

DATED

24 October

2008

- (1) THE SECRETARY OF STATE FOR JUSTICE**
- (2) ASHFORD PRISON SERVICES LIMITED**

AMENDING AGREEMENT

**in respect of the Conditions of Contract
for the Design, Construction, Management
and Financing of a Custodial Service at HMP
Bronzefield
dated 20 December 2002 and made between the same
parties**

THIS DEED is made on 24 October 2008

BETWEEN

- (1) **THE SECRETARY OF STATE FOR JUSTICE** (the "Authority"); and
- (2) **ASHFORD PRISON SERVICES LIMITED** whose registered office is at Interserve House, Ruscombe Park, Reading Berkshire RG10 9JU (company no. 04334205) (the "Contractor").

BACKGROUND

- (A) Pursuant to a contract dated 20 December 2002 between Her Majesty's Principal Secretary of State for the Home Department (1) and Ashford Prison Services Limited (2) which was amended by way of letters of amendment dated 6 July 2005, 25 May 2007 and 12 November 2007 (the "Original Contract"), the Contractor agreed to carry out certain works and provide certain services relating to the provision of a custodial service to the Authority upon the terms and conditions contained in the Original Contract.
- (B) The parties hereto wish by this agreement (the "Amending Agreement") to amend the Original Contract to the extent of the amendments contained in this Amending Agreement. This Amending Agreement is made in accordance with the provisions of clause 62 (Authority to Commit and Variation) of the Original Contract and the parties have agreed that clause 9 (Change to Services Required) of the Original Contract shall not apply in respect of the subject matter of this Amending Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

Save where the context otherwise requires, words and phrases defined in the Original Contract shall have the same meanings given to them whenever they are used in this Amending Agreement, and the provisions of clause 1 of the Original Contract shall apply *mutatis mutandis* to this Amending Agreement as it applies to the Original Contract.

2. DELIVERY OF WORKS AND SERVICES AND AMENDMENT

- 2.1 The Contractor and the Authority shall continue to perform their obligations throughout the remainder of the Contract Term provided that with effect from the date of this Amending Agreement, the Original Contract shall be amended so that, in substitution for its terms, the terms of the amended and restated contract in the form annexed to this Amending Agreement (the "Amended Contract") shall apply as between the parties to the exclusion of the terms of the Original Contract, provided that any claims or liabilities of either party, which

have accrued before the date of this Amending Agreement, shall be established in accordance with the terms of the Original Contract as in force at the time of accrual of the relevant claim or liability.

2.2 The parties here agree that clause 9 (Change to Services Required) of the Original Contract shall not apply to the subject matter of this Amending Agreement notwithstanding any provision of the Original Contract which requires the application of clause 9 of the Original Contract.

2.3 For the avoidance of doubt, the Authority hereby confirms that it approves and consents to the amendments to the Operating Sub-contract made on or about the date of this Amending Agreement pursuant to clause 7.1 (Sub-contracting) of the Original Contract.

3. **ENFORCEMENT BY THIRD PARTIES**

The parties to this Amending Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

4. **SUCCESSORS/BENEFIT OF AGREEMENT**

This Amending Agreement will be binding upon and benefit each party to this Amending Agreement and their successors, and assigns.

5. **ENTIRE AGREEMENT/RELIANCE ON REPRESENTATIONS**

5.1 This Amending Agreement and the Amended Contract and other documents referred to in the Amended Contract contain all the terms which the parties have agreed in relation to the subject matter of this Amending Agreement, the Amended Contract and those documents, and supersedes, but with respect only to any matter arising after the date of this Amending Agreement, any prior written or oral agreements, representations or understandings between the parties in relation to such subject matter.

5.2 The parties acknowledge that this Amending Agreement has not been entered into wholly or partly in reliance on, nor has either party been given any warranty, statement, promise or representation made by or on the other party's behalf other than as expressly set out in this Amending Agreement and the documents referred to in **clause 5.1**. To the extent that any such warranties, statements, promises or representations have been given the recipient party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

5.3 Nothing in this **clause 5** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

6. **GOVERNING LAW**

The formation, existence, construction, performance, validity and all aspects whatsoever of this Amending Agreement or of any term of this Amending Agreement will be governed by the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

This document has been executed and delivered as a deed on the date stated at the beginning of this Amending Agreement.

SIGNED by
for and on behalf of **THE SECRETARY**
OF STATE FOR JUSTICE

)
)
)
)
)

[REDACTED]

Signature of Patsy Northern

SIGNED by
ASHFORD PRISON SERVICES
LIMITED acting by a director and its
secretary/two directors

)
)
)
)
)

Signature of director:

[REDACTED]

Name of director:

Signature of director/secretary:

[REDACTED]

Name of director/secretary:

CONFORMED COPY

20 DECEMBER 2002

THE SECRETARY OF STATE FOR JUSTICE

ASHFORD PRISON SERVICES LIMITED

CONDITIONS OF CONTRACT

**for the Design, Construction, Management
and Financing of a Custodial Service in
Ashford, Middlesex**

PRICED

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THIS AGREEMENT is made on 20 December 2002

BETWEEN

THE SECRETARY OF STATE FOR JUSTICE (the **Authority**); and

ASHFORD PRISON SERVICES LIMITED (Company No. 4334205) whose registered office is situated at Interserve House, Ruscombe Park, Reading, Berkshire, RG10 9JU (the **Contractor**).

