

months of the fourteenth anniversary of Actual Full Operation Date, give notice to the Contractor of its intention to re-tender the Operating Sub-contract for the Relevant Period. In such circumstances, the Contractor (or its Operating Sub-contractor) shall be entitled to bid on equal terms with other parties to act as Operating Sub-contractor for the Relevant Period. The Authority may only re-tender the Operating Sub-contract once. The Contractor shall provide the Authority with any information the Authority requires (acting reasonably) in relation to the Relevant Securities and the Equity Transfer Value and any calculations made in connection therewith shall be set out in reasonable detail by the Contractor.

39A.8 In conducting a re-tendering of the Operating Sub-contract the Authority shall:

- (a) seek expressions of interest from potential bidders for the Operating Sub-contract and the Authority shall select the parties which it proposes should pre-qualify for the new Operating Sub-contract (the Authority will select parties in relation to which it would give its approval to a change of control under Clause 50.2 (**Change of Control**); and
- (b) consult with the counterparty to the Direct Agreement in relation to the parties selected for pre-qualification who will have a right, on reasonable grounds, to remove one or more of the parties put forward by the Authority from the list if they can demonstrate, acting reasonably, that either:
 - (i) there is a concern that the relevant bidder would not be sufficiently financially robust to perform its obligations under the new Operating Sub-contract (taking into account any shareholder support proposed by that bidder) such that it would be imprudent to award the Operating Sub-contract to that bidder; or
 - (ii) the relevant bidder does not have the appropriate qualifications, experience, technical competence or performance record in the operation of custodial services (taking into account any shareholder support proposed by it).

39A.9 Bids will then be invited by the Authority for the Operating Sub-contract for its remaining term. Bids will be required to be made on the basis of the I_1 , I_2 and V (as defined in Schedule E (**Payment Mechanism**))

elements of the Contract Price only and shall also include a proposed fee for the Prisoner Escort Service to be provided in accordance with Clause 36.2 (**Escort Arrangements**). Bids will be sought from the shortlisted bidders on the basis that the new Operating Sub-contractor will be required to:

- (a) enter into certain agreements (as disclosed) with the Contractor or the counterparty to the Direct Agreement (including certain support which may exist under a direct or similar agreement or guarantees) or to procure that its parent or ultimate shareholders do so on terms that are at least equivalent taking into account the creditworthiness of such shareholders to those in place with the original Operating Sub-contractor;
- (b) at the option of the existing Contractor or Operating Sub-contractor, take on any employees of the Contractor/Operating Sub-contractor associated with the Operating Sub-contract, including any associated obligations as contemplated under TUPE Regulations (provided the relevant contracts of employment are on market terms) or to bear any redundancy costs if such employees are not taken on; and
- (c) purchase the Relevant Securities by payment of the Equity Transfer Value to the Shareholders on the date of commencement of the new Operating Sub-contract,

and such information as the bidders may reasonably require in relation to the Relevant Securities shall be made available to the bidders.

39A.10 The evaluation criteria for the assessment of bids for the Operating Sub-contract will be developed by the Authority which will consult with the Contractor and, if so requested, the counterparty to the Direct Agreement.

39A.11 Bids for the Operating Sub-contract will be submitted to the Authority's evaluation committee (which shall include one independent member) and the Authority will determine which of the bids submitted offers best overall value for money on the basis of the evaluation criteria (such criteria to include a requirement that the Authority is reasonably satisfied with the financial robustness of bidders' proposals and of the bidder's ability to deliver the services under the relevant Operating Sub-contract over the remaining life of the Contract). Bids submitted shall be on the basis of the existing terms of the Contract (except to the extent variations are required by reason of the new Operating Sub-contract).

39A.12 The selected party for the Operating Sub-contract will be appointed as soon as practicable after the evaluation of bids by the Authority, taking account of any hand-over considerations. Where the existing Operating Sub-contractor is chosen as the new Operating Sub-contractor, it will continue to operate the Prison on the basis of the Contract, save that the I_1 and I_2 (as defined in Schedule E (**Payment Mechanism**)) element of the Contract Price shall be adjusted to reflect the terms on which it has re-tendered for the Operating Sub-contract if these represent better value to the Authority. At the time that the new Operating Sub-contract is awarded by the Authority:

- (a) the Contract Price will be adjusted to be the remaining F and U together with a revised I_1 , I_2 and V (as defined in Schedule E) and the fee payable under Clause 36.2 (**Escort Arrangements**) for the Prisoner Escort Service shall be amended to be the revised fee proposed by the new Operating Sub-contractor;
- (b) arrangements shall (if required in accordance with Clause 39A.9 (**Benchmarking**)) above) be made for the new Operating Sub-contractor (i) to assume the employment contracts of the staff at the site and such staff shall be transferred in accordance with TUPE Regulations or (ii) if relevant, to make payment to cover any applicable redundancy costs;
- (c) the Contractor shall procure that prior to execution of the new Operating Sub-contract the Relevant Securities shall be transferred to the new Operating Sub-contractor in accordance with Clause 39A.9 (**Benchmarking**). (Any such transfer shall be with full title guarantee from the relevant transferor and any transfer, documentary or similar taxes or charge shall be for the account of the new Operating Sub-contractor.)

In the event that none of the bids received are satisfactory to the evaluation committee, the terms of the existing Contract shall continue until expiry.

39A.13 For the purposes of this Clause 39A (**Benchmarking**) (and for the purposes of any determination by the expert for the purposes of this Clause 39A (**Benchmarking**)), it will be assumed that the I_1 , I_2 and V (as defined in Schedule E (**Payment Mechanism**)) components of the Contract Price represent the cost to the Contractor of providing the Benchmarked Service.

- 39A.14 Each party shall bear any costs incurred by it pursuant to the operation of this Clause 39A (**Benchmarking**) provided that the expert's costs hereunder shall be borne equally by the parties up to a limit of [REDACTED] (exclusive of VAT or similar taxes) (as such figure is increased by the percentage increase in RPI from the date hereof) in total and any greater amount of such costs will be borne by the Authority.
- 39A.15 The Authority may amend the timeframe and/or the procedures set out in this Clause 39A (**Benchmarking**) to the extent necessary to accord with the procurement regulations prevailing at the relevant time and legally binding on the Authority in respect of the procedure under this Clause 39A (**Benchmarking**), whilst (to the extent practicable) reflecting the intentions of the parties as set out in this Clause 39A (**Benchmarking**).
- 39A.16 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**).

40. **ADDITIONAL PRISONER PLACES**

- 40.1 In the event that the Authority requires Additional Prisoner Places, the Authority may, by written notice served at any time from the day falling six (6) months after the Full Operational Date, require the Contractor to provide such number of Additional Prisoner Places as is specified in the notice to a maximum aggregate at any one time of two hundred and sixty four (264) (and a further thirty six (36) Additional Prisoner Places shall be available six (6) months after the Actual Increased Capacity Date) and for such period as is specified in the notice (or specified in any notice amending such notice), except as otherwise provided in this Clause 40 (**Additional Prisoner Places**). The length of the notice period given to the Contractor pursuant to this Clause shall be such period as is reasonable in the circumstances, except in the case of emergencies, in which case the Authority may require provision of such Additional Prisoner Places with immediate effect, but will provide the Contractor with such assistance as is reasonably required in the circumstances (including, if appropriate, a temporary waiver of any relevant obligations of the Contractor pursuant to Part 1 of Schedule D (**Operational Requirements**)). In the event that the Authority requires Additional Prisoner Places after the Full Operation Date but prior to the day falling six (6) months after the Full Operational Date, the Authority and the Contractor shall consult in good faith to decide whether Additional Prisoner Places may prudently be provided at such time. **Amendment No. 7**

40.2 The Contractor agrees to provide up to two hundred and sixty four (264) Additional Prisoner Places at any time (6) months after the Full Operation Date (and up to three hundred (300) Additional Prisoner Places at any time six (6) months after the Actual Increased Capacity date) unless the Contractor has reasonable cause to believe that accepting a Prisoner for an Additional Prisoner Place would prejudice the Contractor's ability to maintain security and control within the Prison.

40.3 The Contractor shall receive a Variable Payment for the Additional Prisoner Places required by the Authority for the period specified in the relevant notice served under Clause 40.1 (**Additional Prisoner Places**), on condition that each such Additional Prisoner Place satisfies the conditions contained in Clause 29.1 (**Available Prisoner Places**). The Variable Payment shall be paid according to the table of prices contained in Schedule E (**Payment Mechanism**).

