetable for Cell Certification)** so that the Prisoner Place ceases to be treated as an Available Prisoner Place.

28.5 Where a Prison Cell is refused Cell Certification by the Authority, and a written record of the reasons has been provided to the Contractor in accordance with Clause 28.3, the Contractor shall comply with the requirements of this **Clause 28 (Timetable for Cell Certification)** and **Clause 27 (Cell Certification)** when seeking any new approval or certification for the Prison Cell, save that the notice period referred to in **Clause 28.1 (Timetable for Cell Certification)** shall be fourteen (14) Days instead of thirty (30) Days but the Authority shall respond as soon as reasonably practicable within the notice period taking into account the reasons for any such refusal.

Available places

29. Available Prisoner Places

29.1 There shall be no Available Prisoner Places in respect of the Existing Prison until:

- (a) the Engineer's Declaration has been obtained;
- (b) the Authority's final approval of the Operational Proposals referred to in **Clauses 20.1 (a), (b) and (c) (Preparation for Operation of the Prison)** has been obtained in accordance with **Clause 20.6 (Preparation for Operation of the Prison)**;
- (c) the Contractor has demonstrated to the reasonable satisfaction of the Authority that it is capable of providing properly trained and certified Staff for the Prison; and
- (d) all the conditions required to be satisfied prior to the holding of Prisoners (for any period, whether overnight or otherwise) at the Prison in accordance with the Permission (as the same may be amended from time to time) are complied with in full.

29.1A There shall be no Available Prisoner Places in respect of the Increased Capacity until:

- (a) the Engineer's Houseblock Declaration has been obtained;
- (b) the Authority's final approval of the Operational Proposals referred to in **Clauses 20A.1(a), (b) and (c) (Preparation for Operation of the Increased Capacity)** has been obtained in accordance with **Clause 20A.6 (Preparation for Operation of the Increased Capacity)**;
- (c) the Contractor has demonstrated to the reasonable satisfaction of the Authority that it is capable of providing properly trained and certified Staff for the Houseblock; and
- (d) all the conditions required to be satisfied prior to the holding of Prisoners (for any period, whether overnight or otherwise) at the Houseblock in accordance with the Increased Capacity Permission (as the same may be amended from time to time) are complied with in full.

Thereafter, a Prisoner Place shall constitute an **Available Prisoner Place** for the purpose of the Contract on a particular Day, if:

- (x) the Prison Cell in which that Prisoner Place is contained has been issued with a Cell Certificate pursuant to **Clause 27.2 (Cell Certification)** (or such Cell Certificate has been reinstated pursuant to **Clause 27.3 (Cell Certification)**) and any such Cell Certificate has not subsequently been withdrawn pursuant to **Clause 27.3 (Cell Certification)**; and
- (y)
 - (i) that Prisoner Place has complied in all respects with the Standard Requirements throughout that Day; or
 - (ii) the Contractor has notified any failure (in respect of that Prisoner Place on that Day) to comply in all respects with the Standard Requirements to the Authority immediately and:
 - (A) that Prisoner Place is occupied by a Prisoner on that Day and the Authority has failed to require that Prisoner to be removed from that Prisoner Place on that Day;
 - (B) that Prisoner Place is not occupied by a Prisoner on that Day, in which case that Prisoner Place shall (until the requirements of (y)(i) above are satisfied) only constitute an Available Prisoner Place for a period of twenty four (24) hours following the first notification in respect of that failure and provided the Standard Requirements are complied with before the expiry of that twenty four (24) hour period, they shall be deemed to have been complied with throughout that period for the purpose of determining whether or not that Prisoner Place is an Available Prisoner Place; or
 - (C) the twenty four (24) hour period referred to in (B) above has expired before that Prisoner Place complies with the requirements of (y)(i) above and the Authority has directed that such Prisoner Place be occupied by a Prisoner and provided that Prisoner occupies that Prisoner Place for any part of that Day that Prisoner Place shall be deemed to be an Available Prisoner Place for the whole of that Day,

provided always that if a Prisoner Place is not (or is not deemed to be) an Available Prisoner Place for the whole of a Day it shall (for all purposes) be deemed not to have been an Available Prisoner Place on that Day.

29.2 Subject to **Clause 39.4 (Variation of Price)**, the Contractor shall on each Day following the Actual Full Opening Date produce the Daily Report and deliver a copy thereof to the Controller or his/her nominated representative.

29.3 No Single Prison Cell shall be used to accommodate more than one Prisoner at any one time (other than, in each case, Prison Cells designated for multiple occupancy in the healthcare centre of the Prison), except to the extent that the number of Prisoners sharing a Single Prison Cell with another Prisoner does not exceed the Permitted Level (and where the Permitted Level is so exceeded, **Clause 29.4 (Available Prisoner Places)** shall apply).

29.4 Where two (2) Prisoners share a Single Prison Cell otherwise than as expressly permitted in **Clause 29.3 (Available Prisoner Places)**, or permitted pursuant to **Clause 4.8 (Indemnities)**, the amount payable by the Authority for the Services shall, without prejudice to the Authority's rights under **Clauses 44 (Default by Contractor)** and **45 (Rectification and Termination for Default)**, be reduced in the following manner:

Where:

- (a) the number of Prisoners sharing a Single Prison Cell with another Prisoner (other than in the healthcare centre of the Prison) is greater than the Permitted Level; and
- (b) the sharing of Prison Cells by Prisoners above the Permitted Level has been reported in one or more Daily Reports,

then the Fixed Fee, the Indexed Fee and the Indexed Costs Fee in respect of the Prisoner Places occupied by all such Prisoners shall each be reduced by thirty five per cent. (35%) for each Day the sharing referred to above is, and for so long as it continues to be, so reported in Daily Reports, with effect from and including the first such Daily Report, the calculation being made monthly and in accordance with **paragraph 9 of Schedule E (Payment Mechanism)**.

29.5 No Prison Cell (whether it be a Single Prison Cell or a Double Prison Cell) shall be used to accommodate more than two (2) Prisoners under any circumstances other than Prison Cells designated for multiple occupancy in the healthcare centre of the Prison.

29.6 The Contractor agrees that it will not refuse to accept a Prisoner for an Available Prisoner Place where such Prisoner has been sent to the Prison by any Court; and that it will not refuse to accept a Prisoner for an Available Prisoner Place where it receives a request to do so from the Authority unless the Contractor has reasonable cause to believe that complying with the Authority's request would prejudice the Contractor's ability to maintain security and control within the Prison. The Authority

agrees not to introduce any Category A Prisoners to the Prison if to do so can reasonably be avoided and, if it cannot reasonably be avoided, the Authority undertakes:

- (a) to remove any such Category A Prisoners from the Prison at the earliest possible opportunity; and
- (b) to negotiate with the Contractor to agree the level of extra resources (if any) which the Authority will provide to the Contractor in order to ensure that the Contractor can maintain security and control within the Prison (provided that no such extra resources shall be required to be provided by the Authority if the Category A Prisoners in question are not held in custody at the prison for more than three (3) Prisoner Days in any six (6) month period). To the extent that provision of any such extra resources is by way of payment, the level of the payment shall be ascertained by reference to the principles set out in **Clause 39.4 (Variation of Price)**.

29.7 An Available Prisoner Place shall be deemed not to be an Available Prisoner Place if the Contractor refuses to accept a Prisoner to occupy such Available Prisoner Place, unless in requesting that the Prisoner occupy such Available Prisoner Place, the Authority is not acting in accordance with its own guidelines for placing prisoners in its own prisons. If the Contractor refuses to comply with the Authority's request and the Authority is not acting in accordance with such guidelines, the Available Prisoner Place shall continue to be an Available Prisoner Place (subject to the requirements of **Clause 29.1 (Available Prisoner Places)**); if the Authority is acting in accordance with such guidelines the Available Prisoner Place shall not be an Available Prisoner Place until the earlier to occur of the following:

- (a) save in respect of the Phase-In Period, four hundred and fifty (450) or more Prisoners have occupied the Prison at any one time after the date of the Contractor's refusal; and
- (b) three (3) months have passed since the date of the Contractor's refusal.

29.8 The Contractor shall be under a duty to inform the Authority promptly (and record the same in the Daily Reports) if any event occurs which could reasonably be expected to result in a Cell Certificate being withdrawn pursuant to **Clause 27.3 (Cell Certification)**, or in a failure to comply in all respects with the Standard Requirements.

PART V - OPERATION

30. Conduct of Operation

- 30.1 The Contractor is responsible for the operation and maintenance of the Prison, in accordance with the terms and specifications of the Contract, and in accordance with the Authority's powers under the Criminal Justice Act 1991.
- 30.2 The Contractor shall at all times operate the Prison in accordance with all relevant provisions of Legislation including but not limited to the Prison Act 1952, the Criminal Justice Act 1991, the Prison Rules 1999 and the Young Offender Institution Rules 1988.
- 30.3 Without prejudice to Clause 30.2, the Contractor shall operate the Prison in accordance with the terms of **Part 1 of Schedule D (Operational Requirements)**.
- 30.4 The Contractor shall at all times:
- (i) not act, and shall use reasonable endeavours to ensure that its Staff do not act, in a way which is likely to cause or provoke and does cause or provoke a Riot at the Prison or the Site; and
 - (ii) if a Riot does occur at the Prison or the Site, take reasonable steps having regard to all relevant circumstances, to limit as far as possible the duration and consequences of the Riot, including, without limitation, minimising the risk of personal injury or death and limiting the damage to the Prison, Site or Assets resulting from the Riot or any related incident.
- 30.5 Without prejudice to the generality of **Clause 30.4 (Conduct of Operation)**:
- (a) The Contractor shall once a month, provide a written report to the Authority which shall be headed "Riot Risk Report" detailing any incidents which might reasonably be regarded as evidence of an increased risk of a Riot occurring and details of such measures as the Contractor has taken in response thereto and the Contractor and the Authority shall meet to discuss such report each month; and
 - (b) The Contractor shall enter into such arrangements with the police and other emergency services as may be reasonably appropriate in order to establish the basis upon which the police and such other

emergency services will or may respond in the event of a Riot occurring and shall provide to the Authority copies of any documentation relating to any such arrangements.

30.6 The Contractor shall not object to the Authority consulting or conferring with the police or any other emergency service with respect to any matter, including without limitation any matter related to the risk of a Riot occurring or other serious disturbance which has occurred. The Authority shall not be obliged to inform the Contractor of any such consultation or conferring or of the context thereof. Nothing herein shall oblige the Authority to enter into any consultation or conferring with any third party.

30.7 Notwithstanding **Clause 58 (Information and Confidentiality)** the Authority shall have the right to disclose to the police and/or any other emergency service ('**Recipient**') Confidential Matters if the Authority reasonably believes such information is material to the matters in respect of which the Authority consults or confers with the police or any other emergency service and subject, in each case, to the Recipient undertaking to keep the information confidential and to use it only for the purpose for which it was provided.

31. **The Director**

31.1 The appointment of the Director of the Prison shall be subject to the approval of the Authority and to his certification as a Prisoner Custody Officer under Sections 85 and 89 of, and Schedule 10 to, the Criminal Justice Act 1991.

31.2 The Contractor shall submit a nomination for the position of the Director to the Authority in accordance with **Clause 20 (Preparation for Operation of the Prison)**, which nomination the Authority may accept or reject as it thinks fit. The Contractor will submit to the Authority such further particulars of the proposed Director and the terms of his employment contract as the Authority may require in order to decide upon the appointment. The Authority will consult with the Contractor with respect to any such nominee and if a Contractor's nominee is rejected by the Authority, the Authority shall provide reasons for the rejection, and the Contractor shall nominate a new candidate for the Authority's approval or rejection in the same manner as the earlier nomination.

31.3 During the term of the Contract, the Director shall be an appointee of the Contractor. Any change to the Person occupying the position of the Director must be approved by the Authority before being effected.

31.4 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 and appointment as specified in this **Clause 31(The Director)**.

32. **Prisoner Custody Officers**

32.1 All Persons carrying on 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. Whenever the Contractor requests a Person be certified as a Prisoner Custody Officer, the Contractor shall submit to the Authority the name of any proposed Prisoner Custody Officer and such other particulars as the Authority may require, to assist in the Authority's decision as to his certification.

32.2 No Person certified as a Prisoner Custody Officer may be employed in that capacity if his certification has been revoked or during any period when his certificate is suspended. The Contractor shall notify the Authority immediately of any behaviour of a Prisoner Custody Officer which would cast doubt on his fitness for certification as a Prisoner Custody Officer.

32.3 The Contractor shall ensure that all Prisoner Custody Officers shall carry out their duties.

33. **The Operational Staff**

33.1 The Contractor shall be responsible for the recruitment and provision of suitable Staff and in particular the Contractor shall appoint one or more suitably qualified individuals to the position of prison medical officer. All Staff shall receive proper training in their functions and duties and such training is subject to approval by the Authority (such approval or refusal not to be unreasonably delayed).

33.2 The Contractor shall submit for the Authority's approval any and all uniforms to be worn by the Staff of the Prison (including the Prisoner Custody Officers) at least three (3) months prior to Estimated Opening Date and, in any event, before such uniforms are taken into use. Such uniform and the Contractor's and Operating Sub-contractor's required standards of dress for the Staff shall be subject to approval by the Authority before being implemented. Any change to the uniforms or standards shall be subject to the Authority's approval.