WHEREBY IT IS AGREED as follows:

PART I - GENERAL

1. Definitions

1.1 In this Contract the following words and expressions shall, except where the context otherwise requires, have the meanings hereby assigned to them:

Actual Cost means the cost of the Operational Premiums;

Actual Full Operation Date means the date upon which the Contractor first provides four hundred and fifty (450) Available Prisoner Places;

Actual Houseblock Opening Date means the date on which the Contractor first provides twenty five (25) Available Prisoner Places at the Houseblock;

Actual Increased Capacity Date means the date on which the Contractor first provides no less than seventy seven (77) Available Prisoner Places at the Houseblock;

Actual Opening Date or AOD means the date upon which the Contractor first provides no less than fifty (50) Available Prisoner Places;

Additional Payment has the meaning assigned to it in **Clause 49.5(f) (Payment for Termination)**;

Additional Prisoner Place

means:

- (a) until the Actual Increased Capacity Date, an Available Prisoner Place additional to the four hundred and fifty (450) Available Prisoner Places (and during the Increased Capacity Phase-In Period an Available Prisoner Place additional to the number of Available Prisoner Places to be provided pursuant to the Increased Capacity Phase-In Period Timetable); and
- (b) from the Actual Increased Capacity Date, an Available Prisoner Place additional to the five hundred and twenty seven (527) Available Prisoner Places to be provided pursuant to clause **40A (Additional Prisoner Places)**;

Adjudicator

means the adjudicator appointed in accordance with **Clause 72.1 (Dispute Resolution)**;

Affiliate

means an entity the majority of whose shares are owned indirectly by the Holding Company (as defined in the Companies Act 1985) of the Contractor or the Operating Sub-contractor, or by any company, which at the relevant time owns directly or indirectly fifty per cent. (50%) or more of the issued share capital in the Contractor or the Operating Sub-contractor;

Agent

has the meaning assigned to it in the Direct Agreement;

Aggregate Number of Additional Prisoner Places

means in respect of any APP Band the number specified in the sixth column of the table in **Clause 40A.1 (Additional**

	Prisoner Places) corresponding to such APP Band;
<i>Amended Bid Sum</i>	has the meaning assigned to it in Clause 39A.4 (Benchmarking) ;
<i>Amended Specifications</i>	has the meaning assigned to it in Clause 39A.2 (Benchmarking) ;
<i>Amended Operating Sub-contract</i>	means the amended Operating Sub-contract, delivered to the Authority pursuant to Clause 2A (Houseblock Documents) ;
<i>Amending Agreement</i>	means the amending agreement entered into between the Authority and the Contractor dated [] 2008;
<i>Amendment Notice</i>	has the meaning assigned to it in Clause 40A.2 (Additional Prisoner Places) ;
<i>APP Bands</i>	has the meaning assigned to it in Clause 40A.1(b) (Additional Prisoner Places) ;
<i>Appointment</i>	has the meaning assigned to it in Clause 72.1 (Dispute Resolution) ;
<i>Appropriate Limit</i>	has the meaning assigned to it in Clause 58.25 (Information and Confidentiality) ;
<i>Arbitral Tribunal</i>	has the meaning assigned to it in Clause 72.3 (Dispute Resolution) ;
<i>Arbitrator</i>	means the arbitral tribunal appointed in accordance with Clause 72.3 (Dispute Resolution) ;
<i>Assets</i>	shall have the meaning assigned to it in Clause 5.1 (Insurance) ;
<i>Authority</i>	means The Secretary of State for Justice;

Authority Payment

has the meaning assigned to it in
Clause 39A.11 (Benchmarking);

Authority's Work Products

has the meaning assigned to it in
Clause 59.10 (Miscellaneous);

Availability Basis

means paying for each Available Prisoner Place or Additional Prisoner Place, which is available during the relevant period;

Available Prisoner Place

shall have the meaning assigned to it in
Clause 29.1 (Available Prisoner Places);

Banks

means in relation to the provision of finance to the Contractor, the following Persons, from time to time:

- (a) an institution which (i) is authorised by the Bank of England under the Banking Act 1987 to accept deposits in the United Kingdom and (ii) has as its home state supervisory authority an authority based in an OECD Country; or
- (b) a Treaty Entity, which is authorised to carry on, and carries on, banking business, and in relation to that business has as its home state supervisory authority an authority based in an OECD Country;
- (c) any trustee or agent for the Persons referred to in paragraphs (a) and/or (b) above provided that such trustee or agent is a Person referred to in paragraph (a) or (b), or is a Person approved by the

Authority (such approval not to be unreasonably withheld or delayed);

provided that no such Person is directly or indirectly either a Shareholder in the Contractor or a beneficial holder of or beneficially interested in more than five per cent. (5%) of any class of the equity share capital in any of the Shareholders (other than through the realisation of security over the same) unless otherwise agreed in writing by the Authority;

Base Cost

means:

- (a) until the Actual Houseblock Opening Date, [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] (Indexed)
per annum; and
- (b) from the Actual Houseblock Opening Date, [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
(Indexed) per annum;

Baseline Total

means, in respect of any Performance Year, the relevant number of Performance Points listed in **Schedule F (Performance Measures)**, and referred to as such, and in respect of each Quarter in such Performance Year, the amount calculated in accordance with the provisions of **Schedule F (Performance Measures)**;

Benchmarking Costs

has the meaning assigned to it in **Clause 39A.9 (Benchmarking)**;