41. **IMPLEMENTATION/DEVELOPMENT PLANS AND PERFORMANCE MEASURES**

41.1 At least two (2) 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 Actual Opening Date to 31 March 2002. On or before 31 October 2001, the Contractor shall provide a strategic development plan to operate the Prison in respect of the three year period commencing on 1 April 2002. The Contractor shall be under a duty to meet the requirements and targets contained in the project implementation plan and strategic development plan for achieving continuing improvements to the Custodial Service. **[Amendment 2]**

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 three (3) year strategic development plan, and every three (3) 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 project implementation plan and the strategic development plans referred to in Clauses 41.1 (**Implementation/Development Plans and Performance Measures**) and 41.2 (**Implementation/Development 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 the Custodial Service.
- 41.4 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 Operation Proposals.
- 41.5 The Contractor shall have no recourse to Clause 39 (***Variation of Price***) as a result of any obligation imposed by this Clause.
- 41.6 Without prejudice to the Authority's rights under Clauses 44 (***Default by Contractor***) and 45 (***Rectification and Termination for Default***), the amount payable by the Authority for the services of the Contractor hereunder 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. The amount of the reduction shall be calculated for each Performance Quarter in accordance with the relevant formula at paragraph 9 of Schedule E (***Payment Mechanism***), and shall be deducted from the amount otherwise payable in respect of that Performance Quarter. If any Performance Measures arise prior to Actual Operating Date, such measures shall be deemed to arise during the first Performance Quarter. **[Amendment 4]**
- 41.7 In the event of the escape of any Prisoner, which for the purposes of this Clause shall mean when such Prisoner overcomes a substantial barrier such as the perimeter wall of the Prison (a "***Prison Escape***") or, in the case of a Prisoner being escorted outside the Prison, is no longer within the custody of the Contractor or its Sub-contractors for any period (an "***Escort Escape***"), the Contractor shall be liable forthwith to make a payment to the Authority of [REDACTED] per Incident in respect of a Prison Escape or [REDACTED] per Incident in respect of an Escort Escape (in each case regardless of the number of Prisoners who have escaped), such amount to be indexed as the Variable Payment is Indexed pursuant to Schedule E (***Payment Mechanism***)
- 41.8 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.
- 41.9 Subject to Clauses 41.10 to 41.13 (***Implementation/Development Plans and Performance Measures***) (inclusive), if the carrying out of the Houseblock Works by the Contractor (using the degree of skill and care to be expected of a contractor performing such works) interferes adversely with, or causes a failure of, the performance of the Custodial Service and/or causes the occurrence of a Performance Measure then, to

the extent that such failure or interference or occurrence of a Performance Measure arises as a result of such carrying out of the Houseblock Works:

- 41.9.1 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;
- 41.9.2 such interference shall be taken account of in measuring the performance of any affected Custodial Service in accordance with the Performance Measurement System, which shall be operated as though the relevant Custodial Service had been performed free from such adverse interference; and
- 41.9.3 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 such Custodial Service.

41.10 To continue to receive payment under this Contract, the Contractor shall as soon as practicable, and in any event within seven (7) days after it became aware that the Houseblock Works will adversely interfere with or cause a failure of the performance of the Custodial Service and/or cause the occurrence of a Performance Measure, provide to the Authority a description of such element of the Houseblock Works at a level of detail sufficient to inform an assessment of their likely impact upon the operation of the Prison, using best endeavours to measure the impact in terms of its effect upon the delivery of the Custodial Service. The Contractor shall also demonstrate to the Authority that:

- (a) the Contractor and its sub-contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
- (b) the adverse interference with or failure of the performance of the Custodial Service and/or occurrence of the Performance Measure could not reasonably be expected to be mitigated by the Contractor acting in accordance with good industry practice, without incurring material expenditure;
- (c) the Contractor is using reasonable endeavours to perform its obligations under the Contract; and

- (d) it has used and will continue to use reasonable endeavours to carry out the Houseblock Works in a way designed to minimise their impact upon the normal operation of the Prison.

41.11 Notwithstanding that the Contractor has complied with the provisions of Clause 4.9 (**Implementation/Development Plans and Performance Measures**) and Clause 41.10 (**Implementation/Development Plans and Performance Measures**), the Authority shall retain absolute discretion as to whether to grant relief under Clause 41.9 (**Implementation/Development Plans and Performance Measures**).

41.12 The Contractor shall not be entitled to seek and shall not receive any relief pursuant to Clause 41.9 (**Implementation/Development Plans and Performance Measures**) to the extent that the relief compromises public protection or the security and safety of the Prison.

41.13 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 41.9 (**Implementation/Development Plans and Performance Measures**) to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained 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 (or any sub-contractor 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.

41.14 In the event of a dispute between the parties in connection with the provisions of Clauses 41.9 to 41.13 (**Implementation/Development Plans and Performance Measures**) (inclusive), the provisions of Clause 72 (**Dispute Resolution**) shall apply.

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 at the same time as the Contract Price 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 Where the Authority is required to reimburse the Contractor the amount of any expenditure incurred by the Contractor, that amount shall include any Irrecoverable VAT charged on the expenditure.
- 42.3 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.
- 42.4 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***).
- 42.5 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.
- 42.6 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 Relevant Liabilities are due 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 (including any amounts due to the Contractor in respect of a termination sum under Clauses 5.8 (***Insurance***), 39.5 (***Variation of Price***) 49 (***Payment for Termination***) or 51 (***Corrupt Gifts and Payments***)).

PART VII - TERMINATION

44. **DEFAULT BY CONTRACTOR**

44.1 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 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 if falling within (c) or (d) below) by the Contractor to perform, keep, observe, meet or comply with any of the terms of the Contract where such failure:
 - (i) has a material effect on the performance of the Services as a whole; or
 - (ii) either by itself or in addition to any other failure or failures (whether or not remedied), has, in any rolling twelve (12) month period, occurred persistently and which (either by itself or in addition to any other failure or failures) occurs in the twelve (12) month period following notice by any of the Named Representatives of the Authority to the Contractor that any occurrence might lead to termination of the Contract; or
 - (iii) either by itself or in addition to any other failure or failures (whether or not remedied), casts, in the Authority's opinion, serious doubt on the competence or suitability of the Contractor to provide the Services.
- (b) failure by the Contractor to pay any amount due from it hereunder within fourteen (14) days of demand (unless the relevant amount is disputed in good faith);
- (c) failure to obtain the Engineer's Declaration on or before the date falling nine (9) months after the Contractual Opening Date;
- (d) failure to provide thirty (30) Available Prisoner Places on or before the date falling three (3) months after the date upon which the Engineer's Declaration is obtained;
- (e) failure to provide all eight hundred (800) Available Prisoner Places and any Additional Prisoner Places from six (6) months

after the Actual Full Operation Date until the Actual Increased Capacity Date for a continuous period exceeding thirty (30) days;

- (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 is due to 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 counterparty to the Development Agreement or the Access Agreement); 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 counterparty to the Development Agreement or the Access Agreement); 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 counterparty to the Development Agreement or the Access Agreement in the manner contemplated in such 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 counterparty to the Development Agreement or the Access Agreement in exercise of their rights under such agreement 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] 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**));
- (j) an Event of Default as defined in the Access Agreement or the Development Agreement occurs and such agreement is terminated by reason of such event of default (except where the Contractor has demonstrated within ten (10) days of the relevant date for termination to the satisfaction of the Authority that it is able to continue to comply with its obligations under the Contract);
- (k) failure to provide eight hundred (800) Available Prisoner Places and any Additional Prisoner Places during the six (6) month period from the Actual Increased Capacity Date for a continuous period exceeding thirty (30) days provided that for the purposes of this Clause 44.1(k) (**Default by Contractor**) the Increased Capacity shall not be taken into account in calculating the number of Available Prisoner Places; or
- (l) failure to provide all one thousand and sixty four (1064) Available Prisoner Places and any Additional Prisoner Places from six (6) months after the Actual Increased Capacity Date for a continuous period exceeding thirty (30) days.

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;
- (b) failure to obtain the Engineer's Houseblock Declaration on or before the Long Stop Date; and
- (c) failure to provide thirty (30) 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.