- 33.3 All Staff who are not required to be certified as Prisoner Custody Officers (including, for the purposes of this **Clause 33.3 (The Operational Staff)**, the medical officer or officers) shall be subject to approval by the Authority. The Contractor shall provide to the Authority such details of the said members of Staff as may be required by the Authority for the purposes of approval. Notwithstanding the foregoing, the Authority may exempt certain categories of Staff from the requirements of this **Clause 33.3 (The Operational Staff)**.
- 33.4 The Contractor shall provide all Staff with the operating and procedural instructions prepared in accordance with **Clause 20 (Preparation for Operation of the Prison)** which are relevant to them, and all Staff shall be provided with any revised or amended operating and procedural instructions which are relevant to them which may be issued during the term of the Contract.
- 33.5 The Contractor shall ensure that all Staff are under an obligation of confidence owed not only to the Contractor but also to 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, and shall provide in the terms of the Sub-contracts that the Sub-contractors will undertake in the same terms to the Authority as the provisions of this **Clause 33.5 (The Operational Staff)**.
- 33.6 Without prejudice to **Clauses 31 (The Director)** and **32 (Prisoner Custody Officers)**, if, in the opinion of the Authority, any Staff (including without limitation, the Director) is guilty of misconduct, incapable of efficiently performing his duties or it is not in the public interest for such a Person to work in the Prison, then the Authority shall notify this to the Contractor and the Contractor shall immediately suspend such Person from his work and refuse the admission of such Person to the Prison (except, if the Authority consents, in connection with disciplinary matters) and shall, immediately on being required to do so, remove such Person from the Prison and will cause such Person's work to be performed by such other Person as may be deemed necessary. The Authority shall, in respect of any such Person, take such action as it considers appropriate.
- 33.7 The Contractor and the Authority shall, following the suspension, refusal of admission and/or removal of such Staff pursuant to **Clause 33.6 (The Operational Staff)**, consult in good faith to ascertain whether the relevant Staff should be allowed to recommence his or her duties in the Prison. If the Contractor considers in good faith that suspension is no

longer appropriate and that the relevant Staff should be allowed to resume duties at the Prison, it shall notify the Authority in writing (an **Original Notice**). Following receipt of any Original Notice by the Authority, the Authority shall be entitled, by giving notice (a **Second Notice**) in writing to the Contractor within fourteen (14) Days of receipt of the Original Notice, to require continued suspension and refusal of admission to the Prison of such Person for a specified period or permanently. If the Authority does not give such notice within such period (but not otherwise) the relevant Staff may be allowed to continue his or her duties and to be admitted to the Prison. If the Staff brings any claim in respect of any suspension or refusal of admission to the Prison pursuant to this Clause (following termination of employment by the Contractor or otherwise) then the Contractor shall take all appropriate actions to procure that such claim is defended with all reasonable diligence. If the Staff nevertheless makes a successful claim in respect of any relevant dismissal and the Authority has been served an Original Notice in accordance with **Clause 33.7 (The Operational Staff)**, the Authority shall (provided that the Contractor has complied with its obligations under this Contract) reimburse the Contractor for any reasonable losses it suffers as a result of such successful claim. If the Contractor fails to comply with any such requirement of the Authority under this **Clause 33.7(The Operational Staff)** to suspend, dismiss, refuse admission and/or remove such Person, or delays in doing so, the Authority may employ such other Person as it may deem necessary for the purpose of carrying out the relevant work, and any additional costs thereby incurred shall be a debt due from the relevant Contractor to the Authority.

- 33.8 The Contractor will note and comply with the provisions of Section 88 of the Criminal Justice Act 1991. The Contractor shall ensure the inclusion in the contract of employment of all Staff a condition requiring the Staff to co-operate with any Governor who may be appointed to the Prison under the terms of Section 88(2) of the Criminal Justice Act 1991.
- 33.9 The Contractor shall maintain sufficient Staff to perform the Custodial Service, including the provision of cover for annual and sick leave or other absence and other emergencies.
- 33.10 The Contractor shall provide written job descriptions, staff record systems, and a performance evaluation plan which shall be available for inspection by the Authority. All Staff shall be provided with written job descriptions before beginning work in the Prison. Job descriptions shall

be amended as necessary and reissued to the members of staff concerned after each amendment.

- 33.11 If the Contractor or a Sub-contractor seeks to engage a new member of staff, and such Person has not been the subject of prior approval or certification in accordance with this **Clause 33 (The Operational Staff)**, **Clause 32 (Prisoner Custody Officers)** and **Clause 31 (The Director)** (where such approval or certification is required under the Contract), or such approval or certification has lapsed, the Contractor shall not permit such Person to commence work at the Prison until the Authority has been provided with the information required by this **Clause 33 (The Operational Staff)** and has given the requisite approval or certification.
- 33.12 The Contractor shall ensure that the Staff (including for the avoidance of doubt Prisoner Custody Officers, the Director and other senior management of the Prison or their delegated representatives) with sufficient authority to take decisions necessary for the proper operation of the Prison, shall be available twenty four (24) hours a Day on every Day throughout the Contract Term in respect of the Custodial Service.
- 33.13 The Contractor shall ensure that a member of the senior management of the Contractor's and the Operating Sub-contractor's organisation, as distinguished from the senior management of the Prison, is contactable by the Authority twenty four (24) hours a Day on every Day throughout the Contract Term. The Contractor shall ensure that the Authority is informed well in advance of the procedures by which this obligation will be performed (and any changes thereto) and such procedures (and any changes thereto) shall be subject to the approval of the Authority.
- 33.14 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.
- 33.15 As between the Contractor and the Authority, subject as expressly provided herein, the Contractor shall be liable for any costs and payment of redundancy awards to its employees, agents or representatives including any costs and payment of redundancy awards to the Staff of an outgoing Operating Sub-contractor if a replacement Operating Sub-contractor is appointed pursuant to the provisions of this Contract and/or the Direct Agreement.

The Construction Staff

- 33A. The terms of **Sub-Clauses 33.3, 33.5, 33.6, 33.7, 33.11, 33.14** and **33.15 (The Operational Staff)** shall, mutatis mutandis, apply to Construction Staff as if references to "Staff" were to Construction Staff.

TUPE Transfers

- 33B.1 Unless otherwise agreed by both parties, the Contractor and the Authority acknowledge that the TUPE Regulations will apply at the expiry or on the termination of this Contract.

- 33B.2.1 During the period of eighteen (18) months preceding the expiry of the Contract or at any other time as directed by the Authority or after the Authority has given notice to terminate the Contract, the Contractor shall:

- (a) fully and accurately disclose to the Authority the information listed in **Part 1 of Schedule R (TUPE Information)** relating to Personnel who are engaged in providing the Services; and
- (b) shall permit the Authority to use the information to inform any tenderer bidding for any services which are substantially the same type of services as provided by this Contract provided that, prior to doing so, any such tenderer shall have executed in writing a confidentiality undertaking in favour of the Contractor.

- 33B.2.2 During the period of six (6) months preceding the expiry of the Contract, or after the Authority has given notice to terminate the Contract, the Contractor shall provide all reasonable assistance and facilities to the Authority, or any prospective employer of the said Personnel as the Authority may determine, to include the communication with and meeting of those Personnel whom the Contractor reasonably believes will be involved in the TUPE transfer and their trade union or other employee representatives when and where the Authority may determine.

- 33B.3 During the period of three (3) months preceding the expiry of the Contract or at any time as directed by the Authority or after the Authority has given notice to terminate the Contract, the Contractor shall fully and accurately disclose to the Authority the information listed in **Part 2 of Schedule R (TUPE Information)** which relates to its employees who are engaged in providing the Services and shall permit the Authority to use the information to inform any prospective employer about its prospective employees provided that, prior to doing so, the

prospective employer shall have executed in writing a confidentiality undertaking in favour of the Contractor.

33B.4.1 The Contractor warrants that it will supply complete and accurate information and agrees to indemnify and keep the Authority indemnified fully in respect of any costs and liabilities whatsoever arising from the provision of information pursuant to **Clauses 33B.2.1, 33B.2.2, 33B.3 (TUPE Transfers) and Schedule R (TUPE Information)** which is incorrect, the failure to provide information pursuant to such Clauses and/or the failure to provide assistance pursuant to **Clause 33B.2.2 (TUPE Transfers)**. The indemnity pursuant to this Clause will survive the expiry or termination of this Contract **PROVIDED THAT** the Contractor will only be obliged to indemnify the Authority in respect of those costs or liabilities which are notified to the Contractor by the Authority for a period no later than nine (9) months after the termination or expiry of this Contract.

33B.4.2 From the date of being given notice of the Authority's intention to re-tender the Services (and the Operating Sub-contract) or where notice terminating the Contract (and the Operating Sub-contract) for whatever reason has been given, the Contractor shall not (and shall ensure that the Operating Sub-contractor shall not) without the prior written agreement of the Authority:

- (a) materially amend the rates of remuneration, hours to be worked, or holiday entitlement of any employee performing any part of the Services;
- (b) replace any of the individuals providing any part of the Services (and the Operating Sub-Contract) or deploy any Person other than those already providing Services) to perform the Services;
- (c) make or propose any changes to the terms or conditions of employment in respect of any employee performing any part of the Services;
- (d) give notice to terminate the employment of any employee performing any part of the Services (save in respect of gross misconduct or following a disciplinary investigation, in which event the Contractor shall inform the Authority forthwith).

33B.4.3 Agreement by the Authority in respect of Sub-Clauses **33B.4.2(a), (b), (c) and (d) (TUPE Transfers)** above shall not be unreasonably withheld or delayed.

33B.5 All salaries and other emoluments (but excluding leave entitlement) including tax and national insurance payments, contributions to

retirement benefit schemes, allowances, expenses and bonus and commission payments relating to employees providing services under the Contract and appertaining to the period up to the expiry or termination of the Contract (or the Operating Sub-contract, as the case may be) shall be borne by the Contractor and all necessary apportionments shall be made.

33B.6 Within fourteen (14) Days prior to the TUPE Transfer Date the Contractor shall provide to the Authority and the New Contractor a complete and accurate list of all Transferring Employees.

33B.7 Within fourteen (14) Days following the TUPE Transfer Date, the Contractor shall provide to the Authority and the New Contractor in writing Final Pay Details of the Transferring Employees.

33B.8 From the date of being given notice of the Authority's intention to re-tender the Services being performed under the Contract (and the Operating Sub-contract) or where notice terminating the Contract and Operating Sub-contract has been given, the Contractor shall (and shall ensure that the Operating Sub-contractor shall) promptly notify the Authority:

- (a) of the period of notice given by the Contractor or received from any employee performing any part of the Services regardless of when such notice is to take effect;
- (b) of the termination, for whatever reason of the employment of any employee performing any part of the Services; and
- (c) of any other change to any employee performing part of the Services and their terms and conditions of employment, the information set forth in **Part 2 of Schedule R (TUPE Information)** and the Relevant Personnel documentation.

33B.9 The Contractor warrants that it shall satisfy all of its obligations up to the TUPE Transfer Date in respect of all salaries and other emoluments, tax and national insurance payments, contributions to retirement benefit schemes and bonus arrangements in respect of each Transferring Employee provided that (i) where the same are due to be paid before the TUPE Transfer Date in respect of the period after the TUPE Transfer Date, the same shall be paid by the Contractor who shall forthwith on demand be indemnified in respect thereof by the Authority; and (ii) where the Transferring Employees are to be paid after the TUPE Transfer Date in respect of the period up to and including the TUPE Transfer Date the

Authority forthwith on demand shall be indemnified by the Contractor in respect of this payment.

33B.10 The Contractor shall indemnify and keep the Authority indemnified in respect of all and any costs and liabilities whatsoever suffered or incurred by the Authority or the New Contractor by reason of any proceeding, claim or demand arising out of or in connection with:

- (a) any claim against the Authority, or the New Contractor nominated by the Authority, by any Transferring Employee included on the list provided in accordance with **Clause 33B.6 (TUPE Transfers)** so far as it relates to any act or omission of the Contractor prior to the TUPE Transfer Date;
- (b) any claim against the Authority or the New Contractor by any Transferring Employee engaged in providing the Custodial Service under this Contract whose name is not included on the list provided by the Contractor pursuant to **Clause 33B.6 (TUPE Transfers)**;
- (c) any claim against the Authority or the New Contractor by any Person engaged in providing the Custodial Service under this Contract who is not a Transferring Employee that they were employed immediately prior to the TUPE Transfer Date in the provision of the Services and that accordingly their employment has been transferred to the New Contractor provided that the New Contractor terminates their employment within ten (10) Days of becoming aware of that Person's claim.

33B.11 The Authority shall (and shall procure that any New Contractor shall), so far as reasonable, ensure that the Authority (or any New Contractor) does not impede or prevent the Contractor from complying with its duties in accordance with Regulation 10 of TUPE and the Authority shall make reasonable endeavours to provide (or procure the provision) of relevant and accurate information to the Contractor. The provision or procurement by the Authority of information or other assistance shall not import or imply any warranty or other representation by the Authority in connection with such information or assistance.

33B.12 For the purposes of this **Clause 33B (TUPE Transfers)**; **"Final Pay Details"** means in respect of each of the Transferring Employees the following: copy pay slip data for the final month, cumulative pay for tax and pension purposes, cumulative tax paid, tax code, voluntary deductions from pay, bank/building society account details for payroll purposes; **"TUPE Transfer Date"** means the date of termination or expiry of this Contract; **"Transferring Employees"** means those

employees of the Contractor or any Sub-contractor who are at the TUPE Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to TUPE or the Acquired Rights Directive EEC 187/77 or otherwise to the New Contractor; **"Relevant Personnel documentation"** means all Documents, manuals, codes, handbooks, procedure guides, publications and agreements (including collective agreements) that relate to the Transferring Employees' terms and conditions of employment and benefits; **"New Contractor"** means the Person nominated by the Authority to undertake the services substantially the same as the Services after the expiry or termination of this Contract.

34. **The Controller**

- 34.1 The Contractor will note and comply with the provisions of Section 85 of the Criminal Justice Act 1991.
- 34.2 The Controller shall be allowed unrestricted access to the Prison at any hour of the Day, and the Controller shall be provided with accommodation in accordance with **Clause 56 (Facilities for Authority)**. 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.

35. **Monitoring and Inspection**

- 35.1 The Contractor shall give or procure access to the Prison and to any training or catering or other facilities of the Contractor or any Sub-contractor where such facilities are used in connection with the provision of the Custodial Service (other than the Works) (the Prison and all such facilities being referred to as the **Facilities**) to, and will otherwise co-operate with, Her Majesty's Inspectorate of Prisons, the Prison Ombudsman, the Board of Visitors, and any other statutory, regulatory or other properly interested body, including relevant international bodies.
- 35.2 The Contractor shall be required to permit or procure reasonable access to the Facilities to any other Person whom the Authority notifies to the Contractor, subject to the Contractor's and the Sub-contractors' security and operational requirements and reimbursement of any reasonable costs, expenses or damage incurred in relation to the Facilities which are caused by such Person.