<i>Bidders</i>	has the meaning assigned to it in Clause 39A.2 (Benchmarking) ;
<i>Bids</i>	has the meaning assigned to it in Clause 39A.4 (Benchmarking) ;
<i>Board of Visitors</i>	means the Persons from time to time appointed by the Authority under Section 6(2) of the Prison Act 1952 in relation to the Prison;
<i>Brokers' Fees</i>	means at any time any amounts or consideration received (or a reverse or reduction of premium or similar credit granted) in whatever form by the broker (or any party on their behalf) pursuant or in relation to any liability or obligation arising or owed by the Contractor to the broker (or any party on their behalf) relating to the Contract whether present or future, actual, conditional, contingent or otherwise;
<i>Business Day</i>	means a Day (other than Saturday or Sunday) on which banks are open for domestic business in the City of London;
<i>Capital Expenditure</i>	means any expenditure incurred which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time or any expenditure which is required once only and not on an annual or periodic basis;
<i>Cash</i>	means cash in hand and deposits (including any investment of such deposits made in accordance with the terms of the Financing Agreements) with any bank or other financial institution and includes deposits in foreign currencies and marketable

	securities;
Category "A" Prisoner	means a Prisoner who, in accordance with the security classifications as they exist as at the date of this Contract, is classified by the Authority as such or, in the event that the categorisation of Prisoners changes, would be so classified;
CDM Regulations	means the Construction (Design and Management) Regulations 2007;
Cell Certificates	means certificates issued in accordance with the terms of Clause 27 (Cell Certification) ;
Certified Normal Accommodation	means the number of Available Prisoner Places on the (i) Full Operation Date, or (ii) date immediately preceding the damage in the event that the number of Available Prisoner Places has been the subject of a Notice of Change in accordance with Clause 9 (Change to Services Required) ;
COD+7	means the seventh Day after the Contractual Opening Date;
Code	has the meaning assigned to it in Clause 58.8 (Information and Confidentiality) ;
Commercial Insurer	has the meaning assigned to it in Clause 5A1.2(b) (Riot (Damages) Act 1886) ;
Commercial Premium	has the meaning ascribed to this term in Clause 1.4 (Definitions) ;
Commercially Sensitive Information	means the sub set of Confidential Information listed in column 1 (Commercially Sensitive Information) of Schedule V (Commercially Sensitive Information)

Information) in each case for the period specified in column 2 of **Schedule V (Commercially Sensitive Information);**

Confidential Information

means:

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

(b) Commercially Sensitive Information;

Completion Works

means the element of the Houseblock Works comprising the removal of site compounds and temporary site accommodation and the reinstatement of the areas outside the Prison wall, including the reinstatement of the perimeter access road;

Comptroller and Auditor General

means the head of the National Audit Office;

Confidential Matters

means any information which:

- (a) relates to the way in which the Contract Price is calculated;
- (b) reveals the numbers of staff at the Prison; or

(c) might prejudice security at the Prison;

Construction Staff

shall mean a Person who is required to work or perform duties which are connected either directly or indirectly with the design and construction of the Prison, the Works or the Houseblock Works, who is an employee of the Contractor or any Construction Sub-contractor (or any sub-contractor or supplier of the Construction Sub-contractor) or the Houseblock Construction Sub-contractor (or any sub-contractor or supplier of the Houseblock Construction Sub-contractor) at any time during the period prior to, and after the Actual Opening Date;

Construction Sub-contract

means the agreement dated on or about the date hereof between the Contractor and the Construction Sub-contractor in respect of the design, execution and completion of the Works;

Construction Sub-contract Dispute

has the meaning assigned to it in **Clause 72.6 (Dispute Resolution)**;

Construction Sub-contractor

means Interserve Project Services Limited or, with the prior written approval of the Authority, such other construction sub-contractor appointed by the Contractor, subject to the provisions of **Clause 7 (Sub-contracting)**, from time to time to execute the Works;

Contract Bid Sum

has the meaning assigned to it in **Clause 39A.4 (Benchmarking)**;

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 or otherwise in the provision of the Services, including software written by or on behalf of the Contractor or any Sub-contractor;

Contract Price

means the amount payable under **Clause 38 (Price)** by the Authority to the Contractor for the performance of its obligations under the Contract, including any amounts payable in respect of the Prisoner Escort Service pursuant to **Clause 36 (Escort Arrangements)**;

Contract Term

means (subject to the terms of Part VII (Termination) hereof and any other provisions herein relating to termination of the Contract) the period referred to in **Clause 2.2 (Duration of Contract)**;

Contractual Opening Date or COD

means 17 June 2004 or as the same may be altered pursuant to **Clause 24 (Extension of Time)**;

Contractual Houseblock Opening Date

shall be 11 December 2009 as the same may be altered pursuant to **Clause 24A (Extension of Time - Increased Capacity)**;

Contractual Increased Capacity Date

shall be 8 January 2010 as the same may be altered pursuant to **Clause 24A (Extension of Time - Increased Capacity)**;

Controller

means the Person or Persons from time to time appointed in respect of the Prison by the Authority under Section

	85 (1) (b) of the Criminal Justice Act 1991;
<i>Cost of Funds</i>	has the meaning assigned to it in Clause 3.2(e) (Preliminary Information) ;
<i>Council</i>	means Spelthorne Borough Council;
<i>Credit Agreement</i>	has the meaning assigned to it in the Direct Agreement;
<i>Crown</i>	includes the Authority;
<i>Custodial Duties</i>	means "custodial duties" at the Prison as defined in Section 86(3) of the Criminal Justice Act 1991;
<i>Custodial Service</i>	means all services to be provided by the Contractor from time to time in relation to the operation and maintenance of the Prison and the Site under this Contract (other than the Houseblock Works) after the Actual Opening Date;
<i>Daily Report</i>	means the daily report to be completed by the Contractor and made available to the Controller via the Prison's computer network within one (1) hour of Prisoners' lock-up with details (inter alia) as to the number of Available Prisoner Places and Additional Prisoner Places during the Day prior to lock-up and since the previous lock-up and presented in hard form to the Controller (or his/her nominated representative) as pursuant to Clause 35.4 (Monitoring and Inspection) substantially in the form of Schedule I (Daily Report) ;
<i>Database System</i>	means a method of creating, reading, updating or deleting data within a