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(a)(i) (**Default by Contractor**), 44(e) (**Default by Contractor**), 44(k) (**Default by Contractor**) or 44(l) (**Default by Contractor**) the Authority shall (if 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 after the date of such Rectification Notice. For the avoidance of doubt, a Rectification Notice shall only be issued by a Named Representative of the Authority.
- 45.2 Where no proposal for rectification is received by the Authority within fifteen (15) days of the date of the Rectification Notice, but the Event of Default has been remedied within that fifteen (15) day 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 fifteen (15) days of the date of the Rectification Notice and is approved by the Authority (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 Rectification Notice), 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(a)(i) (**Default by Contractor**), 44(e) (**Default by Contractor**), 44(k) (**Default by Contractor**) or 44(l) (**Default by Contractor**) which has not been rectified or in respect of which the Authority (acting reasonably) does not approve the proposal for rectification, or if no proposal for rectification is received by the Authority within the fifteen (15) day period specified in Clause 45.2 (**Rectification and Termination for Default**) 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(a)(i) (**Default by Contractor**), 44(e) (**Default by Contractor**), 44(k) (**Default by Contractor**) or 44(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**)) 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**) 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 thirty (30) 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(a)(i) (**Default by Contractor**), 44(e) (**Default by Contractor**), 44(k) (**Default by Contractor**) or 44(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 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; provided that only one Termination Notice shall be capable of being revoked pursuant to this Clause 45.7 (**Rectification and Termination for Default**).

- 45.8 The parties acknowledge and agree that each of the failures set out in Clauses 44(c) (**Default by Contractor**), (d) (**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**).

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 Clause 44A.1(a) (**Houseblock Default**), the Authority shall give notice to the Contractor in writing (a "**Houseblock 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 Rectification Notice. For the avoidance of doubt, a Houseblock Rectification Notice shall only be issued by a Named Representative of the Authority.
- 45A.2 Where no proposal for rectification is received by the Authority within fifteen (15) days of the date of the Houseblock Rectification Notice, but the Houseblock Event of Default has been remedied within that fifteen (15) day 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 fifteen (15) days of the date of the Houseblock Rectification Notice 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 Rectification Notice, unless the Authority otherwise agrees), 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 reasonable 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 Clause 44A.1(a) (**Houseblock Default**) which has not been rectified or in respect of which the Authority (acting reasonably) does not approve the proposal for rectification, or if no proposal for rectification is received by the Authority within the fifteen (15) day period specified in Clause 45A.2 (**Houseblock Works Termination**) 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, specifying the Houseblock Termination Date which, in the case of a Houseblock Event of Default other than under Clause 44A.1(a) (**Houseblock Default**), 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 date of the Houseblock Rectification Notice. 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**).

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 reasonable 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 Subject to Clause 45A.8 (***Houseblock Works Termination***), 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 reasonably 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; provided that only two (2) Houseblock Works Termination Notices in aggregate shall be capable of being revoked pursuant to this Clause 45A.2 (***Houseblock Works Termination***).

45A.8 The parties acknowledge and agree that each of the failures set out in Clauses 44A.1(b) (***Houseblock Default***) and 44A.1(c) (***Houseblock Default***) shall (without limitation) be a breach that is incapable of remedy for the purposes of Clause 45A.2 (***Houseblock Works Termination***).

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; and

45B.2.2 the Contractor shall comply with all reasonable instructions of the Authority:

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

(b) the process for and requirements of the introduction of a third party to complete the Houseblock Works and provide the Increased Capacity, including any 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; and

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 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 the performance by the Authority of the Contractor's obligations in respect of the Houseblock Works and the provision of the Increased Capacity 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 (or ought reasonably to have become so aware) of such adverse interference, then (subject to Clauses 45B.4 and 45B.5 (***Houseblock Works Consequential Arrangements on Termination***)) to the extent such failure or interference of 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 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 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 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***).

45C. **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 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***), terminate the Contract at will in accordance with Clause 7.3(b) of the Direct Agreement, 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, and such terms shall be agreed in accordance with Clause 62 (**Authority to Commit and Variation**); provided that an event which prevents or otherwise affects the ability of the Authority to make payments which are due hereunder shall only be deemed to be a Force Majeure event if the event in question makes settlement of the relevant amount through the banking system impracticable or impossible. 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.

For the avoidance of doubt, the Contractor shall incur no liability to the Authority pursuant to Clause 41.6 (**Implementation/Development 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 CCA has complied with its obligations under the Direct Agreement, pay to the Contractor (subject to the provisions of Clause 43 (**Recovery of Sums Due**) 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 of

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 (subject to the provisions of Clause 43 (**Recovery of Sums Due**)) pay to the Contractor the amounts as set out in Schedule H (**Payments on Voluntary Termination**).
- 49.3 Following termination under Clause 47 (**Unilateral Termination**) or Clause 48 (**Force Majeure**) the Authority shall (subject to the provisions of Clause 43 (**Recovery of Sums Due**)) 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 as set out in Part 2 of Schedule H (**Payments on Voluntary Termination**).
- 49.4 This Clause 49 (**Payment for Termination**) and Clauses 5.14 (**Insurance**), 39.5 (**Variation of Price**), 51.4 (**Corrupt Gifts and Payments**) and 56.3 (**Facilities for Authority**) contains the Contractor's sole contractual entitlement to payment in the event of proper termination of the Contract. Further, without prejudice to any rights 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**), no compensation shall be payable if the Contract is terminated prior to the date of the Engineer's Declaration.
- 49.5
- (a) Subject to the provisions of this Clause 49.5 (**Payment for Termination**), all sums payable by the Authority under Clause 49 (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 etc. or compensation payment is derived from the Project or the Contractor's interest under the Lease and the Supplemental Lease;

but shall not include any liability to advance corporation 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 H.M. 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 dispute 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 dispute 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 and the Supplemental 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 advance corporation tax attributable to any distribution in respect of profits or other matters properly related to the Project) and the Contractor's interest under the Lease and the Supplemental 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 and the Supplemental 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, (a) 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 (b) the Contractor is deemed to make a payment to the Operating Sub-contractor

to terminate the Operating Sub-contract of an amount equal to the Net Present Value of the Future Operating Margin as computed for the purposes of (and as defined in) Schedule H (***Payments on Voluntary Termination***); and

(vi) that account is taken so far as relevant (having regard to Clause 49.5(e) (***Payment on Voluntary Termination***)) of timing of differences.

(e) The additional payment under Clause 49.5(a) (***Payment for Termination***) shall be made five (5) Business Days before the Contractor's liability for Taxation in respect of the Termination Payment is due and payable, subject to the provision, at least four weeks in advance, of evidence in sufficient detail for the Authority to satisfy itself of the basis on which such liability has been calculated, and to the Authority being satisfied that arrangements are in place to ensure that the relevant sum will be paid to and retained by the Inland Revenue. 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 and the Supplemental 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.

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 (***Payment for Termination***) 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 months).

- 49.7 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, Relevant Agreement or agreement under which Relevant Liabilities may arise) 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.
- 49.8 Amounts due under this Clause 49 (**Payment for Termination**) shall be determined and paid in accordance with Clause 11 of the Direct Agreement.

50. **CHANGE OF CONTROL**

- 50.1 The Contractor shall inform the Authority immediately of any change in the ownership of the Contractor and/or each of the Shareholders, including as a result of the operation of the provisions of Clause 39A (**Benchmarking**). Change of ownership means any material change to the legal or beneficial ownership of any shareholding in the Contractor and/or each of the Shareholders, and a change in the ownership is material if it is a change of three per cent (3%) or more of the Contractor's issued share capital and/or a change in ultimate control of the issued share capital of each or either of the Shareholders.
- 50.2 The Contractor shall obtain the Authority's written consent prior to any change of control of the Contractor, including any change pursuant to the operation of the provisions of Clause 39A (**Benchmarking**). The Authority has the right to terminate the Contract at its election, if such written consent is not so obtained, as set out in Clause 44(i). Change of control means an event where any single person or group of persons acting in concert (within the meaning of The City Code on Take-Overs and Mergers) acquires control of the Contractor or a direct or indirect interest in the relevant share capital (as defined in Section 198(2) of the Companies Act 1985) of the Contractor as a result of which that person or group of persons has:
- (i) an interest in more than twenty-five per cent (25%) of the relevant share capital of the Contractor; 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) a direct or indirect interest in seventy five per cent (75%) or more of the relevant share capital of the Contractor.

51. **CORRUPT GIFTS AND PAYMENTS**

51.1 Neither the Contractor, 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 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 as set out in (a) above unless the Contractor terminates (as relevant) the Development Agreement or the Sub-Lease or the relevant Sub-contract and procures (if relevant) 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, 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, the Construction Sub-contractor or the Houseblock 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.

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 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, 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***) above towards payment of the debt due referred to in 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

The Contractor shall notify the Authority immediately it has knowledge of any event which constitutes an Event of Default, 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 an Event of Default or Houseblock Event of Default.