35.3 The Authority may require periodic reviews of the Contractor's operating procedures (including, for the avoidance of doubt, the Operational Proposals), emergency and contingency procedures, public relations procedures and staff handbook. In order to carry out such reviews, the Authority may require the aforesaid procedures to be put into operation by the Contractor in order to test their effectiveness. Such a requirement will not be invoked so as to compromise the security and control of the Prison. The Authority may require the Contractor to make such alterations or amendments to the said procedures and staff handbook as it thinks fit, save that where the alterations give rise to a change of service under **Clause 9 (Change to Services Required)**, the provisions of **Clause 39 (Variation of Price)** shall apply.

35.4 Copies of each Daily Report shall be provided by the Contractor to the Controller by nine (9) am on the Day following the Day to which such Daily Report refers. Full details of the Daily Report shall be input into the Prison's computer network within one (1) hour of the Prisoners' lock-up and the details accessed after that time shall constitute the Daily Report in respect of the Day preceding that lock-up. The Controller shall be entitled at any time to inspect the Prison and its operation to ensure that the information contained in any Daily Report is correct. If any of the matters contained in any Daily Report are found to be incorrect, the provisions of **paragraph 10 of Schedule E (Payment Mechanism)** shall apply.

36. **Escort Arrangements**

36.1 Unless the Authority otherwise notifies the Contractor in writing, the Contractor will provide a Prisoner Escort Service in accordance with **Part 3 of Schedule D (Operational Requirements)**, for which the Contractor will be entitled to a fee as set out in **paragraph 11 of Schedule E (Payment Mechanism)** and payable in accordance therewith.

36.2 The Contractor shall co-operate with all reasonable requirements of any other Person providing a Prisoner Escort Service to the Prison, but subject at all times to the maintenance of the security and control at the Prison.

37. **Visitors**

The Contractor shall 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 onto the Land, for whatever purpose.

PART VI - FINANCE

38. Price

- 38.1 The Authority shall pay to the Contractor the Contract Price which shall be calculated by reference to the relevant formula at **paragraph 9 of Schedule E (Payment Mechanism)**, expressed in pounds sterling per Day, subject to any variations of the Contract Price as provided for in **Clause 9 (Change to Services Required)** and **Clause 39 (Variation of Price)** (which for the avoidance of doubt shall not include any direct reimbursement by the Authority of specific costs or expenses).
- 38.2 Without prejudice to the Authority's obligations pursuant to **Clauses 9.3 (Change to Services Required)** and **39.2 (Variation of Price)**, no payment of the Contract Price shall become due to the Contractor until the earlier of:
- (a) the date upon which the Authority first makes use of Available Prisoner Places provided by the Contractor under **Clause 22.1 (Phase-in Period)**; and
 - (b) the date falling on or after COD+7 upon which the Contractor first provides fifty (50) Available Prisoner Places in accordance with the Phase-in Timetable.
- 38.3 Payment of the Contract Price shall be claimed monthly and in arrears, by means of an invoice, together with such other documentation supporting the invoice as the Authority may reasonably require, submitted to the Contracts and Procurement Unit of HM Prison Service or its successor, and shall be subject to any reduction pursuant to the terms hereof. The first such invoice and documentation shall be due on the last Day of the month in which the Contractor provides fifty (50) Available Prisoner Places to the Authority.
- 38.4 Payment will be due in accordance with **Schedule E (Payment Mechanism)**, thirty (30) Days from the presentation by the Contractor of each valid monthly invoice, and such other documentation as may be reasonably required by the Authority.
- 38.5 Interest shall accrue on any amounts due under this Contract which are not paid on the due date at the rate of LIBOR from time to time plus one per cent. (1%) on the unpaid amount from the due date until the date of payment thereof.

38.6 The Authority shall pay to the Contractor in accordance with **Schedule U (Houseblock Works Fee)** the Houseblock Works Fee.

39. **Variation of Price**

39.1 The Contract Price is fixed and is not subject to revision except as provided in **Clause 9 (Change to Services Required)** or this **Clause 39 (Variation of Price)**.

39.2 Where any Prison Legislation alters the costs incurred by the Contractor in fulfilling its obligations hereunder the following shall apply:

(i) where such Prison Legislation does not result in an obligation on the Contractor to incur any Capital Expenditure, the Contractor may notify the Authority of such alteration in its costs and request that an adjustment be made to the Contract Price. Following such notification, the parties shall endeavour to agree such adjustment as soon as practicable in accordance with the following provisions:

(a) the Contractor shall provide the Authority with a quotation to decrease or increase the Contract Price;

(b) the Contractor shall submit all such information referred to in Clause 60 (Contractor's Records) as the Authority may reasonably require together with break-downs of price and supporting material as the Authority may reasonably require including wage rates, suppliers' costs, overhead and profit calculations, for the purpose of satisfying the Authority that the proposed revised price is fair and reasonable; or

(ii) where such Prison Legislation results in an obligation on the Contractor to incur any Capital Expenditure, the provisions in **Clauses 9.2 (Change to Services Required)** and **9.3 (Change to Services Required)** shall apply, save that any reference to a Notice of Change shall be deemed to include Prison Legislation for the sole purpose of this **Clause 39.2(ii) (Variation of Price)**.

39.3 When any Security Technology Change arises or comes to the attention of the Contractor, the Contractor shall as soon as reasonably practicable notify the Authority of such matter and shall provide to the Authority all information in its knowledge or possession necessary to enable the Authority to evaluate the position. Upon such notification, or if the Authority reasonably believes that a Security Technology Change has occurred or should occur, the Authority shall be entitled to a reduction of the Contract Price equal to seventy five per cent. (75%) of the aggregate

of the reduction in the Contractor's costs which has resulted or would result from such Security Technology Change, and may if it wishes serve notice upon the Contractor, whereupon:

- (a) the Contractor shall provide the Authority with a quotation to reduce the Contract Price;
- (b) the Contractor shall provide all the information referred to in **Clause 39.2(i)(b) (Variation of Price)** as the Authority may require for the Authority to ascertain the amount of reduction in costs which the Contractor will or should achieve as a result of the said Security Technology Change; and
- (c) the Contractor and the Authority shall agree a reduction in the Contract Price which shall fairly reflect seventy five per cent. (75%) of the reduction in the costs of the Contractor, and (but without double counting) any Sub-contractors (calculated on a consolidated basis) which result or will result from the said Security Technology Change.

In the event that any Security Technology Change which is yet to be put in place at the time of the notification referred to in this Sub-Clause requires any Capital Expenditure on the part of the Contractor before it can be put in place in the Prison, **Clause 9.2 (Change to Services Required)** (but for the avoidance of doubt not **Clause 9.7 (Change to Services Required)**) shall apply in respect of such notification as though it were a Notice of Change under **Clause 9.1(Change to Services Required)**. To the extent that the Security Technology Change has been developed by the Contractor or the Operating Sub-contractor, the amount of the reduction in the Contract Price shall only come into effect after a sufficient period following the date the Contractor effects, or is obliged to effect, the Security Technology Change within the Prison to allow the Contractor to recover the Development Cost so that the amounts of the Contract Price will only alter pursuant to this Clause once the difference between the amount the Contractor receives from the Authority and the amount it would have received if the reduction in Contract Price had come into immediate effect equals the amount of the Development Cost. For the purpose of this Clause, the **Development Cost** shall be the costs reasonably incurred by the Contractor or the Operating Sub-contractor in developing the Security Technology Change, such costs to be divided by the number of prisons operated in the United Kingdom by the Contractor and the Operating Sub-contractor or their respective Affiliates in which the Security Technology Change is to be, or is reasonably capable of being, installed to produce a similar costs reduction and to be evidenced in reasonable detail in writing to the Authority.

To the extent the Contractor has or is reasonably expected to suffer redundancy costs in connection with any Security Technology Change giving rise to a reduction in the Contract Price under this Clause, the reduction in the Contract Price shall only come into effect after a sufficient period following the date the Contractor effects, or is obliged to effect, the Security Technology Change within the Prison to allow the Contractor to recover the redundancy costs, so that the Contract Price will only reduce pursuant to this Clause once the difference between the amount the Contractor receives from the Authority and the amount it would have received if the reduction of the Contract Price had come into immediate effect equals the amount of those redundancy costs.

39.4 Any variation to the Contract Price pursuant to **Clause 9 (Change to Services Required)** or (except as provided otherwise) this **Clause 39 (Variation of Price)** shall be set at a level so as to allow the parties providing the necessary works or new Services in order to comply with the Contract following the date upon which the Notice of Change comes into effect to receive a reasonable rate of return in respect of such works or Services comparable with the return normally obtained by such parties in respect of such works or Services in the United Kingdom (taking into account the nature of the financing of such works or services and of any existing financing), such rate not to exceed a real rate of 13.22 % per annum; and any variation to the Contract Price pursuant to **Clause 9 (Change to Services Required)** and this **Clause 39 (Variation of Price)** shall further be made in accordance with the following principles:

- (a) any changes in Wage Costs shall be reflected by an appropriate change in the amount of the Indexed Costs Fee and by the appropriate change in the amount of the APP Fee to reflect the proportion of such amounts which are attributable to Wage Costs;
- (b) any changes in any financing costs resultant upon the financing of any Capital Expenditure pursuant to **Clause 9.2 (Change to Services Required)** shall be reflected by an appropriate change in the amount of the Fixed Fee (taking into account the repayment schedule of such financing);
- (c) any changes in the costs of the Contractor or the Sub-contractors other than in respect of the matters referred to in **(a)** and **(b)** above shall be reflected by an appropriate change in the amount of the Indexed Fee and by appropriate changes in the amount of the APP Fee to reflect the proportion of such amounts which are not attributable to Wage Costs;
- (d) without prejudice to **Clause 23 (Full Operation Date)** and except to the extent that **Clause 40 (Available Prisoner Places)** applies, if the

Authority requires a reduction in the number of Available Prisoner Places to be provided by the Contractor pursuant to **Clause 9 (Change to Services Required)**, appropriate changes will be made to the Contract Price such that:

- (i) the Contractor's existing and ongoing payment and scheduled repayment obligations under the Financing Agreements are fully reflected (provided that if prior to the relevant variation of price a payment breach has occurred and is continuing or is reasonably forecast, then this sub-paragraph (i) should be applied so as to result in the Forecast Debt Service Cover Ratio reasonably forecast immediately prior to the date of the variation being maintained);
- (ii) the Contractor's obligation to comply with the financial covenants contemplated by the Credit Agreement at the date hereof shall be reflected so as to provide the Banks with at least the same Loan Life Cover Ratio and Forecast Debt Service Cover Ratio as are reasonably forecast immediately prior to the date of the variation for the remaining term of their facilities;
- (iii) the Shareholders' actual real post-tax percentage equity return is preserved;
- (iv) the Operating Sub-contractor's actual percentage operating margin is preserved; and
- (e) any benefit or saving accruing to the Contractor, the Operating Sub-contractor or any of their Affiliates at the time of variation of the Contract Price at any other prison(s) or other type of custodial facility operated by them in the United Kingdom as a direct result of the matter giving rise to the change in the Contract Price shall be taken into account.

39.5 In respect of any dispute relating to a price review or amount payable under this Clause, **Clause 72 (Dispute Resolution)** shall apply.

Benchmarking

39A.1 Not later than three (3) months and not more than fifteen (15) months prior to the tenth or twentieth (as applicable) anniversary of the Actual Opening Date the Authority may give notice to the Contractor that it intends to invite others to bid for the provision of services pursuant to the Contract for the Relevant Period, subject to and in accordance with the remaining provisions of this **Clause 39A (Benchmarking)**.

- 39A.2 If the Authority provides the Contractor with the notice referred to in Clause 39A.1(**Benchmarking**), the Authority will invite such Persons as it may in its discretion think appropriate (but including the Contractor) (together **Bidders**) to bid to provide the Custodial Service for the Relevant Period in accordance with the terms of the Contract (the "**Existing Specification**") and/or, at the option of the Authority, on the basis of one or more amended specifications (the "**Amended Specifications**").
- 39A.3 Within fourteen (14) Days of the Authority so requesting, the Contractor shall provide the Authority with such information as the Authority may reasonably require (provided that the Contractor possesses or is capable of acquiring such information and is legally permitted to provide such information to the Authority) in relation to any aspects of the re-tendering of the Contract (including all information required to enable Bidders to assess the full implications of **Clause 39A.8(h) (Benchmarking)**) and the Contractor shall raise no objection to such information relating to the Estimated Transfer Value being made available to Bidders or their advisers.
- 39A.4 Each Bidder will be invited to specify the sum of money (the "**Contract Bid Sum**") that it would be prepared to pay to the Authority on the Transfer Date in return for acquiring the right to provide for the Relevant Period the Existing Specification and/or, a separate sum of money in relation to each of the Amended Specifications (the "**Amended Bid Sum**") (together "**Bids**"). In either case Bidders will be asked to bid on the basis that the pricing in the Contract should remain in effect following a re-tendering. Bidders will be asked to demonstrate clearly how the Contract Bid Sum or the Amended Bid Sum would vary in accordance with changes in the Transfer Date.
- 39A.5 The Contractor shall, on the date that Bidders are required to provide the Authority with Bids, provide the Authority with an estimate, together with such supporting information as the Authority may reasonably require, of the Equity Value, Lender Liabilities and Other Approved Liabilities (the "**Estimated Transfer Value**") all as at the Transfer Date. Any calculations made in connection with the Estimated Transfer Value shall be set out in reasonable detail by the Contractor.
- 39A.6(a) Subject to **Clause 39A.4 (Benchmarking)** and any applicable Legislation, the terms of the re-tendering process (including the evaluation criteria for the assessment of Bids) and the manner in which the re-tendering process is conducted shall be at the Authority's discretion. Subject as aforesaid, the Authority will consider the Bids

received and shall determine which of the Bids submitted represents the best overall value for money.

- (b) The Authority may terminate or suspend the re-tendering process at any time and, subject to applicable Legislation, shall not be obliged to accept any Bid. If the Authority rejects all Bids, (and until the Transfer Date if a Bid is accepted), the Contractor shall continue to perform the Contract on its existing terms.
- (c) The provisions of **Clause 39A.7 (Benchmarking)** or **39A.8 (Benchmarking)**, as applicable, shall apply to the appointment of the successful Bidder.
- (d) The Authority may at any time change the Transfer Date at its discretion provided such change is consistent with the timetable for the re-tendering process.