	database and the production of management information reports from this data;
<i>Data Network Access Point</i>	means an independent data communications connection outlet and cable connecting the Authority's server to the Authority's data network;
<i>DPA</i>	means the Data Protection Act 1998;
<i>data subject</i>	has the meaning assigned to it in Clause 65.1 (Data Protection) ;
<i>Day</i>	means a calendar day, unless otherwise specified;
<i>Deadline Date</i>	has the assigned to it in Clause 5.17.4 (Insurance) ;
<i>Defects Period</i>	means the period of twelve (12) months from the date of issue of the Engineer's Houseblock Declaration;
<i>Delay Notice</i>	has the meaning assigned to it in Clause 24.1 (Extension of Time) ;
<i>Demobilisation Costs</i>	means: <ul style="list-style-type: none"> (a) the reasonable costs which are incurred directly as a result of the termination of the Contract and are payable by the Contractor to third parties in respect of the termination of any agreements entered into with third parties at arms' length for the sole purpose of the Project, provided that, in relation to such agreement(s), no account shall be taken of: <ul style="list-style-type: none"> (i) any payment to compensate for any loss of future revenue or

profits (or similar payment); or

(ii) any action, award, benefit, claim, compensation, damage, demand, liability or payment of any kind whatsoever in respect of any Person who is or was at any time employed under a contract of employment in connection with the Project (save to the extent included within sub-paragraphs (b) and (c) below); or

(iii) any item other than costs incurred as a result of early termination;

(b) the aggregate of all amounts properly payable by the Contractor or UK Detention Services Limited to employees (who are exclusively employed in the Project) under their contracts of employment for the period (immediately prior to the date of termination of the Contract) from the date of termination of the Contract until the earlier of:

(i) the date that is three (3) months after the date of termination of the Contract; and

(ii) the date on which the employees have been redeployed to other activities (the Contractor having used, and undertaking to procure that UK Detention Services Limited uses, all reasonable endeavours to so redeploy such employees);

and

- (c) the aggregate of all statutory redundancy payments (as defined in section 135 of the Employment Rights Act 1996) properly payable by the Contractor to any employee who has been exclusively employed in the Project for a period of at least six (6) months and whose employment is terminated by reason of redundancy (as defined in section 139 of the Employment Rights Act 1996) during the period between the date of termination of the Contract and the date that is 3 (three) months after the date of termination of the Contract;

Detailed Planning Approval

has the meaning assigned to it in **Clause 12.1 (Planning Approval)**;

Development Cost

has the meaning assigned to it in **Clause 39.3 (Variation of Price)**;

Dilapidation Deduction

has the meaning assigned to it in **Clause 39A.8(e) (Benchmarking)**;

Direct Agreement

means the agreement dated on or about the date hereof between the Authority, the Contractor and the Agent for and on behalf of the Banks;

Direct Lines

has the meaning assigned to it in **Clause 56.1 (Facilities for Authority)**;

Direct Shareholders

means that Person or those Persons owning shares of any class in the Contractor, and a ***direct shareholding*** is the interest the said Direct

	Shareholder derives from the shares;
Director	means the Person or Persons appointed and employed by the Contractor in respect of the Prison, and approved by the Authority under Clause 31 (The Director) and Section 85(1)(a) of the Criminal Justice Act 1991;
Dispute	means any difference or dispute of whatsoever nature relating to this Contract between the Authority and the Contractor arising under, out of or in connection with this Contract (including any questions of interpretation thereof) but for the avoidance of doubt excluding any dispute or difference in relation to the availability of Required Insurance which shall be determined in accordance with the procedure contained in Clause 5 (Insurance) ;
Distributions	means repayment of share capital, dividend distributions, subordinated debt principal repayments and subordinated debt interest as set out in lines 40, 44, 45 and 47 of the Schedule K (Finance Plan) ;
Document	includes any written or printed work, or photograph, or any work produced by electronic means including any tapes, disks, CD-ROMs or other recorded matter;
Double Prison Cell	means a Prison Cell with a floor area in excess of ten square metres (10 m ²);
Double Taxation Treaty	means any convention between the government of the United Kingdom and any other government for the avoidance of double taxation and the prevention of fiscal evasion with

	respect to taxes on income and capital;
Effective Date	has the meaning assigned to it in Clause 59A.5(a) (Procurement of IP and IT) ;
Engineer's Completion Works Certificate	has the meaning given to it in Part 2 of Schedule A (Specifications);
Engineer's Declaration	means the declaration to be given under Clause 26.3 (Engineer's Declaration) ;
Engineer's Houseblock Declaration	means the declaration to be given under Clause 26A.3 (Engineer's Houseblock Declaration) ;
Engineer's Houseblock Planting Certificate	has the meaning given to it in Part 2 of Schedule A (Specifications);
Engineer's Lock Works Certificate	has the meaning given to it in Part 2 of Schedule A (Specifications);
Environmental Regulations	Information means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
Equity Value	means the aggregate nominal value of the paid up issued share capital of the Contractor to the extent consistent with the Finance Plan;
Escort Escape	has the meaning assigned to it in Clause 41.8(b) (Plans and Performance Measures) ;
Estimated Opening Date or EOD	means the Contractual Opening Date or such other date as the parties from time to time agree in writing after consultation in good faith will be the