54. CONSEQUENTIAL ARRANGEMENTS ON TERMINATION

Upon the termination of the Contract, for any reason whatsoever, the Contractor agrees to cooperate with the Authority to such extent as the Authority may require 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 use its best endeavours to ensure that any Sub-contractor engaged to perform obligations of the Contractor complies with this Clause. The Authority shall reimburse to the Contractor and the Sub-contractors all reasonable costs and expenses incurred in satisfying the provisions of this Clause, such amount of reimbursement being subject to reduction in respect of any amounts outstanding from the Contractor or any Sub-contractor to the Authority. The Contractor shall also ensure that any outgoing Operating Sub-contractor replaced by a replacement Operating Sub-contractor pursuant to the provisions of Clause 39A (**Benchmarking**) cooperates with the Authority to such extent as may be required for a period of up to six (6) months from the date of such replacement, such period to be determined solely by the Authority, to ensure an orderly and efficient transition from the operation of the Prison by the Operating Sub-contractor to the operation of the Prison by the replacement Operating Sub-contractor.

PART VIII - MISCELLANEOUS

55. INTERVENTION BY THE SECRETARY OF STATE UNDER SECTION 88 OF THE CRIMINAL JUSTICE ACT 1991 (SECTION 88)

55.1 The Contractor will note and comply with the provisions of 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. 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 at least two (2) direct telephone lines (the "**Secure Lines**") linked to the 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 capable of being made secure by means of door locks or other such equipment.
- 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 Secure Lines or otherwise sent or receivable by the Controller via the Secure 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 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 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 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 commission or attempted commission of such act or such longer period as the Authority permits in writing;
- (b) where the commission or attempted commission of such act is occasioned by any person other than the Contractor, the Operating Sub-contractor, 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 to act as set out in (a) above unless within thirty (30) days of notification 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, the Construction Sub-contractor or the Houseblock 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**).

56.3 In the event of termination of the Contract by the Authority pursuant to this Clause 56 (**Facilities for Authority**), the Authority shall pay to the Contractor the amount of the Lender Liabilities provided that no such payment shall be made if the breach of Clause 56.2 (**Facilities for Authority**) is committed by an officer, agent or employee of CCA and such breach occurs while CCA or an affiliate of CCA is a shareholder of API (or is beneficially interested in its shares).

56.4 Any dispute relating to this Clause 56 (**Facilities for Authority**) (other than in respect of Clause 56.2(b) (**Facilities for Authority**)) may be

referred by either party to dispute resolution in accordance with Clause 72 (**Dispute Resolution**), except that the arbitrator shall a Queen's Counsel nominated by the Chairman of the Bar Council, who shall determine the issues 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.
[Amendment No 8]

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. **[Amendment No 8]**

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 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 Where the Contractor, in carrying out its obligations under the Contract, is provided with information from or by a third party, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the consent of the said third party, and has obtained the written consent of the Authority.

58.6 At the end of the Contract Term, the Contractor shall ensure that all documents in its possession, custody or control, which contain information relating to a particular Prisoner who is or has been detained at the Prison, including any 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.

58.7 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, CCA, API or in each case their professional advisers; or
- (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.

58.8 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 hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.

58.9

- (a) The parties agree that the provisions of this Contract shall, subject to Clause 58.9(b) (**Information and Confidentiality**), not be treated as Confidential Information and may be disclosed without restriction.
- (b) Clause 58.9(a) (**Information and Confidentiality**) shall not apply to provisions of this Contract which are designated as Commercially Sensitive Information and listed in column 1 of the table in Schedule S (**Commercially Sensitive Information**) which shall, subject to Clause 58.10 (**Information and Confidentiality**), be kept confidential for the periods specified in column 2 of the table in Schedule S (**Commercially Sensitive Information**).
- (c) The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Contract or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

58.10 Clauses 58.9(b) (**Information and Confidentiality**) and 58.9(c) (**Information and Confidentiality**), shall not apply to;

- (a) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Contract for the performance of those obligations;
- (b) any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 58 (**Information and Confidentiality**);
- (c) any disclosure to enable a determination to be made under Clause 72 (**Dispute Resolution**) or in connection with a dispute between the Contractor and any of its subcontractors;
- (d) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with

the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any provision of information to the parties' own professional advisers or insurance advisers or to the Banks or the Banks' professional advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under this Contract, or may wish to acquire shares in the Contractor in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (g) any registration or recording of the Planning Approvals and property registration required;
- (h) any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract; or
- (i) any disclosure for the purpose of:
 - (i) the examination and certification of the Authority's or the Contractor's accounts;
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,
 - (iii) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any Insurance policies; or
 - (iv) (without prejudice to the generality of Clause 58.10 (b) (**Information and Confidentiality**)) compliance

with the FOIA and/or the Environmental Information Regulations,

provided that neither Clauses 58.10 (iv) (**Information and Confidentiality**) 58.10(i)(iv) (**Information and Confidentiality**) shall permit disclosure of Confidential Information otherwise prohibited by Clause 58.9(c)(**Information and Confidentiality**) where that information is exempt from disclosure under section 41 of the FOIA.

- 58.11 Where disclosure is permitted under Clause 58.10 (**Information and Confidentiality**), other than Clauses 58.10(b), 58.10(d), 58.10(e) or 58.10(h) (**Information and Confidentiality**), the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.
- 58.12 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary. It is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.
- 58.13 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.
- 58.14 Where the Contractor in carrying out its obligations under the Contract is provided with information relating to prisoners, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that prisoner and has obtained the prior written consent of the Authority.
- 58.15 The parties acknowledge that the National Audit Office has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 58.16 The provisions of this Clause 58 (**Information and Confidentiality**) are without prejudice to the application of the Official Secrets Acts 1911 and 1989.

58.17 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 58.18 to 58.24 (**Information and Confidentiality**).

58.18 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within seven (7) days of receiving a Request for Information and the Contractor shall:

- (i) provide the Authority with a copy of all such information in the form that the Authority requires as soon as practicable and in any event within ten (10) days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
- (ii) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

58.19 Following notification under Clause 58.18 (**Information and Confidentiality**), and up until such time as the Contractor has provided the Authority with all the Information specified in Clause 58.18 (**Information and Confidentiality**), the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

- (i) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations;
- (ii) whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly or allow its Sub-contractors to respond directly to a Request for Information unless expressly authorised to do so by the Authority.

- 58.20 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure at least five (5) years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.
- 58.21 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two (2) days of receiving it.
- 58.22 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
- 58.23 In the event of a request from the Authority pursuant to Clause 58.18 (**Information and Confidentiality**) the Contractor shall as soon as practicable and in any event within five (5) days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) day period for compliance shall be extended by such number of days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 58.24 The Contractor acknowledges that (notwithstanding the provisions of Clauses 58.9 (**Information and Confidentiality**) to 58.24 (**Information and Confidentiality**) the Authority may, acting in

accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:

- (i) in certain circumstances without consulting with the Contractor; or
- (ii) following consultation with the Contractor and having taken their views into account,

provided always that where Clause 58.24(i) (**Information and Confidentiality**) applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

59. **INTELLECTUAL PROPERTY RIGHTS**

- 59.1 In this Clause 59 (**Intellectual Property Rights**), Clause 59A (**Procurement of IP and IT**) and Clause 59.B (**IP and IT Costs**):

"Contractor's Work Products" means all or any Work Products which have been created or developed by or on behalf of the Contractor or any of its Sub-contractors after the date of the Contract (whether or not incorporating any Existing Work Product) in the course of the design, construction, maintenance, operation or management of the Prison, including software written by or on behalf of the Contractor or any Sub-contractor;

"Existing Work Product" means any Work Product, the Intellectual Property Rights subsisting in or relating to which at the date of the Contract are owned by the Contractor or any third party (whether or not licensed to the Contractor or a Sub-contractor at the date of the Contract), as the Work Product may be modified, redeveloped or rewritten from time to time;

"IT/IP Contract" means a licence granted to the Contractor or any Sub-contractor of Intellectual Property Rights owned by any third party, or a contract to which the Contractor or any Sub-contractor is a party for the procurement of computer or communications technology and/or services, or other services concerning information or communications technology or services, in each case entered into after the date of the Contract and the benefit of which (or part thereof) is to be used by the Contractor or any Sub-contractor in connection with the Services, excluding a licence or contract in relation to an Existing Work Product to which Clauses 59.6 (*Intellectual Property Rights*) or 59.8 (*Intellectual Property Rights*) refers;

"Relevant IP Event" means any of the events to which Clause 59A.3 (*Procurement of IP and IT*) refers;

"Relevant Successor" has the meaning specified in Clause 59A.3 (*Procurement of IP and IT*);

"Virus" means any thing or device which may impair or otherwise adversely affect the operation of any computer, prevent or hinder access to any program or data, impair the operation of any program or the reliability of any data (whether by rearranging the same within the computer or any storage medium or device or by altering or erasing the program or data in whole or in part or otherwise), including computer viruses and other similar things;

"Work Product" means software (including, without limitation, source, object and executable code), data, materials, records, reports manuals, designs, drawings, plans, specifications, inventions or any other works or materials which are protected by any Intellectual Property Rights.