39A.7 If the existing Contractor is appointed the successful Bidder, it will continue as the Contractor under this Contract and:

- (a)
 - (i) the Contract Bid Sum or, as the case may be, the Amended Bid Sum bid by the existing Contractor shall, to the extent that it exceeds the Transfer Value, be paid by the Contractor to the Authority on the Transfer Date or as may have been otherwise agreed at the time the existing Contractor's Bid is accepted and any Amended Specification shall be incorporated into the Contract with effect from the Transfer Date; the parties shall execute such documentation as may be reasonably necessary to evidence such payment and effect such incorporation and shall complete the same by no later than the Transfer Date;
 - (ii) if the existing Contractor has bid an Amended Bid Sum and that Bid has been accepted, if the Amended Bid Sum is less than the Transfer Value, the Authority shall pay the amount of the difference to the existing Contractor in such manner and at such times as the Authority and the Contractor shall have agreed at the time of acceptance of that Bid; and
- (b) except as provided in **Clause 39A.7(a) (Benchmarking)**, for the Relevant Period the Contract Price and the Prisoner Escort Fee will remain as set out in the Contract as at the Transfer Date (as has been amended or adjusted prior to the Transfer Date in accordance with the terms of the Contract) and (except to the extent amended by the implementation of any Amended Specifications) the remaining Contract

terms will also be as set out in the Contract as at such date (without prejudice to any subsequent implementation of a Notice of Change, amendment, re-tendering or termination in accordance with the terms of this Contract);

39A.8 If a Bidder other than the existing Contractor is the successful Bidder appointed to be the Contractor under this Contract (the "**New Contractor**"), the existing Contractor and the Authority shall novate the Contract to such Bidder on the following terms:

- (a)
 - (i) the New Contractor shall assume all the rights and obligations of the existing Contractor (and the existing Contractor shall be released from its obligations) under the Contract with effect from the Transfer Date but without prejudice to any liabilities of the existing Contractor or the Authority which have accrued prior to, but remain undischarged as at, the Transfer Date;
 - (ii) for the purposes of the Direct Agreement, the Contract shall be deemed to terminate on the Transfer Date;
- (b) the Contract will be amended with effect from the Transfer Date to incorporate the Amended Specification (if any) and to replace the existing Contractor with the New Contractor and the parties shall execute such documentation as may be reasonably necessary to effect the foregoing by no later than the Transfer Date;
- (c) on the Transfer Date or as otherwise may have been agreed between the New Contractor and the Authority at the time of acceptance of the New Contractor's Bid, the New Contractor shall pay to the Authority the Contract Bid Sum or, as the case may be, the Amended Bid Sum;
- (d) on the Transfer Date, upon execution by the existing Contractor of the documentation referred to in **Clause 39A.8(b) (Benchmarking)**, the Authority shall pay to the existing Contractor a sum equal to the Transfer Value less the Dilapidation Deduction;
- (e) the Authority will appoint an independent expert to carry out a dilapidation survey when the successful bidder is selected, such survey to report on the condition of the Prison and provide an estimate of the costs (if any) to be incurred pursuant to **Clause 19 (Dilapidation Survey)** to carry out unremedied repairs and/or maintenance necessary to ensure the Prison meets the standards of repair and maintenance set out in **Clause 17 (Maintenance of Prison)** and **Schedule C (Maintenance Management)** (the "**Dilapidation Deduction**");

- (f) except as provided in **Clause 39A.8(b) (Benchmarking)**, for the Relevant Period the Contract Price and the Prisoner Escort Fee are as set out in the Contract as at the Transfer Date and (except to the extent amended by the implementation of any Amended Specifications) the remaining Contract terms are also as set out in the Contract as at such date (without prejudice to any subsequent implementation of a Notice of Change, amendment, re-tendering or termination in accordance with the terms of this Contract);
 - (g) the New Contractor and/or its Operating Sub-contractor or their parents or ultimate shareholders, as applicable, shall enter any agreements which may have been required by the Authority under the tendering process in accordance with **Clause 39A.8(b) (Benchmarking)**;
 - (h) if the New Contractor is required to take on any employees of the Contractor and/or the Operating Sub-contractor, including any associated obligations in accordance with the provisions of **Clause 33B (TUPE Transfers)**, arrangements shall be made for the New Contractor and/or its Operating Sub-contractor (i) to assume the employment contracts of those Staff at the Site required to be taken on by the Contractor and such Staff shall be transferred in accordance with TUPE and the provisions of **Clause 33B (TUPE Transfers)**; or (ii) if relevant, to make payment to cover any redundancy costs applicable to such Staff.
- 39A.9 The costs of any expert appointed pursuant to this **Clause 39A (Benchmarking)** shall be borne by the Contractor if the effect of the re-tendering under this **Clause 39A (Benchmarking)** is to provide the Authority with better value for money under the Contract than it would have obtained otherwise without re-tendering, otherwise the Benchmarking Costs will be borne by the Authority.
- 39A.10 Neither the Contractor nor the Authority will take any action which could reasonably be expected to frustrate the intent or operation of this **Clause 39A (Benchmarking)**.
- 39A.11 The provisions of **Clause 49.5 (Payment for Termination)** shall be applied to all sums payable by the Authority to the Contractor under **Clause 39A.7 (Benchmarking)** or **Clause 39A.8 (Benchmarking)** (each, an **Authority Payment**) as if each Authority Payment were a Termination Payment.

Prisoner Places

40. Available Prisoner Places

- 40.1 For the period commencing with the Actual Opening Date and ending with the Relevant Date, the Authority shall pay for all Available Prisoner Places on an Availability Basis in accordance with the formula set forth in **paragraph 9 of Schedule E (Payment Mechanism)**.
- 40.2 At any time on or after the Relevant Date, the Authority shall pay for four hundred (430) Available Prisoner Places on an Availability Basis and the remaining twenty (20) Available Prisoner Places on a Utilised Basis in accordance with the formula set forth in **paragraph 9 of Schedule E (Payment Mechanism)** for the remainder of the Contract Term.

Additional Prisoner Places

- 40A.1(a) On and from the Full Operation Date up to the Actual Increased Capacity Date and without prejudice to its obligation under **Clause 23 (Full Operation Date)** to provide Available Prisoner Places, the Contractor shall make available to the Authority up to forty five (45) Additional Prisoner Places in accordance with this **Clause 40A (Additional Prisoner Places)**.
- (b) The Additional Prisoner Places shall be divided into three (3) bands (**APP Bands**) as set out in the table below, where APP Band A is the lowest APP Band (i.e. it represents the first fifteen (15) of the forty five (45) Additional Prisoner Places) and APP Band C is the highest APP Band:

| APP Band | Maximum Number of Additional Prisoner Places in APP Band | Start of APP Band (Prisoner Places) | End of APP Band (Prisoner Places) | Minimum Contracted Capacity (Prisoner Places) | Aggregate Number of Additional Prisoner Places |
|----------|--|-------------------------------------|-----------------------------------|---|--|
| A | 15 | 451 | 465 | 450 | 15 |
| B | 15 | 466 | 480 | 465 | 30 |
| C | 15 | 481 | 495 | 480 | 45 |

- (c) On and from the Actual Increased capacity Date and without prejudice to its obligation under **Clause 23A (Actual Increased Capacity Date)** to

provide Available Prisoner Places, the Contractor shall continue to make available to the Authority up to forty five (45) Additional Prisoner Places in accordance with this **Clause 40A (Additional Prisoner Places)**. Such Additional Prisoner Places shall be divided into three (3) bands (**APP Bands**) as set out in the table below, where APP Band A is the lowest APP Band (i.e. it represents the first fifteen (15) of the forty five (45) Additional Prisoner Places) and APP Band C is the highest APP Band:

| APP Band | Maximum Number of Additional Prisoner Places in APP Band | Start of APP Band (Prisoner Places) | End of APP Band (Prisoner Places) | Minimum Contracted Capacity (Prisoner Places) | Aggregate Number of Additional Prisoner Places |
|-----------------|---|--|--|--|---|
| A | 15 | 528 | 542 | 527 | 15 |
| B | 15 | 543 | 557 | 542 | 30 |
| C | 15 | 558 | 572 | 557 | 45 |

40A.2 Subject to **Clause 40A.4 (Additional Prisoner Places)**, if the Authority requires Additional Prisoner Places, it shall give the Contractor thirty (30) Days written notice of the APP Band or Bands it requires and the date from which such APP Band or Bands is or are required. The Contractor shall make available to the Authority the Aggregate Number of Additional Prisoner Places applicable to the highest APP Band so notified from the date specified in the notice (or in any notice amending such notice (an **Amendment Notice**)) until the date it is no longer obliged to make them available in accordance with **Clause 40A.3 (Additional Prisoner Places)** (the "**Relevant Available Period**"). For the avoidance of doubt, any Amendment Notice must be given in writing thirty (30) Days before the date the APP Band or Bands is or are required.

40A.3 Subject to **Clause 40A.4 (Additional Prisoner Places)**, if the Authority no longer requires any APP Band it has requested under **Clause 40A.2 (Additional Prisoner Places)**, it may give the Contractor written notice thereof and the Contractor's obligation to provide such APP Band shall cease thirty (30) Days after the date of such notice.

40A.4 If the Authority requires any APP Band under **Clause 40A.2 (Additional Prisoner Places)**, APP Band A shall be deemed required for a minimum

period of twelve (12) months from the date specified in the notice (**Minimum Period**); in any event the Authority will give the Contractor three (3) months prior written notice of the date on which APP Band A is no longer required (such date to fall no earlier than the end of the Minimum Period) and the Contractor's obligation to make APP Band A available shall cease on such date.

- 40A.5 The Contractor shall not be obliged to make available an Additional Prisoner Place under any of APP Bands if (a) accepting a Prisoner for that Additional Prisoner Place would prejudice the Contractor's ability to maintain security and control within the Prison or (b) in requesting that a Prisoner occupy such Additional Prisoner Place, the Authority is not acting in accordance with its own guidelines for placing Prisoners in its own prisons.
- 40A.6 Subject to **Clause 23.1 (Full Operation Date)**, the notice periods required under **Clauses 40A.2 (Additional Prisoner Places)** and **40A.4 (Additional Prisoner Places)** shall not apply in the case of emergencies; in such cases, the Authority may require Additional Prisoner Places within any of APP Bands to be provided by the Contractor with immediate effect, but will afford the Contractor such assistance as is reasonably required in the circumstances (including, if appropriate, a temporary waiver of any relevant obligations of the Contractor pursuant to **Schedule D (Operational Requirements)**).
- 40A.7 The APP Bands shall be used in the order A, B, C and cease to be used in the order C, B, A and notices pursuant to **Clauses 40A.2 (Additional Prisoner Places)** and **40A.3 (Additional Prisoner Places)** shall be required to follow such order (although consecutive APP Bands may be selected or cease to be required simultaneously).
- 40A.8 The Authority shall pay the Contractor in accordance with **paragraph 7 of Schedule E (Payment Mechanism)** for each Additional Prisoner Place required.

41. **Plans and Performance Measures**

- 41.1 At least six (6) months prior to the Estimated Opening Date, the Contractor shall provide a project implementation plan to operate the Prison which shall cover the period from the Contractual Opening Date up to six (6) months after the Contractual Opening Date. On or before six (6) months after the Contractual Opening Date, the Contractor shall provide a strategic development plan to operate the Prison in respect of the Custodial Service to cover the Year commencing on the Full

Operation Date. The Contractor shall be under a duty to meet the requirements and targets contained in the project implementation plan in respect of the operation of the Prison and the strategic development plan for achieving continuing improvements to the Custodial Service.

- 41.1A The Contractor shall provide an update to the current strategic development plan to operate the Prison, including the Houseblock, at least six (6) months prior to the Contractual Increased Capacity Date.
- 41.2 At the end of the first strategic development plan and every five (5) Years thereafter, the Contractor shall consult with the Authority and submit such further strategic development plans to the Authority for its approval as the Authority may reasonably require.
- 41.3 The strategic development plan will propose changes to the Service to meet the Authority's current key operational and regime requirements. The strategic development plan will be supported by a resource plan indicating how the Contractor intends to achieve changes outlined. It will be at the Authority's discretion to approve implementation of all (or some) parts of the strategic development plan and **Clause 9 (Change to Services Required)** may apply.
- 41.4 The project implementation plan and the strategic development plans referred to in **Clauses 41.1, 41.2 and 41.3 (Plans and Performance Measures)** are to accord with the policies and vision statements adopted from time to time by the Authority, provided (and without prejudice to the provisions of **Clause 9 (Change to Services Required)**) that the Contractor shall only be obliged to implement such plans to the extent they would not increase the cost to the Contractor of providing any or all of the Custodial Service.
- 41.5 The Contractor shall operate systems to ensure the continuing quality of the Custodial Service and such systems shall (where applicable) be at a level not less than that indicated in the Operational Proposals.
- 41.6 The Contractor shall have no recourse to **Clause 39 (Variation of Price)** as a result of any obligation imposed by this **Clause 41 (Plans and Performance Measures)** .
- 41.7 Without prejudice to the Authority's rights under **Clause 46 (Voluntary Termination)** and **Clause 45 (Rectification and Termination for Default)**, the amount payable by the Authority for the Services shall be reduced in the event that Performance Measures arise such that the number of Performance Points accrued exceeds the Baseline Total during

the relevant Performance Quarter or Performance Year. The amount of the reduction shall be calculated for each Performance Quarter or Performance Year in accordance with the relevant formula at **paragraph 9 of Schedule E (Payment Mechanism) (Formula for Daily Payment)**, and shall be deducted from the amount otherwise payable in respect of that Performance Quarter or Performance Year.

41.8 In the event of:

- (a) the escape of any Prisoner which for the purposes of this **Clause 41.8(a) (Plans and Performance Measures)** shall mean when such Prisoner overcomes a substantial barrier such as the perimeter wall of the Prison (a **Prison Escape**), the Contractor shall be liable to make a payment to the Authority of [REDACTED] per Prisoner; or
- (b) a Prisoner being escorted outside the Prison, which Prisoner is no longer within the custody of the Contractor for any period exceeding fifteen (15) minutes (an **Escort Escape**), the Contractor shall be liable to make a payment to the Authority of [REDACTED] per prisoner; or
- (c) a Prisoner being escorted outside the Prison, which Prisoner is no longer within the custody of the Contractor for any period up to and including fifteen (15) minutes (a **Transitory Escape**), the Contractor shall be liable to make a payment to the Authority [REDACTED] per Prisoner.