	Actual Opening Date;
<i>Estimated Transfer Value</i>	has the meaning assigned to it in Clause 39A.5 (Benchmarking) ;
<i>Event of Default</i>	means any of the events listed in Clause 44 (Default by Contractor) ;
<i>Excusing Cause</i>	means any of the events listed in the second column of Table 1 in Schedule Z (Excusing Causes) , to the extent that such events arise as a result of the carrying out of the Houseblock Works and/or the Houseblock Removal Works by the Houseblock Construction Sub-contractor, (or by the Authority where Clause 45B.2 (Houseblock Works Consequential Arrangements on Termination) applies) in accordance with the terms of this Contract;
<i>Existing Prison</i>	means the Prison but shall, during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Increased Capacity Date and the date of termination of the Houseblock Works, exclude the Houseblock Works Area;
<i>Existing Specification</i>	has the meaning assigned to it in Clause 39A.2 (Benchmarking) ;
<i>Existing Work Product</i>	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;

Expert	shall have the meaning assigned to it in Clause 5.18 (Unavailability of Insurance) ;
Expiry Date	means the date on which the Contract expires, or would expire, assuming no early termination occurs in accordance with the provisions of the Contract;
Extended Licence	has the meaning assigned to it in Clause 59.5(b)(ii) (Existing Work Products incorporated into Contractor's Work Products) ;
Extended Termination Date	means the Termination Date or such date on which the Contract terminates in accordance with the Direct Agreement;
Extracted Cashflows	shall have the meaning assigned to it in Schedule H (Payments on Voluntary Termination) ;
Facilities	has the meaning assigned to it in Clause 35.1 (Monitoring and Inspection) ;
Fees Regulations	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
FF&E Schedule	shall have the meaning assigned to it in Schedule B (Equipment) ;
Final Notice	has the meaning assigned to it in Clause 44.1(a) (Default by Contractor) ;
Final Pay Details	has the meaning assigned to it in Clause 33B.12 (TUPE Transfers) ;
Finance Plan	means the Contractor's finance plan, attached hereto at Schedule K (Finance Plan) as amended from time to time and approved by the Authority

	pursuant to the provisions hereof;
<i>Financing Agreements</i>	means: <ul style="list-style-type: none"> (a) Original Financing Agreements; and (b) Subsequent Financing Agreements;
<i>First Notice</i>	has the meaning assigned to it in Clause 44.1(a) (Default by Contractor) ;
<i>First Threshold</i>	has the meaning assigned to this term in Clause 5.13(a)(ii) (Insurance) ;
<i>Fixed Fee</i>	means the fee referred to as such in Schedule E (Payment Mechanism) ;
<i>Fixed Charge</i>	means the agreement dated on or about the date hereof between the Contractor and the Authority relating to the equipment referred to in Clause 14 (Supply of Equipment) ;
<i>FOIA</i>	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or order of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
<i>Force Majeure Events</i>	means those events listed in Clause 48 (Force Majeure) ;
<i>Forecast Debt Service Cover Ratio</i>	has the meaning assigned to it in the Credit Agreement;

<i>Formula for Daily Payment</i>	has the meaning assigned to it in Clause 41.7 (Plans and Performance Measures) ;
<i>Full Operation Date</i>	means 10 September 2004, or as the same may be altered pursuant to Clause 24 (Extension of Time) ;
<i>Further Prisoner Place</i>	has the meaning assigned to it in Clause 22.1 (Phase-in Period) and Clause 22A.1 (Increased Capacity Phase-In Period) ;
<i>Further Female Prisoner Place</i>	means a Further Prisoner Place to be occupied by a female Prisoner;
<i>Further Male Prisoner Place</i>	means a Further Prisoner Place to be occupied by a male Prisoner;
<i>Good Industry Practice</i>	means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor and/or operator (as applicable) of custodial facilities seeking in good faith to comply with its contractual obligations, complying with all legislation (whether or not binding on the Authority) and engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this Contract;
<i>Governor</i>	means a Crown servant appointed by the Authority under Section 88 of the Criminal Justice Act 1991;
<i>Group</i>	has the meaning which would have been given by section 170 of the Taxation of Chargeable Gains Act 1992 if in that section references to residence in the United Kingdom were omitted and for references to seventy

			five per cent. (75%) subsidiaries there were substituted references to fifty one per cent. (51%) subsidiaries;
<i>Holding Company</i>			has the meaning assigned to it in Clause 50.3(b) (Change of Control) ;
<i>High Dependency Unit</i>			means an area within the Prison that is designated to manage and accommodate Prisoners with mental disorders;
<i>Houseblock</i>			means the new seventy seven (77) place houseblock building at the Prison and its associated facilities and infrastructure;
<i>Houseblock Construction Sub-contract</i>			means the contract to be entered into between the Contractor and the Houseblock Construction Sub-contractor in respect of the design, execution and completion of the Houseblock Works;
<i>Houseblock Construction Sub-Contract Dispute</i>			has the meaning assigned to it in Clause 72 (Dispute Resolution) ;
<i>Houseblock Construction Sub-contractor</i>			means Interserve Project Services Limited or, with the prior written approval of the Authority, such other Houseblock Construction Sub-contractor appointed by the Contractor, subject to the provisions of Clause 7 (Sub Contracting) , from time to time to execute the Houseblock Works;
<i>Houseblock Documents</i>			means any of the Documents listed in Schedule W (Houseblock Documents) ;
<i>Houseblock Event of Default</i>			means any of the events listed in Clause 44A (Houseblock Default) ;

Houseblock PI Insurance

has the meaning assigned to it in paragraph 4A, part 1A of **Schedule O (Construction Sub-contract PI Insurance)**;

Houseblock Planting

means the element of the Houseblock Works comprising the reinstatement, as necessary, of landscaping and planting outside the Prison wall following the carrying out of the Completion Works;

Houseblock Relevant Event

means any of the following events:

- (a) a change of service is required by the Authority under **Clause 9 (Change to Services Required)**, or Prison Legislation is enacted as contemplated in **Clause 39 (Variation of Price)** and that change or Prison Legislation requires the Contractor to perform or procure building works upon the Houseblock Works Area or to change the nature of or reprogramme the Houseblock Works or to redesign or amend the nature or extent of the Custodial Service;
- (b) any failure or delay by the Authority to comply with any of its obligations under this Contract, or the Lease, or any delay by the Authority or any representative of the Authority or other Person deriving authority from the Authority in allowing the Contractor or the Houseblock Construction Sub-Contractor to have access to the Site or any obstruction by the Authority or any Representative

of the Authority insofar as such failure or delay is relevant to the Houseblock Works and/or the provision of the Increased Capacity;

- (c) strikes or other industrial action in the nature of go slows, lock-outs, blockades by any parties other than any of the employees of the Contractor or any of the Sub-contractors or suppliers to the Contractor or the Sub-contractors affecting the Houseblock Works;
- (d) civil commotion including any blockage or embargo relating to the cost of fuel (other than any civil commotion the primary intention of which is to disrupt the Houseblock Works or the opening of the Houseblock) or terrorism;
- (e) exceptionally adverse weather conditions (at least significantly exceeding the worst conditions that have occurred in the area of the Site at the same time of Year over the previous ten (10) Years);
- (f) specified perils under the Houseblock Construction Sub contract being fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them (except where such specified perils caused by the wilful or reckless

default or breach of a relevant obligation under the Houseblock Construction Sub contract by the Operating Sub-contractor or the Houseblock Construction Sub-contractor);

- (g) the discovery of fossils, antiquities or other objects of interest and value, which may be found on the Land or in excavating the same during the progress of the Houseblock Works;
- (h) any award by an Arbitrator or an Adjudicator (which award is not referred to arbitration) pursuant to **Clause 72 (Dispute Resolution)** to the extent such award includes a determination that the Contractual Opening Date and/or the Full Operation Date should be deferred and/or necessary adjustments be made to the Increase Capacity Phase-in Period Timetable;
- (i) any works undertaken by the Statutory Undertaker to supply services to the Site; and
- (j) adverse weather conditions (as defined in the Construction Sub-contract);

Houseblock Removal Works

has the meaning assigned to it in **Clause 45B.6 (Houseblock Works Consequential Arrangements on Termination)**;

Houseblock Works

means all the works which the Contractor is required to carry out pursuant to **Part 2 of Schedule A (Design and Construction**

		Specification - Houseblock Works);	
<i>Houseblock Works Area</i>		means during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Increased Capacity Date and the date of termination of the Houseblock Works, that area of land shown edged blue on the plan attached at Schedule X (Houseblock Works Area);	
<i>Houseblock Works Fee</i>		means [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED] exclusive of VAT;	
<i>Houseblock Works Monitoring Contract</i>		means the contract between the Authority and the Independent Engineer setting out the terms of the Independent Engineer's appointment as amended from time to time;	
<i>Houseblock Works Rectification Notice</i>		has the meaning assigned to it in Clause 45A.1 (Houseblock Works Termination);	
<i>Houseblock Works Rectification Period</i>		has the meaning assigned to it in Clause 45A.1 (Houseblock Works Termination);	
<i>Houseblock Works Termination Date</i>		has the meaning assigned to it in Clause 45A.5 (Houseblock Works Termination);	
<i>Houseblock Works Termination Notice</i>		has the meaning assigned to it in Clause 45A.5 (Houseblock Works Termination);	
<i>Increased Capacity</i>		means an increase in the capacity of the Prison by seventy seven (77) Available Prisoner Places;	
<i>Increased Capacity Delay Notice</i>		has the meaning assigned to it in Clause 24A.1 (Extension of Time -	

	Increased Capacity);
<i>Increased Capacity Operational Proposals</i>	has the meaning assigned to in Clause 20A.1 (Preparation for Operation of the Increased Capacity);
<i>Increased Capacity Permission</i>	has the meaning assigned to it in Clause 12A.1 (Planning Permission - Increased Capacity);
<i>Increased Capacity Phase-in Period</i>	means the period between the Contractual Houseblock Opening Date and the Contractual Increased Capacity Date;
<i>Increased Capacity Phase-in Period Timetable</i>	means the timetable set out in paragraph 2B of Schedule E (Payment Mechanism) as the same may be adjusted from time to time in accordance with Clause 26A (Engineer's Houseblock Declaration);
<i>Independent Engineer</i>	means the Person or firm appointed by the Authority to act as an independent engineer for the purposes of this Contract, being at the date hereof Gibb Limited and in respect of the Houseblock Works, JacobsGIBB Limited, or any named representative thereof, or such other qualified, experienced and independent Person or firm so appointed from time to time by the Authority on the terms of the Monitoring Contract following consultation with the Contractor;
<i>Independent Report</i>	has the meaning assigned to it in Clause 6.4 (Liability for Loss and Damage);
<i>Indexed</i>	has the meaning assigned to the process varying the Indexed Fee as set out in paragraph 6(a) of Schedule E

	(Payment Mechanism);
<i>Indexed Costs Fee</i>	means the fee referred to as such in Schedule E (Payment Mechanism);
<i>Indexed Fee</i>	means the fee referred to as such in Schedule E (Payment Mechanism);
<i>Indirect Shareholder</i>	means that Person or those Persons owning shares of any class in the Direct Shareholder, and an <i>indirect shareholding</i> is the interest the said Indirect Shareholder derives from its shares;
<i>Information</i>	has the meaning given under Section 84 of the Freedom of Information Act 2000;
<i>Inmate Related System(s)</i>	means the inmate management system(s) and application(s) referred to in Part 2 of Schedule B (Equipment) , as replaced, upgraded or modified from time to time;
<i>Insurance</i>	means the insurance policies required to be effected and maintained in accordance with the Contract;
<i>Insurance Claim</i>	has the meaning assigned to it in Schedule 2 to the Direct Agreement;
<i>Insurance Costs Fee</i> or ICF	has the meaning assigned to this term in Schedule E (Payment Mechanism);
<i>Insurance Notice</i>	shall have the meaning set out in Clause 5.14 (Unavailability of Insurance);
<i>Insurance Proceeds</i>	has the meaning assigned to it in Schedule 2 to the Direct Agreement;
<i>Insurance Review Date</i>	means the date falling:

- (a) thirty (30) Days prior to the Actual Opening Date; and
- (b) thereafter the date that is agreed between the parties from time to time or otherwise determined by the Expert pursuant to **Clause 5.13A (Insurance Review Period)**;

Insurance Termination Notice

has the meaning assigned to it in **Clause 5.18.9(c) (Insurance)**;

Insurance Threshold Amount

has the meaning assigned to it in **Schedule 2** to the Direct Agreement;

Intellectual Property Rights

means patents, trade marks, service marks, copyrights, semi-conductor topography rights, database rights, design rights, trade secrets and rights of confidence, and all other intellectual property rights and other rights or forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world, whether or not any of them are registered and including applications for registration of any of them;

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 in relation to this Project the benefit of which (or part thereof) is to be used or is intended to be used by the Contractor

	or any Sub-contractor in connection with the Services;
<i>Joint Insurance Proceeds Account</i>	means the account referred to in Clause 5.6(a)(i) (Insurance) ;
<i>Land</i>	means the land and premises more particularly defined as the Premises in the Lease;
<i>Landlord</i>	has the meaning assigned to it in the Lease;
<i>Lease</i>	means the Lease of even date herewith entered into by the Authority, the Contractor and the Operating Sub-contractor;
<i>Legislation</i>	means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978 and any exercise of the Royal Prerogative and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
<i>Lender Liabilities</i>	<p>means (subject as stated below) that amount which represents the aggregate, determined in accordance with Clause 16 and Schedule 3, both of the Direct Agreement, of:</p> <p>(a) all (i) principal outstanding as at the Termination Date and, (ii) interest (excluding default interest) which has accrued and not been paid as at the Termination Date provided such amounts are owing to Banks under the Financing Agreements; and</p> <p>(b) all amounts (if any) payable by</p>

the Contractor as at the Termination Date under the terms of any agreements entered into by the Contractor and approved by the Authority hedging the interest rate exposure of the Contractor under the agreements referred to in paragraph (a) above;

less the aggregate of:

- (i) all amounts (if any) payable to the Contractor under the terms of any of the Financing Agreements; and
- (ii) any amounts of Cash deposited or placed by or on behalf of the Contractor to secure obligations owed under any of the Financing Agreements (including any interest on deposits that has been added to the original deposit for the purpose of security);

calculated on the basis that the relevant Financing Agreements have been terminated, accelerated, cancelled and/or closed out as the case may be provided that Lender Liabilities shall not include:

- (a) any principal which has been advanced after a Rectification Notice or Termination Notice has been served unless:
 - (i) the Authority has consented to that advance being included in any Lender Liabilities;

or

- (ii) that advance was in accordance with the Finance Plan and spent by the Contractor in the performance of its obligations under the Contract;

provided that:

- (x) in respect of termination pursuant to **Clause 5.18.9(a) (Unavailability of Insurance)** or **5.18.9(c) (Unavailability of Insurance)**, Lender Liabilities shall include all principal which has been advanced and is outstanding as at the Termination Date but under no circumstances shall the Lender Liabilities be more than the sum of (aa) the amount which the Lender Liabilities would have been without the operation of this paragraph (x) (the **Relevant Lender Liability Amount**) plus (bb) an amount equal to ten per cent. (10%) of the Relevant Lender Liability Amount provided further that Lender Liabilities shall only include such additional ten per cent. (10%) if:

- (i) the Authority is notified that the Contractor has made a written request for an advance not contemplated by the Finance Plan (and such notification, including the

intended amount of any such advance, is made to the Authority at least fourteen (14) Days prior to such intended advance being made) and that the Authority is notified of the amount of the actual advance at least three (3) Business Days prior to the actual advance being made; and

(ii) such advance is in respect of those costs referred to in paragraphs (a), (b), (c) and (f) of the definition of Project Costs contained in the Credit Agreement;

(b) any principal advanced to finance the payment of default interest or any fee or other amount not specifically identified as being an item to be funded by an advance of principal in a Financing Agreement (except amounts advanced by the banks to fund a payment to be made by the Contractor pursuant to **Clause 39A.7) (Benchmarking)**;

(c) any interest on any advance of principal referred to in (a) in this paragraph; or

(d) any amount that is in any way attributable to any obligation in respect of subordinated debt;

LIBOR

means the rate notified to the Authority by the Agent from time to time pursuant to Clause 14.1(n) of the