Contractor's Work Products

59.2 The Contractor hereby grants to the Authority a perpetual, irrevocable non-exclusive, transferable licence to do all acts (including the grant of sub-licences, subject to Clause 59.3) (*Intellectual Property Rights*) in relation to the Contractor's Work Products (excluding any Existing Work Products to the extent they are incorporated in or form part of the Contractor's Work Products) which would otherwise be an infringement of the Intellectual Property Rights subsisting in or relating to the Contractor's Work Products for the purpose of, or in connection with the conduct of, Her Majesty's Prison Service as it is carried on at the date of the Contract or at any time afterwards, and whether in connection with the Prison or otherwise.

- 59.3 Without limiting the scope of the licence in Clause 59.2 (***Intellectual Property Rights***), the licence shall include the right to grant sub-licences to third parties for the purpose of the design, construction, maintenance, operation, or management of the Prison at any time on or after the occurrence of or in connection with a Relevant IP Event.
- 59.4 The Contractor shall notify the Authority in writing when the creation of any Contractor's Work Product has begun and on completion of the Contractor's Work Product.
- 59.5 Where the Contractor's Work Product is computer software which has been wholly and exclusively developed during the Contract Term:
- (a) the Contractor shall use all reasonable endeavours to provide to the Authority or its nominee (or procure the provision to the Authority or its nominee of) such software corrections, upgrades, updates and other support services as the Authority may reasonably require on reasonable commercial terms, including a reasonable charge, or on other terms as may be agreed between the Authority and the Contractor in writing; and
 - (b) without affecting the Authority's rights under the provisions of this Clause 59 (***Intellectual Property Rights***), the Contractor shall place the source code relating to the software in escrow with the National Computing Centre (or any successor in title to its source code escrow business) in the United Kingdom pursuant to a contract which entitles the Authority or its nominee (as the case may be) to have the source code released from escrow and licensed in accordance with Clauses 59.2 (***Intellectual Property Rights***), 59.3 (***Intellectual Property Rights***) and 59.6 (***Intellectual Property Rights***) (as the case may be), and which is otherwise subject to the appropriate standard terms of the National Computing Centre (or its successor as the case may be). The contract to which this Clause 59.5(b) (***Intellectual Property Rights***) refers may also entitle the Contractor to receive a copy of the source code, but not as an alternate to, or in substitution for, the Authority or its nominee.

Existing Work Products incorporated into Contractor's Work Products

- 59.6 Where the Contractor (or any Sub-contractor) proposes to incorporate any Existing Work Product or any part thereof into a Contractor's Work Product, the Contractor shall grant or procure the grant to the Authority

or the Relevant Successor of a licence (the "**Required Licence**") in relation to the Existing Work Product in accordance with this Clause 59.6. If the Intellectual Property Rights in or to such Existing Work Product are owned by:

- (a) the Contractor, the Operating Sub-contractor or the Construction Sub-contractor or any of their affiliates, then consideration for the grant of the Required Licence to the Authority shall be [REDACTED] by the Authority to the grantor and the terms of the Required Licence shall be the same terms as in Clauses 59.2 (**Intellectual Property Rights**) and 59.3 (**Intellectual Property Rights**); and
- (b) any party other than those referred to in (a) above, then the following shall apply:
 - (i) the Contractor shall promptly notify the Authority in writing giving reasonable details of the relevant Existing Work Product and the terms (if any) on which the Contractor, a Sub-contractor or their affiliate is entitled to use the Existing Work Product;
 - (ii) the Authority shall notify the Contractor in writing within a reasonable time whether the Authority requires the Required Licence to authorise acts to be undertaken for the purpose of, or in connection with the conduct of, the whole or part of Her Majesty's Prison Service ("**Extended Licence**"), and in default of a notice received by the Contractor within a reasonable time, which shall not be more than sixty (60) days from the date the Contractor's notice is received by the Authority, Clause 59.6(b)(iv) shall apply;
 - (iii) where the Authority requires an Extended Licence, the Extended Licence shall be granted to the Authority and the scope of the Extended Licence shall be as the Authority may reasonably require in writing provided that the Extended Licence shall not apply in relation to the design, construction, maintenance operation or management of the Prison until a Relevant IP Event occurs. The Contractor shall propose to the Authority reasonable commercial terms for the grant of the Extended Licence. The Authority may enter into a

contract with the relevant third party for the grant of the Extended Licence on such terms, but if the Authority does not do so within a reasonable time which shall not be more than sixty (60) days from the date the offer of the Extended Licence on such terms is received by the Authority, the Contractor (having procured an offer of the Extended Licence on such terms) may proceed to incorporate the Existing Work Product or part thereof into the Contractor's Work Product. The consideration payable under that contract to the relevant third party shall be paid by the Authority;

- (iv) where the Authority does not require an Extended Licence or fails to serve a notice in accordance with Clause 59.6(b)(ii) (*Intellectual Property Rights*), and in either case where a Relevant IP Event occurs from time to time (but not otherwise), the Required Licence shall entitle the Relevant Successor to use the Existing Work Product for the purpose of the design, construction, maintenance, operation or management of the Prison and shall include the right to grant sub-licences to a Relevant Successor on substantially the same terms, and shall otherwise be on reasonable terms or such other terms as the parties may agree in writing.

Standalone Existing Work Products

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

- (a) Where a Relevant IP Event occurs from time to time, the Contractor shall grant or shall procure that there shall be granted to the Relevant Successor a licence to use, copy, adapt, translate, arrange and otherwise alter, or to do any of those acts as the Relevant Successor may require in relation to, all such Existing Work Products then used or which have been used for the purpose of the Services and which may be required thereafter by the Relevant Successor; any such licence being

limited to such acts for the purpose of the design, construction, maintenance, operation or management of the Prison by the Relevant Successor.

- (b) The licence to which Clause 59.7(a) (***Intellectual Property Rights***) refers shall include the right to grant sub-licences to a nominee of the Authority on substantially the same terms.
- (c) The licence to be granted to the Relevant Successor under Clause 59.7(a) (***Intellectual Property Rights***) shall be non-exclusive and otherwise on reasonable terms, or such other terms as the parties may agree in writing.

59.8 Where the Contractor or any Sub-contractor proposes to use any Existing Work Product to which Clause 59.8(d) (***Intellectual Property Rights***) refers in connection with the Services other than by incorporating it in or making it part of any Contractor's Work Product, the Contractor shall notify the Authority accordingly.

- (a) Where a Relevant IP Event occurs from time to time, the Contractor shall use all reasonable endeavours to procure for the Relevant Successor a licence to use all such Existing Work Products then used or which have been used for the purpose of the Services and which may reasonably be required thereafter by the Relevant Successor; any such licence being limited for the purpose of the design, construction, maintenance, operation or management of the Prison.
- (b) The licence to which Clause 59.8(a) (***Intellectual Property Rights***) refers shall include the right to grant sub-licences to a Relevant Successor on substantially the same terms, and shall otherwise be on reasonable terms or such other terms as the parties may agree in writing.
- (c) Where the Contractor is in breach of Clause 59.8(a) (***Intellectual Property Rights***) or the Contractor is otherwise unable to procure the licence within a reasonable time (such time to be determined taking into account the effect which the absence of the licence will have, or may reasonably be expected to have, on the design, construction, maintenance, operation or management of the Prison), without affecting the Authority's other rights, the Authority shall be entitled to procure for the Relevant Successor its own such licence.

- (d) This Clause 59.8 (***Intellectual Property Rights***) applies to all Existing Work Products, the Intellectual Property Rights which are owned by a third party other than a Sub-contractor or any affiliate of the Contractor or any Sub-contractor, and which are licensed to the Contractor or any Sub-contractor or any affiliate at the date of the Contract.