For the purposes of this **Clause 41.8 (Plans and Performance Measures)**, the maximum amount deductible for one incident will be [REDACTED]. The amounts specified in this **Clause 41.8 (Plans and Performance Measures)** shall be indexed using the formula in **Schedule E (Payment Mechanism) (Price and Payment)**, Paragraph 6(a), using the Retail Price Index (excluding mortgages) (RPIX). Any payments due to the Authority in accordance with this **Clause 41.8 (Plans and Performance Measures)** shall be made as soon as reasonably practicable, but in any event within ten (10) Days.

41.9 The Contractor shall be under a duty to inform the Authority of any Performance Measure as soon as practicable and, in any event, within twenty four (24) hours of its occurrence.

41.10 The provisions of **Schedule Z (Excusing Causes)** shall have effect in respect of any Excusing Causes.

42. **Value Added Tax**

42.1 The Contract Price together with any other payments due from the Authority to the Contractor hereunder (including without limitation under Part VII hereof) shall be exclusive of Value Added Tax, and all reference to fees and prices in this Contract shall be regarded as exclusive of Value Added Tax. The Authority shall pay to the Contractor a sum equal to the Value Added Tax chargeable on the value of the provision of the obligations of the Contract, in addition to the Contract Price.

42.2 Any invoice or other request for payment of monies due to the Contractor under the Contract shall be in the same form and contain the same information as if the same were a tax invoice for the purpose of the regulations made under the Value Added Tax Act 1994.

42.3 The Contractor shall, if so requested by the Authority, furnish such information as may be reasonably required by the Authority as to the amount of Value Added Tax chargeable in accordance with the Contract, and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of **Clause 43 (Recovery of Sums Due)**.

42.4 If the Contract Price is increased or decreased, or if a sum of money shall become due for payment by or to the Authority, any monies thereby payable shall have added to them a sum equal to any appropriate adjustment in respect of Value Added Tax due on the adjusted value of the Contract or the sum of money due.

42.5 Any payment to the Contractor by the Authority pursuant to the provisions of **Clause 49 (Payment for Termination)** or **52.3 (Termination Survey)** shall be regarded as exclusive of Value Added Tax and the Authority shall pay to the Contractor in addition to the payment a sum equal to any Value Added Tax thereon.

43: **Recovery of Sums Due**

Whenever, under the Contract, any sum or sums of money shall be due and payable by the Contractor to the Authority, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract, or under any other contract which the Contractor has with the Authority or with the Crown, provided that the Authority agrees not to set-off any amounts due from the Contractor against the obligations to pay a termination sum under

Clause 46 (Voluntary Termination), Clause 47 (Unilateral Termination), Clause 48 (Force Majeure), Clause 51.4 (Corrupt Gifts and Payments), Clause 56.3 (Facilities for Authority), Clause 5.19 (Insurance) and Clause 39A.8(d) (Benchmarking), except to the extent that the amount by which such termination sum is greater than the Lender Liabilities.

PART VII - TERMINATION

44. Default by Contractor

44.1 Each and any of the following events shall constitute an Event of Default on the part of the Contractor entitling the Authority, if it so elects, to terminate the Contract in accordance with the terms hereinafter set out:

- (a) any failure (except of a type falling within **(b), (c), (d)** or **(f)** below or in connection with the execution of the Works) by the Contractor to perform, keep, observe, meet or comply with any of the terms of the Contract where such failure occurs after the Engineer's Declaration and:
 - (i) has a material effect on the performance of the Custodial Service as a whole; or
 - (ii) does not give rise to Performance Measures or otherwise constitute an Event of Default but is a failure which has continued or recurred within six (6) months after the date of a Final Notice (as defined below) served on the Contractor; or
 - (iii) by itself (whether or not remedied), casts serious doubt on the competence or suitability of the Contractor to provide the Services; or
 - (iv) in addition to any other failure or failures (whether or not remedied), which have occurred over a rolling five (5) Year period casts serious doubt on the competence or suitability of the Contractor to provide the Services.

For the purposes of (ii) above:

- (w) If a failure which does not give rise to Performance Measures or does not otherwise constitute an Event of Default has continued or occurred persistently, the Authority may serve a notice (a **First Notice**) on the Contractor duly signed by a Named Representative of the Authority, specifying that it is a First Notice as defined in **Clause 44.1(a) (Default by Contractor)** of this Contract, giving

reasonable details of that failure and stating that such failure is a failure which (if it continues, or recurs persistently) may result in a termination of this Contract.

- (x) If, following the service of a First Notice, the failure specified therein has continued, or recurred persistently following the date falling thirty (30) Days after the date of service of the First Notice and the Operating Sub-contractor has not been replaced by an unrelated, independent and experienced Operator, then the Authority may serve another Notice (a **Final Notice**) on the Contractor duly signed by a Named Representative of the Authority and specifying that it is a Final Notice, that the failure specified has been the subject of a First Notice served within the twelve (12) month period prior to the date of service of the Final Notice and that if such failure continues or recurs within the six (6) month period following the date of service of the Final Notice, the Contract may be terminated.
- (y) No Final Notice may be served pursuant to this Clause unless a First Notice has been served in respect of the same failure within the twelve (12) month period preceding the date of service of the Final Notice.
- (z) A First Notice may not be served in respect of any failure in respect of which a separate First Notice has already been served until a period of twelve (12) months has elapsed since the date of service of the previous First Notice.
- (b) failure by the Contractor to pay any amount due from it hereunder (except for liquidated damages payable under **Clause 25 (Liquidated Damages)** to which **Clause 44.1(f) (Default by Contractor)** applies) within fifteen (15) Business Days of a written demand which refers to either a previous invoice or other written demand for the same sum which is unpaid (unless the Relevant Amount is disputed in good faith);
- (c) failure by the Contractor to obtain the Engineer's Declaration on or before the date falling nine (9) months after the Contractual Opening Date;
- (d) failure to provide fifty (50) Available Prisoner Places on or before the date falling three (3) months after the date upon which the Engineer's Declaration is obtained unless resulting from a breach by the Authority of its obligations hereunder or resulting from a Relevant Event where the

Contractor is using all reasonable endeavours to provide such Available Prisoner Places;

- (e) failure to provide all four hundred and fifty (450) Available Prisoner Places and any Additional Prisoner Places in accordance with **Clause 40A (Available Prisoner Places)** during the period up to but not including the Actual Increased Capacity Date for a continuous period exceeding thirty (30) Days except (i) in circumstances where **Clause 48 (Force Majeure)** applies, or (ii) where:
 - (x) such failure results from matters entirely outside the Contractor's control (including a breach by the Authority of its obligations hereunder); and
 - (y) the Contractor is using best endeavours to restore all such Prisoner Places as soon as practicable;
- (f) failure to pay any liquidated damages in accordance with **Clause 25 (Liquidated Damages)** on or before the date falling thirty (30) Days after the due date (except where such failure results from a technical failure in the banking system);
- (g) if:
 - (i) a court makes an order that the Contractor be wound up; or
 - (ii) any receiver or manager is appointed in respect of the Contractor (other than for the purpose of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the receiver is appointed by the Banks under the Financing Agreements); or
 - (iii) a meeting of creditors of the Contractor passes or a meeting of any class of shareholders of the Contractor is convened for the purposes of considering a resolution for the winding-up of the Contractor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the meeting is convened by the Banks under the Financing Agreements); or
 - (iv) a petition for an administration order is presented and such petition is not withdrawn within thirty (30) Days (except when it is presented by the Banks in the manner contemplated in the Direct Agreement); or

- (v) a petition is presented or other steps are taken for the purposes of the winding up of the Contractor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority or as a result of action being taken by the Banks in exercise of their rights under the Financing Agreements as contemplated in the Direct Agreement) and any such petition is not, or such other steps are not discharged or withdrawn within thirty (30) Days of receiving notice of such petition; or
- (h) if distress or execution is levied against all or a substantial part of the Contractor's assets and is not paid or discharged within twenty eight (28) Days, or a judgment against the Contractor in excess of [REDACTED] [REDACTED] remains unsatisfied for more than twenty eight (28) Days, except in either case where the Contractor has lodged a bona fide appeal against such levy or judgment;
- (i) if a change of control of the Contractor (as defined in **Clause 50 (Change of Control)**) occurs (without the consent of the Authority and except as otherwise permitted in **Clause 50 (Change of Control)**); or
- (j) an Event of Default as defined in the Credit Agreement occurs (unless resulting from a breach by the Authority of its obligations hereunder) and the Banks (or a requisite majority of the Banks or the Agent) have accelerated all or part of the indebtedness outstanding pursuant to the Financing Agreements (except where the Contractor has demonstrated within ten (10) Days of such acceleration to the satisfaction of the Authority that it is able to continue to comply with its obligations under the Contract);
- (k) subject to **Clauses 5.14, 5.16, 5.17, 5.18, 5.19, 5.20 and 5.21 (Unavailability)**, any failure by the Contractor to effect and maintain insurance in accordance with its obligations under **Clause 5 (Insurance)**; or
- (l) failure to provide all five hundred and twenty seven (527) Available Prisoner Places and any Additional Prisoner Places in accordance with **Clause 40A (Available Prisoner Places)** on and from the Actual Increased Capacity Date for a continuous period exceeding thirty (30) Days except (i) in circumstances where **Clause 48 (Force Majeure)** applies, or (ii) where:
 - (x) such failure results from matters entirely outside the Contractor's control (including a breach by the Authority of its obligations hereunder); and

- (y) the Contractor is using best endeavours to restore all such Prisoner Places as soon as practicable.

44A Houseblock Default

44A.1 Without prejudice to any other rights of the Authority to claim damages in respect of any breach of the Contract by the Contractor, each and any of the following events shall constitute a Houseblock Event of Default on the part of the Contractor entitling the Authority, if it so elects, to terminate the Houseblock Works in accordance with the terms hereinafter set out:

- (a) in respect of the Houseblock Works, the Contractor does not perform the Houseblock Works for a continuous period of forty five (45) Business Days or for a period of one hundred and thirty five (135) Days (whether continuous or not) at any time after the date of the Amending Agreement, unless such failure arises as a result of a breach by the Authority of its obligations under this Contract or a Houseblock Relevant Event;
- (b) failure to obtain the Engineer's Houseblock Declaration on or before the Long Stop Date; and
- (c) failure to provide twenty-five (25) Available Prisoner Places in the Houseblock on or before the date falling six (6) months after the date upon which the Engineer's Houseblock Declaration is obtained unless resulting from a breach by the Authority of its obligations hereunder or resulting from a Houseblock Relevant Event where the Contractor is using all reasonable endeavours to provide such Available Prisoner Places;

45. Rectification and Termination for Default

45.1 Where an Event of Default has occurred by reason of any matter occurring which is referred to in **Clauses 44.1(a)(i) (Default by Contractor), (iii) (Default by Contractor), 44.1(e) (Default by Contractor) or 44.1(l) (Default by Contractor)**, the Authority shall (if the breach or matter giving rise to the breach is capable of remedy) give notice to the Contractor in writing (a **Rectification Notice**), and the Contractor shall either propose a programme of rectification or remedy such Event of Default on or before the date falling fifteen (15) Days (or seven (7) Days in the case of a matter occurring which is referred to in **Clause 44.1(a)(iii) (Default by Contractor)**) after the date of such Rectification Notice (the "**Rectification Period**").

- 45.2 Where no proposal for rectification is received by the Authority within the Rectification Period, but the Event of Default has been remedied within the Rectification Period, no further action will be taken and the Contract will continue.
- 45.3 Where a proposal for rectification is received by the Authority within the Rectification Period and is approved by the Authority (such approval not to be unreasonably withheld or delayed save that in the case of a matter occurring which is referred to in **Clause 44.1(a)(iii) (Default by Contractor)**, the Authority shall have absolute discretion in approving a proposal for rectification), the Contractor shall carry out such approved rectification and remedy the default within such period comprised in the proposal (not to exceed forty five (45) Days from the date of the Rectification Notice unless the Authority otherwise agrees, having regard to any consequential increase in the amount of Lender Liabilities), save that the Authority may subsequently extend the said period if it thinks fit. At the expiry of such period, if the Contractor has remedied the Event of Default, no further action will be taken and the Contract will continue. If at the expiry of such period the Contractor has failed to carry out such approved rectification to the satisfaction of the Authority, the Authority shall notify the Contractor in writing of such failure and (subject to the provisions of the Direct Agreement) may terminate the Contract in accordance with **Clause 45.6 (Rectification and Termination for Default)**.
- 45.4 If an Event of Default occurs under **Clauses 44.1(a)(i), (iii) (Default by Contractor), 44.1(e) (Default by Contractor) or 44.1(l) (Default by Contractor)** which has not been rectified or in respect of which the Authority does not approve the proposal for rectification, or if no proposal for rectification is received by the Authority within the Rectification Period and that Event of Default has not been remedied, or if the breach in question is incapable of remedy, then the Authority shall so notify the Contractor and may proceed to terminate the Contract in accordance with **Clause 45.5 (Rectification and Termination for Default)**.
- 45.5 Where an Event of Default (other than under **Clauses 44.1(a)(i)(Default by Contractor), (iii) (Default by Contractor), 44.1(e) (Default by Contractor) or 44.1(l) (Default by Contractor)**) has occurred or in the circumstances set out in **Clause 45.4 (Rectification and Termination for Default)**, the Authority may proceed to terminate the Contract by giving notice in writing of its intention to terminate the Contract (a **Termination Notice**) to the

Contractor, receiver, liquidator, or any Person in whom the Contract may be vested, specifying the Termination Date which is at least ninety (90) Days after the date of the Termination Notice or, in the circumstances set out in **Clause 45.4 (Rectification and Termination for Default)**, at least one hundred and twenty (120) Days after the Rectification Notice served in accordance with **Clause 45.1 (Rectification and Termination for Default)**, save that in the case of a matter occurring which is referred to in **Clause 44.1(a)(iii)(Default by Contractor)** the Termination Date shall be at least ninety (90) Days after the Rectification Notice. Subject to **Clause 45.7 (Rectification and Termination for Default)**, the Contract shall terminate on the Termination Date and the termination shall take effect in accordance with the provisions of **Clause 49 (Payment for Termination)**, **Clause 54 (Consequential Arrangements on Termination)** and the Direct Agreement.

45.6 If, following approval of a proposal for rectification under **Clause 45.3 (Rectification and Termination for Default)**, the Contractor fails to carry out such approved rectification to the satisfaction of the Authority, the Authority may proceed to terminate the Contract as set out in **Clause 45.5 (Rectification and Termination for Default)**, save that the Termination Notice must specify a Termination Date which is at least seventy five (75) Days after the date of the Termination Notice.

45.7 Where:

- (a) an Event of Default has occurred other than by reason of any matter occurring which is referred to in **Clauses 44.1(a)(i) (Default by Contractor)**, **(iii) (Default by Contractor)**, **44.1(e) (Default by Contractor)** or **44.1(l) (Default by Contractor)**;
- (b) a Termination Notice has been served but the Termination Date has not occurred; and
- (c) the Authority is satisfied that such Event of Default has been remedied or in the case of the occurrence of an Event of Default under **Clause 44.1(f) (Default by Contractor)**, the Authority receives payment within seven (7) Days of the service of the Termination Notice, and the Authority is satisfied that the default or defaults that gave rise to such Event of Default are unlikely to recur,

then the Termination Notice shall be revoked in writing by the Authority without undue delay; provided that the Authority shall only be obliged to revoke two (2) Termination Notices pursuant to this **Clause 45.7**

(Rectification and Termination for Default) and pursuant to Clause 4.5(b) of the Direct Agreement in any rolling five (5) Year period.

- 45.8 The Contractor acknowledges and agrees that unless the Authority decides otherwise each of the failures set out in **Clauses 44.1(c) (Default by Contractor)** and **(g)(i) (Default by Contractor)** shall (without limitation) be a breach that is incapable of remedy for the purposes of **Clause 45.7 (Rectification and Termination for Default)**.
- 45.9 Where a replacement Operating Sub-contractor is appointed in accordance with **Clause 7 (Sub-contracting)** of this Contract or the Direct Agreement, any revocation of a Termination Notice served in respect of a failure as set out in **Clause 44.1(a)(ii)(Default by Contractor)** that has occurred during the five (5) Years preceding such appointment shall for the purposes of **Clause 45.7 (Rectification and Termination for Default)** be disregarded.
- 45.10 For the avoidance of doubt, service by the Authority of any Rectification Notice, Termination Notice, First Notice or Final Notice, and/or any notice of revocation thereof pursuant to **Clause 44 (Default by Contractor)** or this **Clause 45 (Rectification and Termination for Default)** shall be served by a Named Representative of the Authority.

45A Houseblock Works Termination

- 45A.1 Where a Houseblock Event of Default has occurred by reason of any matter occurring which is referred to in **Clauses 44A.1(a) (Houseblock Default)**, the Authority shall (if the breach or matter giving rise to the breach is capable of remedy) give notice to the Contractor in writing (a "**Houseblock Works Rectification Notice**"), and the Contractor shall either propose a programme of rectification or remedy such Houseblock Event of Default on or before the date falling fifteen (15) Days after the date of such Houseblock Works Rectification Notice (the "**Houseblock Works Rectification Period**").
- 45A.2 Where no proposal for rectification is received by the Authority within the Houseblock Works Rectification Period, but the Houseblock Event of Default has been remedied within the Houseblock Works Rectification Period, no further action will be taken and the Contract will continue.
- 45A.3 Where a proposal for rectification is received by the Authority within the Houseblock Works Rectification Period and is approved by the Authority (such approval not to be unreasonably withheld or delayed in the case of

a breach which is capable of remedy), the Contractor shall carry out such approved rectification and remedy the default within such period comprised in the proposal (not to exceed forty five (45) Days from the date of the Houseblock Works Rectification Notice unless the Authority otherwise agrees, having regard to any consequential increase in the amount of Lender Liabilities), save that the Authority may subsequently extend the said period if it thinks fit. At the expiry of such period, if the Contractor has remedied the Houseblock Event of Default, no further action will be taken and the Contract will continue. If at the expiry of such period the Contractor has failed to carry out such approved rectification to the satisfaction of the Authority, the Authority shall notify the Contractor in writing of such failure and may terminate the Houseblock Works in accordance with **Clause 45A.6 (Houseblock Works Termination)**.

45A.4 If a Houseblock Event of Default occurs under **Clauses 44.A1(a) (Houseblock Default)** which has not been rectified or in respect of which the Authority does not approve the proposal for rectification, or if *no proposal for rectification is received by the Authority within the Houseblock Works Rectification Period* and that Houseblock Event of Default has not been remedied, or if the breach in question is incapable of remedy, then the Authority shall so notify the Contractor and may proceed to terminate the Houseblock Works in accordance with **Clause 45A.5 (Houseblock Works Termination)**.

45A.5 Where a Houseblock Event of Default (other than under **Clause 44A.1(a) (Houseblock Default)**) has occurred or in the circumstances set out in **Clause 45A.4 (Houseblock Works Termination)**, the Authority may proceed to terminate the Houseblock Works by giving notice in writing of its intention to terminate the Houseblock Works (a "**Houseblock Works Termination Notice**") to the Contractor, receiver, liquidator, or any Person in whom the Houseblock Works may be vested, specifying the Houseblock Works termination date (the "**Houseblock Works Termination Date**") which is at least ninety (90) Days after the date of the Houseblock Works Termination Notice or, in the circumstances set out in **Clause 45A.4 (Houseblock Works Termination)**, at least one hundred and twenty (120) Days after the Houseblock Works Rectification Notice served in accordance with **Clause 45A.1 (Houseblock Works Termination)**. Subject to **Clause 45A.7 (Houseblock Works Termination)**, the Houseblock Works shall terminate on the Houseblock Works Termination Date and the termination shall take effect in accordance with the provisions of

Clause 49 (Payment for Termination), Clause 54 (Consequential Arrangements on Termination).

45A.6 If, following approval of a proposal for rectification under **Clause 45A.3 (Houseblock Works Termination)**, the Contractor fails to carry out such approved rectification to the satisfaction of the Authority, the Authority may proceed to terminate the Houseblock Works as set out in **Clause 45A.5 (Houseblock Works Termination)**, save that the Houseblock Works Termination Notice must specify a Houseblock Works Termination Date which is at least seventy five (75) Days after the date of the Houseblock Works Termination Notice.

45A.7 Where:

- (a) a Houseblock Event of Default has occurred;
- (b) a Houseblock Works Termination Notice has been served but the Houseblock Works Termination Date has not occurred; and
- (c) the Authority is satisfied that such Houseblock Event of Default has been remedied and the Authority is satisfied that the default or defaults that gave rise to such Houseblock Event of Default are unlikely to recur,

then the Houseblock Works Termination Notice shall be revoked in writing by the Authority without undue delay; provided that the Authority shall only be obliged to revoke two (2) Houseblock Works Termination Notices pursuant to this **Clause 45A.7 (Houseblock Works Termination)** in any rolling five (5) Year period.

45A.8 The Contractor acknowledges and agrees that unless the Authority decides otherwise each of the failures set out in **Clauses 44A.1(b) (Houseblock Default)** and **(c) (Houseblock Default)** shall (without limitation) be a breach that is incapable of remedy for the purposes of **Clause 45A.7 (Houseblock Works Termination)**.

45A.9 Not Used

45A.10 For the avoidance of doubt, service by the Authority of any Houseblock Works Rectification Notice, Houseblock Works Termination Notice, First Notice or Final Notice, and/or any notice of revocation thereof pursuant to **Clause 44A (Houseblock Default)** or this **Clause 45A (Houseblock Works Termination)** shall be served by a Named Representative of the Authority.

45B Houseblock Works Consequential Arrangements on Termination

45B.1 On termination of the Houseblock Works pursuant to **Clause 45A (Houseblock Works Termination)**, the Contractor's obligations in respect of the Houseblock Works and the provision of the Increased Capacity shall automatically cease (and any provisions relating to performance of the Houseblock Works and provision of the Increased Capacity shall be removed from this Contract) save where the Authority elects to undertake to the Contractor by way of written notice that it will step into and assume responsibility for the Contractor's obligations hereunder in respect of the carrying out and completion of the Houseblock Works and meeting the requirements for providing the Increased Capacity.

45B.2 Where the Authority does so elect to complete the Houseblock Works:

45B.2.1 the Contractor shall be relieved of its obligations under the Contract in respect of the carrying out of the Houseblock Works and meeting the requirements for providing the Increased Capacity;

45B.2.2 the Contractor shall comply with:

(a) all reasonable instructions of the Authority to ensure an orderly and efficient transfer of the Houseblock Works Area to the Authority; and

(b) the process reasonably specified by and reasonable requirements of the Authority for the introduction of a third party to complete the Houseblock Works and provide the Increased Capacity, including any reasonable amendments to the terms of this Contract to ensure that the safe, secure and efficient running of the Prison in accordance with the terms of this Contract is not materially adversely affected;

45B.2.3 the provisions relating to the dates for delivery of the Increased Capacity shall be amended such that the Contractual Houseblock Opening Date, the Increased Capacity Phase-in Period Timetable and the Contractual Increased Capacity Date shall be such dates as the Authority shall determine from time to time, but shall otherwise remain in full force and effect; and

45B.2.4 the Authority shall give to the Contractor not less than sixty (60) Days written notice of the anticipated Actual Houseblock Opening Date.

45B.3 If the Authority makes an election pursuant to **Clause 45B.2 (Houseblock Works consequential arrangements on Termination)** and in each case:

- (a) the performance by the Authority of the Contractor's obligations in respect of the Houseblock Works and the provision of the Increased Capacity; or
- (b) notwithstanding the issue by the Independent Engineer of a certificate under **Clause 26A (Engineer's Houseblock Declaration)**, any part of the Houseblock Works has not been completed in accordance with **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)**, such non compliance,

interferes adversely with, or causes a failure of the performance of the Custodial Service and/or causes the occurrence of a Performance Measure and provided that the effect of such adverse interference is claimed within ten (10) Business Days of the date on which the Contractor became aware of such adverse interference, then (subject to **Clauses 45B.4 (Houseblock Works consequential arrangements on Termination)** and **45B.5 (Houseblock Works consequential arrangements on Termination)**) to the extent such failure or occurrence of a Performance Measure arises as a result of such adverse interference:

45B.3.1 such failure by the Contractor to perform, and any poor performance of, any affected Custodial Service shall not constitute a breach of the provisions of this Contract by the Contractor;

45B.3.2 such interference shall be taken account of in measuring the performance of any affected Custodial Service in accordance with this Contract; and

45B.3.3 any such Performance Measure shall be deemed not to have occurred,

so that the Contractor shall be entitled to payment under this Contract as if there had been no such interference with the Custodial Service.

45B.4 Without prejudice to **Clause 5 (Insurance)**, the Contractor shall not be entitled to any payment which would not have been due under this Contract but for **Clause 45B.3 (Houseblock Works consequential arrangements on Termination)** to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained by the Contractor in accordance with this Contract (whether or not such insurance has in fact been effected, or if effected has been vitiated as a result of any act or omission of the Contractor, including but not limited to non-disclosure or under insurance) or any other policy of insurance which the Contractor has taken out and maintained.

- 45B.5 The Contractor shall take all reasonable steps to mitigate the consequences of any adverse interference (as described in **Clause 45B.3 (Houseblock Works consequential arrangements on Termination)**) on the Contractors' ability to perform its obligations under this Contract in respect of the Custodial Service. To the extent that the Contractor does not take such steps, the Contractor shall not be entitled to and shall not receive, the relief specified in **Clause 45B.3 (Houseblock Works consequential arrangements on Termination)**.
- 45B.6 Where the Authority elects not to complete the Houseblock Works, the Contractor shall comply with all reasonable instructions of the Authority to ensure that those parts of the Site upon which any part or parts of the Houseblock Works have been commenced and/or completed are left in a safe and secure condition, including the removal of any temporary buildings, tools, goods, plant, equipment and/or materials remaining on the Site in relation to which the Authority has not made payments and/or is not liable to make payment to the Contractor pursuant to this Contract (the "**Houseblock Removal Works**"). The Contractor shall itself and shall procure that any Sub-contractor engaged to perform any of the Contractor's obligations under this Contract complies with this **Clause 45B (Houseblock Works Consequential Arrangements on Termination)** and the Contractor shall be responsible for its own and any Sub-contractor's costs in complying with this **Clause 45B (Houseblock Works Consequential Arrangements on Termination)**.
- 45B.7 The provisions of **Schedule Z (Excusing Causes)** shall apply mutatis mutandis to the carrying out by the Contractor of the Houseblock Removal Works, save that references in **Schedule Z (Excusing Causes)** to "Houseblock Works" shall be amended to "Houseblock Removal Works".

45C **Authority's Rights On Termination**

Any exercise by the Authority of any right to terminate the Contract hereunder shall be without prejudice to any other rights and remedies the parties may have against each other (including, without limitation, the right to claim damages in respect of any breach of the Contract and any other rights under or in respect of the Contract) that may have arisen or be related to anything that may have arisen prior to any such exercise (whether or not any formal claim may have been made at the time of such exercise in respect of any such rights). Subject to the foregoing, the exercise of a right of termination of the Contract shall discharge both parties from their obligations thereunder.

45D **Preservation of Custodial Service**

For the avoidance of doubt the exercise by the Authority of its rights pursuant to **Clause 45A (Houseblock Works Termination)** shall be without prejudice to the rights and the obligations of the Contractor to provide the Custodial Service at the Prison and the Contractor shall following such exercise by the Authority of such right continue to perform the Custodial Service. Furthermore any exercise by the Authority of its right to elect to complete the Houseblock Works pursuant to **Clause 45B.2 (Houseblock Works Consequential Arrangements on Termination)** shall be without prejudice to the Contractor's continued right and obligation to perform the Custodial Service at the Prison (which shall for the avoidance of doubt include the Houseblock in the event that the Engineer's Houseblock Declaration has been issued in respect thereof) in accordance with the provisions of this Contract.

46. **Voluntary Termination**

The Authority shall have an option to terminate the Contract at will at any time from the date falling five (5) Years after the Contractual Opening Date. If upon the fifth anniversary of the Contractual Opening Date, or at any time thereafter, the Authority wishes to terminate the Contract it shall give six (6) months notice to the Contractor whereupon compensation will be payable to the Contractor in accordance with **Clause 49.2 (Payment for Termination)**.