Miscellaneous

- 59.9 The Contractor shall notify any proposed assignee of any Intellectual Property Rights subsisting in or relating to the Contractor's Work Products (other than Existing Work Products, the Intellectual Property Rights in or to which are owned by a person other than the Contractor, a Sub-contractor or any of their affiliates) of the existence of the Contract and of the licences granted under or in accordance with the Contract and shall otherwise ensure that any such assignment is subject to such licences.
- 59.10 Subject to the limits of the Contractor's liability in the Contract, the Contractor warrants and undertakes that no act of the Authority or any sub-licensee within the scope of the licences granted under or in accordance with the previous terms of this Clause 59 (***Intellectual Property Rights***), or any permitted sub-licence granted by the Authority or a Relevant Successor, shall infringe the Intellectual Property Rights of any third party.
- 59.11 All Intellectual Property Rights in Work Products produced by the Authority shall vest in and be the property of the Crown (the "***Authority's Work Products***").
- 59.12 The Authority hereby grants to the Contractor free of charge and for the Contract Term a non-exclusive royalty-free licence to use such of the Authority's Work Products as are necessary to perform the Services for use in connection with the design, construction maintenance, operation or management of the Prison in accordance with the Contract together with the right to grant sub-licences to Sub-contractors.
- 59.13 If the Contractor employs or engages a Prisoner to work in return for financial consideration, no property or Intellectual Property Rights relating to the product of a Prisoner's labour shall vest in the Authority, and the ***product of a Prisoner's labour*** shall be those things resulting directly from the paid employment or engagement.
- 59.14 If a Prisoner creates or produces a work or an invention or a performance, and the said work or invention or performance is not a "product of a Prisoner's labour" within the meaning of Clause 59.12

(Intellectual Property Rights), no Intellectual Property Rights shall vest in the Authority or the Contractor in relation to the said work, invention or performance.

59A **PROCUREMENT OF IP AND IT**

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

- (a) An acknowledgement by the Supplier that the benefit and/or burden of the IT/IP Contract or any part of it shall be used by the Contractor or the Operating Sub-contractor or its successors to the IP/IT Contract from time to time, in connection with the design, construction, maintenance, operation or management (as the case may be) of the Prison for the purposes of the Authority.
- (b) Upon receipt of written notice from the Contractor or the Operating Sub-contractor (whichever is the party to the IT/IP Contract (being the "**Relevant Party**")), the Supplier shall novate the rights and obligations of the Relevant Party under the IT/IP Contract to the Authority or its nominee, as the case may be.
- (c) An obligation on the Supplier to execute such deeds or other documents and do such things as the Authority may reasonably require in order to effect the novation.
- (d) Where the IT/IP Contract (if entered into) would be a contractual licence relating to any off-the-shelf computer program customarily licensed by the licensor on its standard terms of business, the Contractor shall use all reasonable endeavours to procure that the IT/IP Contract contains the terms set out in (a) to (c) of this Clause 59A.1 (**Procurement of IP and IT**).
- (e) (e)Where the Contractor is in breach of Clause 59A.1(d) (**Procurement of IP and IT**) or the Contractor is otherwise

unable to procure that the IP/IT Contract contains such terms, the Contractor shall nevertheless be entitled to enter into the IT/IP Contract and to use the subject matter of the IT/IP Contract in connection with the provision of the Services; provided that where a Relevant IP Event occurs, the Authority shall be entitled to procure a contract for the Relevant Successor either (i) with the relevant third party on substantially the same terms as the relevant IT/IP Contract, or (ii) with any other third party for the supply of technology and/or services comparable to the subject matter of the IT/IP Contract on reasonable commercial terms, in either case in connection with the design, construction, maintenance, operation or management of the Prison by the Authority or its nominee.

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

- (a) obliges the Supplier to place the source code of any software supplied under the IT/IP Contract in escrow with the National Computing Centre (or any successor in title to its source code escrow business) in the United Kingdom pursuant to a contract which entitles the Authority or its nominee (as the case may be) to have released from escrow, and to use a copy of the source code for the purpose of the design, construction, maintenance, operation or management of the Prison, and which is otherwise subject to the then standard terms of the National Computing Centre (or its successor as the case may be). The contract to which this Clause 59A.2 (**Procurement of IP and IT**) refers may also entitle the Contractor or Operating Sub-contractor to receive a copy of the source code, but not as an alternate to, or substitute for, the Authority or its nominee;
- (b) gives the Relevant Party (or its successor) the right to assign the benefit of the IT/IP Contract without the consent of the Supplier;
- (c) gives the Relevant Party the right to sub-license its rights without the consent of the Supplier; and
- (d) shall not be affected by any change of control of the Relevant Party (or any successor thereto).

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

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

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

For these purposes:

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

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

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

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

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

- (a) the Contractor shall, and, where the Operating Sub-contractor is the Relevant Party, shall procure that the Operating Sub-contractor shall issue the notice to the Supplier to which 59A.1(b) (**Procurement of IP and IT**) refers and shall:
 - (i) use all reasonable endeavours to procure that the Supplier complies with its obligations under the IT/IP Contract and otherwise consents to the proposed novation; and
 - (ii) shall execute such deeds or other documents and do such other things as the Authority may reasonably require in order to effect the novation;
- (b) until all relevant consents or other formalities (if any) required in order to effect the novation have been obtained or complied with, the Relevant Successor shall be exclusively entitled to the benefit of the IT/IP Contract for the purposes of the design, construction, maintenance, operation or management of the Prison (as the case may be); and
- (c) during the period the Relevant Successor is entitled to the benefit of any IT/IP Contract, the Authority shall, or shall procure that any Relevant Successor shall, perform the obligations of the Relevant Party under the IT/IP Contract.

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

- (a) the Authority shall fully and effectively indemnify the Contractor against all Losses suffered or incurred by the Contractor or the Operating Sub-contractor by reason of the failure of the Relevant Successor to observe and perform or procure to have observed and performed all obligations of the Relevant Party under any IT/IP Contract novated in accordance with this Clause 59A (**Procurement of IP and IT**) to the extent that such Contract should have been performed on or after the date on which the

Authority requested the novation pursuant to Clause 59A.3 (***Procurement of IP and IT***) (the "***Effective Date***"); and

- (b) with effect from the Effective Date, the Contractor shall keep the Authority fully and effectively indemnified against all Losses suffered or incurred by the Authority by reason of the failure before the Effective Date of the Relevant Party to perform its obligations under the novated IT/IP Contract. The Contractor acknowledges that any loss, damage, cost and/or expense to be indemnified under this Clause 59A.5(b) (***Procurement of IP and IT***) may be incurred by the Authority pursuant to an Indemnity in similar terms given by the Authority to a Relevant Successor.

59A.6 The Contractor undertakes that all computer and communications systems used by the Contractor or any Sub-contractor in connection with the Services:

- (a) when they are accepted or (if earlier) first used by the Contractor or Sub-contractor shall be, and thereafter shall be maintained (subject to reasonable wear and tear), free from material defects in design materials and workmanship, and programming errors in the case of software. A "material" defect or error means any defect or error which prevents the system or software from performing substantially in accordance with its specifications; and
- (b) which is computer software developed by or on behalf of the Contractor or any Sub-contractor, shall be able to:
 - (i) handle date information before, during and after January 1, 2000, including accepting date input, providing date output and performing calculations on dates or portions of dates;
 - (ii) function accurately and without interruption before, during and after January 1, 2000, without any change in operations associated with the advent of the year 2000 and the new century;
 - (iii) respond to two-digit year input in a way that resolves the ambiguity as to century in a disclosed, defined and predetermined manner;
 - (iv) process two-digit year date information in ways that are similarly unambiguous as to century; and

- (v) store and provide output of date information in ways that are similarly unambiguous as to century

(such capability as described in (i) to (v) above) being "**Millennium Compliant**").

59A.7 The Contractor shall not, and shall procure that no Sub-contractor shall, procure for use in connection with the Services any communications or computer systems or other technology which is not Millennium Compliant without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed; without affecting the general nature of this Clause 59A.7 (**Procurement of IP and IT**), it shall be reasonable for the Authority to refuse its consent where the Contractor is unable to demonstrate to the Authority on reasonable grounds that the Services would not be adversely affected because any such system or technology is not Millennium Compliant.

59A.8 The Contractor shall take all reasonable care to ensure the computer and communications used by the Contractor or any Sub-contractor are free of Viruses.