47. **Unilateral Termination**

After the Engineer's Declaration has been issued, the Authority may, after service of a Termination Notice in respect of an Event of Default under **Clause 44 (Default by Contractor)** which has not been revoked, terminate the Contract at will, in which case compensation will be payable in accordance with **Clause 49.3 (Payment for Termination)**.

48. **Force Majeure**

In the event of a Force Majeure event arising during the term of the Contract which directly causes the Contractor or the Authority to be materially unable to comply with its obligations hereunder, the Contractor and the Authority may, if they so choose, agree such terms as are appropriate for the continued performance of the Contract (including, if such terms are agreed, any appropriate variation to the Contract Price, the Contractual Opening Date, the Full Operation Date and the Phase-in Timetable), and such terms shall be agreed in accordance with **Clause**

62 (Authority to Commit and Variation). If no such terms are agreed within sixty (60) Days of the commencement of the said event, and such event is continuing or its consequence remains that the Contractor or the Authority is materially unable to comply with its obligations, the parties hereby agree that both parties shall be excused performance of any and all obligations imposed upon them by the Contract, and the Contract shall thereupon terminate, subject to the terms of **Clause 49 (Payment for Termination)**.

The Force Majeure events are:

- (a) war, civil war (whether declared or undeclared) or armed conflict arising within and affecting England and Wales; or
- (b) radioactive, chemical or biological contamination of the Site arising from any of the events at (a) above or arising from an act of terrorism; or
- (c) substantial damage arising from the effect of sonic booms; or
- (d) damage arising as a result of any act of terrorism, other than as set out in paragraph (b) above, which is not the subject of insurance cover detailed in **Schedule O (Insurance)**.

For the avoidance of doubt, the Contractor shall incur no liability to the Authority pursuant to **Clause 41.7(Plans and Performance Measures)** hereof by reason of Performance Measures occurring by reason of the continuance of an event of Force Majeure.

49. **Payment for Termination**

- 49.1 Where the Contract terminates as contemplated in **Clause 45 (Rectification and Termination for Default)**, the Authority shall, provided that the Banks have complied with their undertakings under Clause 10 of the Direct Agreement and it has been established that no replacement Operating Sub-contractor or Substitute Entity has been found and appointed or could reasonably have been expected to be found and appointed by the Termination Date, pay to the Contractor the amounts due under **Schedule G (Payments on Termination for Default)** in accordance with the provisions of **Part 1 of Schedule G (Payments on Termination for Default)** and if the Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur if the Actual Houseblock Opening Date and the date of termination of the Houseblock Works, the amounts

as set out in **Part 2 of Schedule G (Payments on Termination for Default)**.

- 49.1A Where the Houseblock Works terminate as contemplated in **Clause 45A (Houseblock Works Termination)** the Authority shall promptly pay to the Contractor the amounts as set out in **Part 2 of Schedule G (Payments on Termination for Default)**.
- 49.2 In the event of termination under **Clause 46 (Voluntary Termination)** the Authority shall pay to the Contractor the amounts as set out in **Part 1 of Schedule H (Payments on Voluntary Termination)**.
- 49.3 In the event of termination under **Clause 47 (Unilateral Termination)** or **Clause 48 (Force Majeure)** the Authority shall pay to the Contractor the amount of the Lender Liabilities plus, if the Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the termination of the Houseblock Works, the amounts set out in **Part 2 of Schedule H (Payments on Voluntary Termination)**.
- 49.4 Without prejudice to the express provisions of the Direct Agreement, this **Clause 49 (Payment for Termination)** and **Clauses 5.19 (Unavailability of Insurance), 51.4 (Corrupt Gifts and Payments)** and **56.3 (Facilities for Authority)** contain the Contractor's sole contractual entitlement to payment and sole remedy against the Authority in the event of proper termination of the Contract. Any payment of compensation under such Clauses shall be in full satisfaction of any claim of the Contractor in relation to termination of this Contract or any project document. Further, without prejudice to any rights (including any right to a claim for damages) accrued up to and including the date of termination and except for compensation payable as a result of termination under **Clause 48 (Force Majeure)** as provided in **Clause 49.3 (Payment for Termination)** or as expressly provided in the Direct Agreement no compensation shall be payable if the Contract is properly terminated prior to the date of the Engineer's Declaration. Nothing in this Clause shall prejudice either party's rights against the other in respect of any matters arising prior to termination of the Contract.
- 49.5(a) All sums payable by the Authority under **Clause 49 (Payment for Termination)** (the "**Termination Payment**") shall be increased in the event that the Contractor shall incur any liability for Taxation in respect of any Termination Payment, so as to ensure that the net amount received by the Contractor (after account is taken of the Taxation

consequences of the increased payment) is equal based on the following provisions of this **Clause 49.5(Payment for Termination)** to the full amount which would have been received by it had no such liability to Taxation been incurred.

(b) In this **Clause 49.5 (Payment for Termination)** the expression ***Taxation*** means:

- (i) any liability to corporation tax of the United Kingdom;
- (ii) the loss or use of any loss, relief, allowance, exemption, set-off or deduction in computing, or against, profits, income or gains of any description or from any source for the purposes of corporation tax of the United Kingdom save where such loss, relief, allowance, exception, deduction or set off or compensation payment is derived from the Project or the Contractor's interest under the Lease;

but shall not include any liability to any tax or loss or use of any reliefs as a consequence of the distribution of the Termination Payment by the Contractor whether by way of interest, dividend or other distribution, repayment or reduction or redemption of capital or indebtedness or return of assets or otherwise howsoever.

(c) The Contractor shall keep the Authority fully informed of all negotiations with HM Revenue and Customs relating to any liability for Taxation in respect of any Termination Payment. The Contractor shall not agree, accept or compromise any claim or issue or dispute relating to such liability without the prior written consent of the Authority which shall not be unreasonably withheld or delayed. The Authority may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct the Contractor to resist, appeal, defend or otherwise dispute any assessment relating to its liability for Taxation in respect of the Termination Payment and the costs of any such dispute shall be at the Contractor's expense. However, if the Contractor obtains at its own expense professional advice from a Person with relevant expertise that any resistance, appeal, defence or other mode of disputation is not likely to result in any diminution of the liability to Taxation, the Contractor need not continue such resistance, appeal, defence or other mode of disputation unless the costs thereof are thereafter borne by the Authority. Where a dispute is prosecuted and results in a diminution in the Contractor's liability for taxation, an adjustment shall be made between the parties to reflect the outcome of the dispute.

- (d) The increased amount which is payable under **Clause 49.5(a) (Payment for Termination)** shall be determined upon the following assumptions and bases:
- (i) the Project and the Contractor's interest under the Lease comprise the sole trade and business of the Contractor;
 - (ii) the assets and equipment held, owned, hired, leased or otherwise used by the Contractor for the purposes of the Project comprise the sole assets and equipment of the Contractor;
 - (iii) that full account shall be taken of any unrelieved trading losses or other reliefs derived from the Project (including any relief attributable to any distribution in respect of profits or other matters properly related to the Project) and the Contractor's interest under the Lease which can be set off against, or against Taxation in respect of, the Termination Payment;
 - (iv) losses or other amounts eligible for relief from corporation tax derived from the Project or the Contractor's interest under the Lease which have been surrendered by the Contractor by way of group relief or consortium relief shall be assumed for these purposes not to have been surrendered and to remain available as carried forward trading losses or other reliefs;
 - (v) that, where **Clause 49.2(Payment for Termination)** applies, the Contractor is deemed to redeem any subordinated debt of the Contractor at an amount equal to the present value of the Extracted Cash Flows forecast to arise from the Termination Date to the Expiry Date as computed for the purposes of (and as defined in) **Schedule H (Payments on Voluntary Termination)** to the extent the same are attributable to interest and repayments in respect of such subordinated debt; and
 - (vi) that account is taken so far as relevant (having regard to **Clause 49.5(e) (Payment for Termination)**) of timing of differences.
- (e) The additional payment under **Clause 49.5(a)(Payment for Termination)** shall be five (5) Business Days before the Contractor's liability for Taxation in respect of the Termination Payment is/becomes due and payable, subject to the provision, at least four (4) weeks in advance, of evidence in sufficient detail for the Authority to satisfy itself of the basis on which such liability has been calculated. However, if and to the extent that the liability is reduced by a claim, loss or relief which is

not derived from the Project or the Contractor's interest under the Lease then payment will be made when and to the extent that the surrendering company or the Contractor as the case may be first makes a payment of Taxation which would not otherwise have been made.

- (f) Any payments due under **Clause 49.5(a) (Payment for Termination)** shall only be made when the Authority is satisfied that arrangements are in place to ensure that the amount paid by the Authority pursuant to **Clause 49.5(a) (Payment for Termination)** representing the Liability for Taxation in respect of any Termination Payment (the "**Additional Payment**"), along with any amount paid by the Authority representing the liability for taxation in respect of any Additional Payment will be paid to and retained by the Inland Revenue.

- 49.6 In the event of voluntary termination pursuant to **Clause 46 (Voluntary Termination)**, the Contractor shall provide and/or procure that the Operating Sub-contractor shall provide to the Authority such information concerning its respective financial position as shall be necessary to enable the relevant termination payment calculation to be carried out in accordance with **Clause 49.2** and **Schedule H (Payments on Voluntary Termination)** (together with such supporting evidence as the Authority may reasonably require). Such information shall include, without limitation, Project Cash Flows and Extracted Cash Flows (both as defined in **Schedule H (Payments on Voluntary Termination)**). The Project Cash Flows and Extracted Cash Flows shall be prepared in respect of six-monthly periods (i) from the date of signature of the Contract up to the Termination Date (or in respect of such shorter period where the final period prior to the Termination Date is less than six (6) months) and (ii) from the Termination Date until the Expiry Date (or in respect of such shorter period where the final period prior to the Expiry Date is less than six (6) months).

- 49.7(a) The Contractor agrees that it will not take or refrain from taking any action in relation to its contractual arrangements (including, without limitation, pursuant to any Sub-contract or Financing Agreement) or otherwise that is motivated primarily by a desire to increase the payment that would be due from the Authority on a termination of the Contract rather than by other considerations.

- (b) The Authority agrees that it will not take or refrain from taking any action that is motivated primarily by a desire to decrease the payment that would be due from it on termination of the Contract if such termination payment is calculated in accordance with **Schedule G (Payments on Termination for Default)**.

- (c) In relation to any action or inaction prior to the date falling twelve (12) months before the relevant Termination Date, the certificate of the Contractor or the Authority as to whether a breach of **Clause 49.7(a) (Payment for Termination)** or **(b)** respectively has occurred will be conclusive in the absence of manifest error.

49.8 Amounts due under this **Clause 49 (Payment for Termination)** shall be determined and paid in accordance with Clause 16 and Schedule 3, both of the Direct Agreement.

Limitation on Authority Payments

49A. In no circumstances shall the Authority be liable to pay any amount to the Contractor, any Bank(s) or any other party which it would not have been liable to pay if each Bank had been:

- (a) a bank within the meaning of Section 840A of the Income and Corporation Taxes Act 1988;
- (b) beneficially entitled to all amounts to be paid to it by the Contractor; and
- (c) within the charge to United Kingdom corporation tax as respects such amounts.

50. Change of Control

50.1 The Contractor shall inform the Authority immediately of any change in the ownership of the Contractor. Change of ownership for this purpose means any material change to the direct or indirect legal or beneficial ownership of the Contractor, and a change in the ownership is material if it relates directly or indirectly to three per cent. (3%) or more of the Contractor's issued share capital.

50.2 The Contractor shall obtain the Authority's prior written consent (which may be given subject to conditions) prior to any change of control of the Contractor or Shareholders (other than where the Banks exercise their rights in respect of shares of the Contractor granted in any Document conferring security over any of the shares of the Contractor). The Authority has the right to terminate the Contract at its election, if such consent is not so obtained and a change of control occurs, as set out in **Clause 44.1(i)(Default by Contractor)**. Change of control means for these purposes an event where any single Person or group of Persons acting in concert (within the meaning of The City Code on Take-Over and Mergers) acquires any direct or indirect interest in the relevant share capital (as defined in Section 198(2) of the Companies Act 1985) of the

Contractor or Shareholders as a result of which that Person or group of Persons has:

- (i) a direct or indirect interest in more than twenty five per cent.(25%) of the relevant share capital of the Contractor, the Direct Shareholders or the Indirect Shareholders; or
- (ii) (in relation to a Person or group of Persons who at the relevant time already has a direct or indirect interest in more than twenty five per cent. (25%) of the relevant share capital of the Contractor, the Direct Shareholders or the Indirect Shareholders) a direct or indirect interest in seventy five per cent. (75%) or more of the relevant share capital of the Contractor, the Direct Shareholders or the Indirect Shareholders.

50.3 For the purposes of **Clause 50.1 (Change of Control)** and **Clause 50.2 (Change of Control)** above:

- (a) any change in beneficial or legal ownership of any shares that are listed on a stock exchange shall be disregarded; and
- (b) any transfer of shares or of any interest in shares by a Person to its affiliate shall be disregarded. For these purposes, and notwithstanding the definition set out in Clause 1.1, an **affiliate** is, in relation to any Person, any Holding Company of that Person and any Subsidiary of that Person or of any such Holding Company (**Subsidiary** and **Holding Company** having for this purpose the meanings ascribed to those terms in the Companies Act 1985).

51. **Corrupt gifts and payments**

51.1 Neither the Contractor, nor any Sub-contractor, nor anyone employed by any of them or acting on behalf of any of them, shall:

- (a) offer to give or agree to give any Person in Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other agreement for Her Majesty's Service or for showing or forbearing to show favour or disfavour to any Person in relation to this or any other contract for Her Majesty's Service;
- (b) enter into this or any other agreement with Her Majesty or any Government Department in connection with which commission has been paid or agreed to be paid by it or on its behalf, or to its knowledge,

unless before the Contract is made particulars of any such commission and of the terms and clauses of any contract for the payment thereof have been disclosed in writing to the Authority; or

- (c) defraud or attempt to defraud or conspire to defraud the Crown.

51.2 Any breach of **Clause 51.1 (Corrupt Gifts and Payments)** by the Contractor, any Sub-contractor or by anyone employed by them or acting on their behalf with or without their knowledge or consent, or the commission of any offence by the Contractor, any Sub-contractor or anyone employed by them or acting on their behalf (i) under the Prevention of Corruption Acts 1889 to 1916, (ii) under Legislation creating offences in respect of fraudulent acts, (iii) at common law, in connection with this or any other agreement with Her Majesty or any Government Department shall entitle the Authority to act as follows:

- (a) where the breach or commission of any offence is occasioned by the Contractor or an employee of the Contractor, and such Person intended thereby to benefit the Contractor, the Authority shall be entitled to determine the Contract immediately and at the Authority's option either to recover from the Contractor the amount of any loss resulting from the breach and/or to recover from the Contractor the amount or value of any such gift, consideration or commission;
- (b) where the breach or commission of any offence is occasioned by the Operating Sub-contractor, the Construction Sub-contractor, the Houseblock Construction Sub-contractor, or any of their employees and such Person intended thereby to benefit that Sub-contractor, the Authority shall be entitled to act as set out in (a) above unless the Contractor terminates the relevant Sub-contract and procures that all those parts of the Services which were performed by that Person are performed by the Contractor itself or another Sub-contractor in accordance with **Clause 7 (Sub-contracting)** within thirty (30) Days of notification to the Contractor of the breach or commission of an offence or such longer period as the Authority permits in writing;
- (c) where the breach or commission of any offence is occasioned by any Person other than the Contractor, the Operating Sub-contractor or the Construction Sub-contractor or the Houseblock Construction Sub-contractor and whether or not any benefit to that Person's employer was intended, the Authority shall be entitled as set out in (a) above unless within thirty (30) Days of notification to the Contractor of the breach or commission of an offence the Contractor has procured that the employment of such Person (and, in the case of an individual other than

an individual employed by the Contractor, the Operating Sub-contractor or the Construction Sub-contractor, of that Person's employer) in performing parts of the Services has been terminated and the Contractor has procured that all those parts of the Services as were performed by such Person or Persons are performed by another Person in accordance with **Clause 7 (Sub-contracting)**.

51.3 Any dispute relating to this **Clause 51 (Corrupt Gifts and Payments)** (other than in respect of **Clause 51.2(c) (Corrupt Gifts and Payments)**) may be referred by either party to dispute resolution in accordance with **Clause 72 (Dispute Resolution)**, except that the arbitrator shall be a Queen's Counsel nominated by the Chairman of the Bar Council, who shall determine the issue on the balance of probabilities.

51.4 In the event of termination of the Contract by the Authority pursuant to this **Clause 51 (Corrupt Gifts and Payments)**, the Authority shall pay to the Contractor the amount of the Lender Liabilities, and where the termination arises and if this Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the date of termination of the Houseblock Works, the amounts calculated in accordance with **Part 2 of Schedule G (Payments on Termination for Default)**.

52. **Termination Survey**

52.1 Twelve (12) months prior to the Expiry Date or within seven (7) Days of service of a Termination Notice after the Full Operation Date, whichever is the earlier, the Authority shall carry out a final dilapidation survey of the Prison. The provisions of **Clauses 19.2 (Dilapidation Survey)** and **19.3(Dilapidation Survey)** (and **Clause 17 (Maintenance of Prison)** to the extent that such Clause is referred to in **Clause 19.2 (Dilapidation Survey)**) shall apply to this survey.

52.2 If upon the Termination Date or the Expiry Date, as applicable, the Contractor has failed to carry out any repairs to or maintenance of the Prison required as a result of the final dilapidation survey, the value of the repairs shall be off-set against any payment due to the Contractor hereunder, or to the extent no such sums are due shall become a debt due to the Authority from the Contractor.

52.3 Twelve (12) months prior to the Expiry Date or upon service of a Termination Notice, if earlier, the Authority shall establish an interest bearing account into which it shall pay five per cent (5%) of the

Contract Price for each month thereafter on a monthly basis until the end of the Contract Term or the revocation of the Termination Notice in accordance with the terms of this Contract and the Direct Agreement, such amounts being a reduction of the amount payable to the Contractor hereunder. Such amounts shall be released to the Contractor if a Termination Notice is revoked or withdrawn under the Direct Agreement more than twelve (12) months prior to the Expiry Date and the relevant repairs and maintenance required as a result of the final dilapidation survey have been carried out. If the relevant repairs and maintenance have not been carried out, the Authority may carry them out itself and apply any amounts standing to the credit of such account in so doing; where such amounts are insufficient to cover the Authority's whole cost of carrying out the repairs and maintenance, the uncovered cost shall be off-set against any payment due to the Contractor hereunder, or to the extent no such payment is due, shall become a debt due to the Authority from the Contractor.

- 52.4 Upon or after the Expiry Date or Termination Date, the Authority shall be entitled to apply any amounts standing to the credit of the account referred to in **Clause 52.3 (Termination Survey)** towards payment of any debt due under **Clause 52.2 (Termination Survey)**. To the extent that, following completion of any repairs or other works as are referred to in this **Clause 52 (Termination Survey)**, the amount standing to the credit of such account exceeds the amount of such debt due, such excess shall forthwith be paid by the Authority to the Contractor together with any interest accrued on amounts standing to the credit of such account from time to time.

53. **Notice of Default Events**

- 53.1 The Contractor shall notify the Authority immediately it has knowledge of any event which constitutes an Event of Default or an event which with the giving of notice and/or lapse of time and/or making of any determination would constitute an Event of Default.
- 53.2 The Contractor shall notify the Authority immediately it has knowledge of any event which constitutes a Houseblock Event of Default or an event which with the giving of notice and/or lapse of time and/or making of any determination would constitute a Houseblock Event of Default.

54. **Consequential Arrangements on Termination**

- 54.1 Upon the termination of the Contract, for any reason whatsoever, the Contractor agrees to co-operate with the Authority to such extent as it

may be required for a period of up to six (6) months from the date of termination, such period to be determined solely by the Authority, to ensure an orderly and efficient transition from the management of the Prison by the Contractor to the management of the Prison by the Authority or some other Person. The Contractor shall comply with all reasonable instructions of the Authority to ensure that those parts of the Site upon which any part or parts of the Houseblock Works have been commenced and/or completed are left in a safe and secure condition including procuring the removal of any temporary buildings, tools, goods, plant, equipment and/or other materials remaining on the Site which do not form part of the Houseblock Works and/or in relation to which the Authority has not made payments and/or is not liable to make payment to the Contractor pursuant to this Contract. The Contractor shall use its best endeavours to ensure that any Sub-contractor engaged to perform obligations of the Contract complies with this Clause.

- 54.2 The Authority shall reimburse to the Contractor and the Sub-contractors all reasonable costs and expenses incurred in satisfying the provisions of **Clauses 54.1 (Consequential Arrangements on Termination)**, such amount of reimbursement being subject to reduction in respect of any amounts outstanding from the Contractor or any Sub-contractor to the Authority.

PART VIII - MISCELLANEOUS

55. **Intervention by the Secretary of State under Section 88 of the Criminal Justice Act 1991**

- 55.1 The Contractor will note and comply with the provisions of the Criminal Justice Act 1991, Section 88 (**Section 88**).
- 55.2 In the event that the Secretary of State shall appoint a Governor of the Prison by virtue of his powers under Section 88, the Contract shall continue in force, and all provisions of the Contract shall, without prejudice to the Authority's rights under **Clauses 44 (Default by Contractor)** or **45 (Rectification and Termination for Default)**, continue to operate, save that the functions that would otherwise be exercisable by the Director or the Controller shall be exercised by the Governor.
- 55.3 Any costs incurred by the Authority as a result of action being taken by virtue of Section 88 will be reimbursed to the Authority by the Contractor and the Authority shall be entitled to set off all such amounts due to it

against any other amounts due to the Contractor from the Authority hereunder.

56. **Facilities for Authority**

56.1 From the date hereof, the Contractor shall provide suitable accommodation at the Site or (following the date of the Engineer's Declaration) in the Prison as the Authority may require, at no additional cost, for the use of the Controller and his representatives and any other Representative of the Authority who has cause to visit the Site or the Prison. Without prejudice to the foregoing, the accommodation provided for any Representative of the Authority who has cause to visit the Site or the Prison will not be in addition to that provided for in **Schedule A (Specifications)**. All such accommodation shall be adequately furnished, lighted, heated and ventilated, and shall include cloakroom and telephone facilities providing for communication to parties both within and outside the Prison, including in respect of accommodation for the Controller at least two (2) direct telephone lines (the "**Direct Lines**") linked to, and limited to calls within, 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. Accommodation for the Controller shall be deemed to be capable of being made secure by means of door locks or other such equipment and shall, in addition, comprise of at least two (2) separate rooms, one of which shall be suitable for accommodating the Controller's team of three (3) staff, and the other shall be suitable for accommodating the Controller and be of sufficient size to hold meetings of at least four (4) people. The Contractor shall, as the Authority may require, provide, or procure the provision to Board of Visitors members the opportunity to receive Hepatitis B immunisations at no additional cost to the Authority.

56.2 The Contractor shall be responsible for the cleanliness, proper use and reasonable care of all such facilities provided and the costs, maintenance and rental fees associated with all telephone facilities provided pursuant to **Clause 56.1 (Facilities for Authority)** and the Contractor shall not, and shall procure that its Sub-contractors and any of their employees, shall not (i) monitor or (ii) record or (iii) collect in any form data or information transmitted over the Direct Lines or otherwise sent or receivable by the Controller via the Direct Lines (except to the extent that the Controller may knowingly pass such data or information to the Contractor, Sub-contractors or any of their employees). If the

Contractor commits or attempts to commit any such act referred to in (i), (ii) or (iii) above, the Authority shall be entitled to act as follows:

- (a) where the commission (or attempted commission) of such act is occasioned by the Contractor, the Operating Sub-contractor, the Construction Sub-contractor or any of their employees and such Person intended thereby to benefit that Sub-contractor, the Authority shall be entitled to terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from the commission (or attempted commission) of such act, unless, where the commission (or attempted commission) of the act was occasioned by the Operating Sub-contractor or Construction Sub-contractor, the Contractor terminates the relevant Sub-contract and procures that all those parts of the Services which were performed by that Sub-contractor are performed by the Contractor itself or another Sub-contractor in accordance with **Clause 7 (Sub-contracting)** within thirty (30) Days of written notification to the Contractor by the Authority of the commission or attempted commission of such act or such longer period as the Authority permits in writing; and
- (b) where the commission (or attempted commission) of such act is occasioned by any Person other than the Contractor, the Operating Sub-contractor or the Construction Sub-contractor and whether or not any benefit to that Person's employer was intended, the Authority shall be entitled to act as set out in (a) above unless within thirty (30) Days of written notification by the Authority to the Contractor of the commission or attempted commission of such act the Contractor has procured that the employment of such Person (and, in the case of an individual other than an individual employed by the Contractor, the Operating Sub-contractor or the Construction Sub-contractor, of that Person's employer) in performing parts of the Services has been terminated and the Contractor has procured that all those parts of the Services as were performed by such Person or Persons are performed by another Person in accordance with **Clause 7 (Sub-contracting)**.

For the avoidance of doubt, the receipt and/or payment by the Contractor of itemised bills sent by the provider of the Direct Lines shall not be a breach of the Contractor's obligation not to monitor the Direct Lines.

- 56.3 In the event of termination of the Contract by the Authority pursuant to **Clause 56.2 (Facilities for the Authority)**, the Authority shall pay to the Contractor the amount of the Lender Liabilities.

- 56.4 Any dispute relating to **Clause 56.2 (Facilities for the Authority)** may be referred by either party to dispute resolution in accordance with **Clause 72 (Dispute Resolution)**, except that the arbitrator shall be a Queen's Counsel nominated by the Chairman of the Bar Council, who shall determine the issue on the balance of probabilities.

57. **Public Relations and Publicity**

- 57.1 The Authority reserves the right to publish information about the performance of the Contract and/or any other information as it may deem appropriate from time to time, other than in respect of the Confidential Matters, which it may only publish in response to enquiries from Parliament, its members and officers and to enquiries legitimately made by Persons acting in the public interest.
- 57.2 The Contractor shall not by itself, its servants, agents or Sub-contractors communicate with any part of the media, either written or broadcast on any matter concerning the Contract without reference to the guidelines agreed in the Protocol on Media Handling issued by the Authority.
- 57.3 No facilities to photograph or film in or upon the Land or the Prison shall be given or permitted by the Contractor unless the Authority has given its prior approval in accordance with the guidelines mentioned in **Clause 57.2 (Public Relations and Publicity)** above.

58. **Information and Confidentiality**

- 58.1 The Contractor will note and comply with the provisions of Section 91 of the Criminal Justice Act 1991 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).
- 58.2 The Contractor will note and comply with the provisions of the Official Secrets Acts 1911-1989.
- 58.3 The Contractor shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all Persons including Construction and/or Operational Staff or Sub-contractors employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue to apply to them after the completion or earlier termination of the Contract and after termination of their employment.
- 58.4 The Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for

the purpose of the Contract, except with the written consent of the Authority.

58.5 At the end of the Contract Term, the Contractor shall ensure that all Documents or computer records in its possession, custody or control, which contain information relating to a particular Prisoner who is or has been detained at the Prison, including such Documents in the possession, custody or control of a Sub-contractor, are delivered up to the Authority. Any rights belonging to the Contractor and subsisting in the said Documents are hereby assigned to the Authority upon termination by virtue of this Clause.

58.6 Notwithstanding any of the provisions of this **Clause 58 (Information and Confidentiality)** or of **Clause 57 (Public Relations and Publicity)** above nothing herein shall apply to information which is revealed, made available or published by either party:

- (a) to its professional advisers, Shareholders, the Banks, any Person who may become a Shareholder or a Bank (provided that, in the case of any Person who may become a Bank, they have entered into a confidentiality agreement on the same terms as this **Clause 58 (Information and Confidentiality)** (with appropriate changes)) or in each case their professional advisers;
- (b) as required by law or any regulatory or tax authority including the rules of any Recognised Securities Exchange or where such information is or comes into the public domain other than by reason of a breach of this **Clause 58 (Information and Confidentiality)**; or
- (c) to an Adjudicator or Arbitrator or Expert appointed pursuant to this Contract.

58.7 For the purpose of:

- (a) the examination and certification of the Authority's accounts; or
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,

the Comptroller and Auditor General may examine such Documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is