59A.9 The Contractor shall create and maintain a register containing the following information:

- (a) details of all licences of Intellectual Property Rights to which the Contractor or any Sub-contractor is a party and contracts for the procurement of computer or communications technology and/or services or other services concerning information or communications technology, the benefit of which is to be used in connection with the Services, including the date of the licence or contract, the parties, a description of the relevant hardware, software or service, the purpose for which the software is used or capable of use, the platform on which the software is licensed to run, the duration, the parties licensed to use the relevant software and the assignability of the licence;
- (b) any other relevant consents relating to any software used by or on behalf of the Contractor or any Sub-contractor in providing the Services;
- (c) details of all existing and planned Contractor's Work Products required to be notified under Clause 59.4 (**Intellectual Property Rights**), including (where appropriate) a description of any software, the purpose for which such software is used or capable of use; and

- (d) details of all hardware leases.

59A.10 The Contractor shall allow the Authority or its representative access to such register at all reasonable times and permit the Authority or its representative to take, or at the Authority's request, provide, copies of all or part of the register or its contents. The Authority shall reimburse the Contractor its reasonable costs incurred in taking or providing such copies.

59B **IP AND IT COSTS**

59B.1 Except as provided otherwise in the Contract, where a Relevant IP Event occurs, any costs incurred by the Authority from time to time in connection with the grant of a Required Licence under Clause 59.6(b)(iv) (***Intellectual Property Rights***) or a licence under Clauses 59.8(a) (***Intellectual Property Rights***) or (c) (***Intellectual Property Rights***), or under a contract to which the Authority is a party under Clause 59A.1(e), in any case including payment of fees or charges to a third party, shall be recoverable from the Contractor as a liability due to the Authority.

59B.2 The terms for the grant to the Authority of the licences to which Clause 59.7 (***Intellectual Property Rights***) refers shall include a reasonable fee payable by the Authority only where the Relevant IP Event is the introduction of a new Operating Sub-contractor in accordance with Clause 39A (***Benchmarking***), but in any other case, the licence shall be free of charge.

60. **CONTRACTOR'S RECORDS**

60.1 The Contractor shall at all times:

- (a) maintain a full record of particulars of the costs of performing the Services, including those relating to design, build, maintenance and operation;
- (b) ensure that such records shall further include details of any commitments made by the Contractor for future expenditure and details of any funds held by the Contractor; and
- (c) when requested by the Authority, furnish the summary of any of the aforementioned costs in such form and detail as the Authority may reasonably require; and
- (d) afford such facilities as the Authority may reasonably require for its representatives to visit the site (or any other place where

the records are held) and examine the records maintained under this Clause 60 (**Contractor's Records**),

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

60.2 For the duration of the Contract the Contractor:

(a) shall furnish to the Authority:

- (i) as soon as they become available (and in any event within one hundred and eighty (180) days of the end of each of its financial periods) copies of its audited financial statements for that period which shall contain an income statement and a balance sheet and a cash flow statement and be audited and certified without qualification by a firm of independent accountants;
- (ii) as soon as they become available (and in any event within ninety (90) days of the end of each of its financial half-years and within ninety (90) days of each Review Date) copies of its unaudited financial statements for that half-year or year (as the case may be) which shall contain an income statement, a balance sheet and a cash flow statement;

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

counterparty from time to time to the Development Agreement or the Access Agreement during the term of the Contract.

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

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

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

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

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

- (a) a full record of all incidents relating to health, safety and security which occur during the term of the Contract;
- (b) full records of all maintenance procedures carried out during the term of the Contract;
- (c) an annual report reviewing the medical work and practice of the Prison;
- (d) a Health and Hygiene report to be completed every six (6) months,

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

- 60.6 The Contractor shall maintain such other records and make the same available to the Authority as the Authority may reasonably require.
- 60.7 The Contractor shall permit records referred to in this Clause 60 (***Contractor's Records***) to be examined and copied by the Controller and other representatives of the Authority, and by the Comptroller and Auditor General and his representatives.
- 60.8 The records referred to in this Clause shall be retained for a period of at least five (5) years after the Contractor's obligations under the Contract have come to an end. Records relating to the construction of the Prison will be retained and provided to the Authority as set out in Schedule N (***Management and Control of Documentation***).
- 60.9 Upon termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the Prison, or on operation of the provisions of Clause 39A (***Benchmarking***), and without prejudice to the identity of any new Contractor or replacement Operating Sub-contractor, the Contractor shall (and shall ensure that the Operating Sub-contractor will) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Prison. Such information shall include information relating to the anticipated cost of a transfer of the Prison to a new Contractor.
- 60.10 The Contractor will control the documents referred to in Schedule N (***Management and Control of Documentation***) in the manner set out in that Schedule N (***Management and Control of Documentation***).

61. **INDEPENDENT CONTRACTOR**

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

62. AUTHORITY TO COMMIT AND VARIATION

- 62.1 There shall be Named Representatives of the Authority, whose names shall appear at Part 1 of Schedule J (***Named Representatives***), and in the event of any change to the Named Representatives of the Authority the Authority shall give written notice of the change to the Contractor. A change in the Named Representatives of the Authority does not constitute a variation of the Contract.
- 62.2 Only the Named Representatives of the Authority, or their formally nominated officers, have the power to vary the terms and conditions of the Contract, or to commit the Authority to additional expenditure.
- 62.3 Any variation of any provision of the Contract must be effected in writing issued by the Authority or the Named Representatives of the Authority and no purported variation by any other means shall bind the Authority.
- 62.4 For the avoidance of doubt, any agreement between the Authority and the Contractor to change the Estimated Opening Date is without prejudice to any of the Contractor's or the Authority's obligations hereunder in respect of Actual Opening Date, Contractual Opening Date, Full Operation Date and Actual Full Operation Date.

63. SERVICE OF NOTICES

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

64. **RACE AND SEX DISCRIMINATION**

- 64.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, or the Sex Discrimination Acts 1975 and 1986.
- 64.2 The Contractor shall take all reasonable steps to secure that all servants, agents and Sub-contractors do not unlawfully discriminate within the meaning and scope of the above-mentioned Legislation.

65. **DATA PROTECTION**

- 65.1 In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary including maintaining a valid and up-to-date registration or notification under the DPA covering the data processing to be performed in connection with the Services.
- 65.2 The Contractor and any Sub-contractor shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area.
- 65.3 The Contractor shall not disclose Personal Data to any third parties other than:
- (a) to employees and Sub-contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Service; or
 - (b) to the extent required under a court order,
- provided that disclosure under paragraph (a) is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 65 (**Data Protection**) and that the Contractor shall give notice in writing to the Authority of any disclosure of Personal Data it or a Sub-Contractor is required to make under paragraph (b) immediately it is aware of such a requirement.
- 65.4 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to take reasonable steps to ensure the reliability of staff having access to the Personal Data.
- 65.5 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor

the Sub-contractors referred to in paragraph (4). Within thirty (30) days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

- 65.6 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause 65 (**Data Protection**) by the Contractor and/or any act or omission of any Sub-contractor.

66. **HEALTH AND SAFETY**

- 66.1 All plant, fixtures, fittings, furniture chattels and other equipment supplied by the Contractor in performance of the Contract shall comply with all provisions of any Legislation relating to health and/or safety from time to time in force. Crown Immunity will not apply to the Contractor, who shall be liable for any failure to meet statutory requirements in respect of these items.
- 66.2 The Contractor shall be responsible for the observance by itself, its staff and Sub-contractors of all current and relevant health and safety precautions necessary for the protection of itself, its staff, Sub-contractors and any other persons invited onto or visiting the Site, including all precautions required to be taken by or under any Legislation.
- 66.3 The Contractor shall be responsible for the observance by itself, its staff and Sub-contractors of all current and relevant rules, regulations and requirements of statutory or regulatory authorities concerning building works and fire prevention.

67. **DUTY OF CARE**

The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out its obligations under this Contract.

68. **WAIVER**

- 68.1 No term or provision of this Contract shall be considered as waived by any party to this Contract unless a waiver is given in writing by that party.
- 68.2 No waiver under Clause 68.1 (**Waiver**) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms,

conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

69. **SEVERABILITY**

If any term, condition or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Contract.

70. **COUNTERPARTS**

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

71. **LAW OF THE CONTRACT AND JURISDICTION**

This Contract shall be governed by the laws of England, and subject to Clause 72.1 (**Dispute Resolution**) the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

72. **DISPUTE RESOLUTION**

- 72.1 Except in the case of any dispute in respect of matters referred to in Clauses 5.14 (**Insurance**), 9 (**Change to Services Required**) (other than any decision of the Authority relating to changes to the Works or their design which do not result in the possibility of a variation of the Contract Price pursuant to Clause 9.5 (**Change to Services Required**)), 39.2 (**Variation of Price**), 39.3 (**Variation of Price**), or (in respect of the amount of the Original Value only) Clause 39.5 (**Variation of Price**) or any dispute as to the amounts payable under Clause 49 (**Payment for Termination**), or unless the Authority and the Contractor agree to the dispute being referred to an Arbitrator in accordance with Clause 72.3 (**Dispute Resolution**), the Contractor shall refer any dispute as to a decision or instruction (including any estimate given pursuant to Clause 24.3 (**Extension of Time**) or Clause 24A.3 (**Extension of Time-Increased Capacity**)) issued by the Authority or the reasonableness of any action of the Independent Engineer, and either party shall (except as otherwise expressly provided) refer any dispute as to any other issue arising in relation to the Contract, to a person nominated from a panel of experts established for such purpose who shall all be wholly independent of the Contractor and the Authority, any Construction Sub-contractor, API CCA or the Houseblock Construction Sub-contractor (the "**Expert**"). The panel of experts shall, in respect of issues relating to the construction of the Prison, be comprised of five (5) persons appointed jointly by the

Authority and by the Contractor who shall be experts in relation to construction matters but unrelated to the Authority, CCA, API, the Contractor, Construction Sub-contractor, the Houseblock Construction Sub-contractor or any of the major competitors of the Construction Sub-contractor or Houseblock Construction Sub-contractor; In respect of issues relating to the provision of the Custodial Service, the panel of experts shall be comprised of five (5) persons appointed jointly by the Authority and the Contractor who shall be experts in relation to the operation and maintenance of prisons but unrelated to the Authority, the Contractor or the Operating Sub-contractor or any of the major competitors of the Operating Sub-contractor. In the case of the panel for construction matters, its appointment shall take place within twenty-eight (28) days of the date hereof and the Authority and the Contractor shall appoint a replacement if any member of the relevant panel of experts resigns during the Contract Term. In the event that the Authority and the Contractor are unable to agree as to the identity of any member of either panel, such member will be selected by the President for the time being of the Chartered Institute of Arbitrators within thirty (30) days of any application for such selection by either party.

- 72.2 The Expert nominated to consider a dispute referred to him under Clause 72.1 (**Dispute Resolution**) shall be selected on a strictly rotational basis from the panel of experts. Within seven (7) days of appointment in relation to a particular dispute, the Expert shall require the parties to submit in writing their respective arguments. The Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute, and shall, in any event within fourteen (14) days of the appointment (or such other period as the parties may agree), provide to both parties his written decision on the dispute. The Expert shall not state any reasons for his decision, and unless and until revised, cancelled or varied by the Arbitrator pursuant to Clause 72.3 (**Dispute Resolution**), it shall be binding on both parties who shall forthwith give effect to the decision. The Expert's costs of any reference shall be borne as the Expert shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses. The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 (as amended from time to time) and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reached his determination. Subject to Clause 72.1 (**Dispute Resolution**), the Expert shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made pursuant hereto. All information, data or

documentation disclosed or delivered by a party to the Expert in consequence of or in connection with his appointment as Expert hereunder shall be treated as confidential and the Expert shall not, save as permitted by Clause 72 (***Dispute Resolution***), or as required by law, disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies thereof shall be returned to such party on completion of the Expert's work.

72.3 In the case of:

- (a) any dispute in respect of matters referred to in Clause 5.14 (***Insurance***), Clause 9 (***Change to Services Required***), Clause 39.2 (***Variation of Price***), Clause 39.3 (***Variation of Price***), Clause 39.5 (***Variation of Price***) (in respect of the amount of the Original Value only) or Clause 49 (***Payment for Termination***); or
- (b) either party being dissatisfied with or otherwise wishes to challenge the Expert's decision made in accordance with Clause 72.2 (***Dispute Resolution***); or
- (c) both parties agreeing so to do;

either party may (within fourteen (14) days of receipt of the Expert's decision, where appropriate), notify the other party of its intention to refer the dispute to arbitration and to invite the other party to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than ten (10) years' standing (the "***Arbitrator***"). If the parties are unable within fourteen (14) days to agree the identity of the Arbitrator either party may request the President of the Law Society to make the appointment. The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made pursuant hereto, to vary or cancel the decision of the Expert and, where appropriate, to order financial compensation to be paid by one party to the other. The arbitration shall take place in London.

- 72.4 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary. The Arbitrator shall deliver his decision on any matter referred to him within

twenty-eight (28) days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) months or such other period as the parties may agree of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both parties. The costs of the arbitration will be in the discretion of the Arbitrator.

- 72.5 The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause 72 (***Dispute Resolution***) and shall give effect forthwith to every decision of the Expert and the Arbitrator delivered pursuant to this Clause 72 (***Dispute Resolution***).

If any dispute relating to the construction of the Prison raises issues which relate to any dispute between the Contractor and/or API and/or the Construction Sub-contractor and/or the Houseblock Construction Sub-contractor (as the case may be) arising under the Development Agreement or the Construction Sub-contract or otherwise affects the relationship or rights of the Contractor and/or the Construction Sub-contractor under the Construction Sub-contract (the "***Construction Sub-contract Dispute***") or the rights of the Contractor and/or the Houseblock Construction Sub-contractor under the Houseblock Construction Sub-contract (the "***Houseblock Construction Sub-contract Dispute***"), the Contractor may include as part of its submissions made to the Expert pursuant to Clause 72.2 (***Dispute Resolution***) or to the Arbitrator, where the dispute is referred to arbitration pursuant to Clause 72.3 (***Dispute Resolution***), submissions made by API and/or the Construction Sub-contractor and/or the Houseblock Construction Sub-contractor.

- 72.6 The Expert or the Arbitrator, as appropriate, shall not have jurisdiction to determine the Construction Sub-contract Dispute and/or the Houseblock Construction Sub-contract Dispute but the decision of the Expert or the Arbitrator shall be binding on the Contractor, API, the Construction Sub-contractor and the Houseblock Construction Sub-contractor insofar as it determines the issues relating to the Construction Sub-contract Dispute and/or the Houseblock Construction Sub-contract Dispute.
- 72.7 Any submissions made by the Construction Sub-contractor, API or the Houseblock Construction Sub-contractor as part of the Contractor's case shall:

- (a) be made within the time limits applicable to the delivery of submissions by the Contractor; and
- (b) concern only those matters which relate to the dispute between the Authority and the Contractor under this Contract.

72.8 Where the Construction Sub-contractor, API or the Houseblock Construction Sub-contractor makes submissions in any reference (i) before the Expert, the Expert's costs of such reference shall be borne as the Expert shall specify, or in default such costs shall be apportioned between the Authority and the Contractor, such that (aa) if API and the Construction Sub-contractor and/or the Houseblock Construction Sub-contractor make submissions pursuant to Clause 72.5 (**Dispute Resolution**), the Authority shall bear one quarter of the Expert's costs and (bb) if only one of API, the Construction Sub-contractor or the Houseblock Construction Sub-contractor make submissions pursuant to Clause 72.5 (**Dispute Resolution**) the Authority shall bear one third of the Expert's costs, and in case of either (aa) or (bb), the Contractor shall pay the portion of the Expert's costs not borne by the Authority (ii) before the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator. For the avoidance of doubt, the Authority shall have no liability to the Construction Sub-contractor, API or the Houseblock Construction Sub-contractor arising out of or in connection with any decision of the Expert or Arbitrator or in respect of the costs of the Construction Sub-contractor, API or the Houseblock Construction Sub-contractor in participating in the resolution of any dispute under this Contract.

72.9 The Contractor shall not allow the Construction Sub-contractor, API or the Houseblock Construction Sub-contractor access to any document relevant to the issues in dispute between the Authority and the Contractor save where:

- (a) the document is relevant also to the issues relating to the Construction Sub-contract Dispute and/or Houseblock Construction Sub-contract Dispute; and
- (b) the Contractor has first delivered to the Authority a written undertaking from the Construction Sub-contractor, API or the Houseblock Construction Sub-contractor (as applicable) addressed to the Authority that it shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that it shall not disclose such documents or any information contained therein

to any third party other than the Expert or Arbitrator or any professional adviser engaged by the Construction Sub-contractor, API or the Houseblock Construction Sub-contractor to advise in connection with the dispute.

73. **PRECEDENCE OF TERMS**

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

74. **THIRD PARTY RIGHTS**

The parties to this Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999.