	Direct Agreement whilst the Credit Agreement is in effect, and thereafter, in respect of any month, the three (3) month London Interbank offer rate on the first business Day of such month, as shown in the Financial Times;
<i>Licence</i>	has the meaning assigned to it in Clause 11.1.2 (The Land) ;
<i>Loan Life Cover Ratio</i>	has the meaning assigned to it in the Credit Agreement;
<i>Lock Works</i>	means the fitting of locks within the Houseblock;
<i>Long Stop Date</i>	means the date nine (9) months after the Contractual Houseblock Opening Date;
<i>Losses</i>	has the meaning assigned to it in Clause 4.1 (Indemnities) ;
<i>Minimum Additional Contracted Capacity</i>	shall mean those Additional Prisoner Places, which the Contractor is obliged to pay for on an Availability Basis as set out in paragraph 7 of Schedule E (Payment Mechanism) ;
<i>Minimum Contracted Capacity</i>	shall mean those Available Prisoner Places, which the Authority is obliged to pay for on an Availability Basis pursuant to Clauses 22.2 (Phase-in Period) and 23.2 (Phase-in Period) ;
<i>Minimum Period</i>	has the meaning assigned to it in Clause 40A.4 (Additional Prisoner Places) ;
<i>Monitoring Contract</i>	means the contract dated 7 July 2000 between the Authority and the Independent Engineer setting out the terms of the Independent Engineer's appointment as amended from time to time, an unpriced certified copy of

	which will be provided to the Contractor upon request;
<i>Mother and Baby Unit</i>	means an area within the Prison that is designated as separate accommodation for occupation by Prisoners and their babies;
<i>Named Representatives of the Authority</i>	means those Persons whose names appear at Part 1 of Schedule J (Named Representatives) or as varied pursuant to Clause 62 (Authority to Commit and Variation) ;
<i>Named Representatives of the Contractor</i>	means those representatives of the Contractor whose names appear in Part 2 of Schedule J (Named Representatives) or such other Person(s) notified to the Authority by the Contractor in writing attaching a resolution of the Board of Directors of the Contractor appointing such Person(s);
<i>National Computing Centre</i>	has the meaning assigned to it in Clause 59.4(b) (Contractor's Work Products) ;
<i>New Contractor</i>	has the meaning assigned to it in Clause 33B.12 (TUPE Transfers) ;
<i>New Lease</i>	has the meaning assigned to it in Clause 11.6 (The Land) ;
<i>Net Insurance Cost</i>	means the difference in cost between the Base Cost and the Actual Cost;
<i>Non-Compliance Notice</i>	has the meaning assigned to it in Clause 27.3 (Cell Certification) ;
<i>Notice of Acceptance</i>	has the meaning assigned to it in Clause 72.2 (Dispute Resolution) ;

<i>Notice of Adjudication</i>	has the meaning assigned to it in Clause 72.1 (Dispute Resolution) ;
<i>Notice of Change</i>	has the meaning assigned to it in Clause 9.1 (Change to Services Required) ;
<i>Notification Date</i>	shall have the meaning assigned to it in Clause 5.14 (Unavailability of Insurance) ;
<i>Notified Termination Date</i>	has the meaning assigned to it in the Direct Agreement;
<i>OECD Country</i>	means a member country of the Organisation for Economic Co-operation and Development;
<i>Open Space Land</i>	has the meaning assigned to it in Clause 11.1.2 (The Land) ;
<i>Operational Premiums</i>	means the aggregate market cost of insurance premiums in order for the Contractor and/or Authority to effect the Required Insurances for a period of at least one Year commencing on the next Renewal Date;
<i>Operational Proposals</i>	has the meaning assigned to it in Clause 20.1 (Preparation for Operation of the Prison) ;
<i>Operational Staff</i>	shall mean a Person who is required to work or perform duties at the Prison at any time during the period from the Actual Opening Date to the end of the Contract Term and who is an employee of the Contractor, or an employee of any Sub-contractor or is self-employed, including the Director and any Prisoner Custody Officer;
<i>Operating Defect</i>	has the meaning assigned to it in Clause 59A.6 (Procurement of IP

	and IT);
<i>Operating Sub-contract</i>	means the agreement dated on or about the date hereof between the Contractor and the Operating Sub-contractor in respect of the provision of certain operation and maintenance services to be provided by the Contractor hereunder;
<i>Operating Sub-contract Dispute</i>	has the meaning assigned to it in Clause 72.6 (Dispute Resolution);
<i>Operating Sub-contractor</i>	means Sodexo Limited or, with the prior written consent of the Authority and subject to the provisions of Clause 7 (Sub-contracting) , such other sub-contractor(s) appointed by the Contractor from time to time to perform the Custodial Service (other than those undertaken by the Construction Sub-contractor and/or the Houseblock Construction Sub-contractor in their capacity as such);
<i>Original Financing Agreements</i>	means all agreements (including any agreements hedging the exposure of the Contractor to interest rate variations) entered into, on or prior to the date of this Contract by the Contractor and any Banks for the provision of finance to the Contractor for the purpose of its obligations under the Contract, as initialled by the Authority in accordance with Clause 3.1 (Preliminary Information);
<i>Original Notice</i>	has the meaning assigned to it in Clause 33.7 (The Operational Staff);
<i>Original Planning Agreement</i>	has the meaning assigned to it in Clause 12.2 (Planning Approval);

<i>Original Projected Distributions Amount</i>	has the meaning assigned to it in Clause 3.2(e) (Preliminary Information) ;
<i>Other Approved Liabilities</i>	means any liabilities owing by the Contractor (other than in respect of Lender Liabilities or Equity Value) and approved in writing by the Authority as constituting an element of the Transfer Value;
<i>Outline Clearance</i>	has the meaning assigned to it in Clause 12.1 (Planning Approval) ;
<i>Performance Measure</i>	means an event or circumstance listed as such in Schedule F (Performance Measures) in respect of which there may be a reduction in the amount payable hereunder as provided in Clause 41.7 (Plans and Performance Measures) ;
<i>Performance Point</i>	means each point accruing on the occurrence of a Performance Measure, as more particularly set out in Schedule F (Performance Measures) ;
<i>Performance Quarter</i>	means each of the four (4) successive periods of three (3) calendar months during the Performance Year;
<i>Performance Year</i>	means the Year commencing on the first Day of the April following the Full Operation Date and each Year commencing on each anniversary of such Day;
<i>Permission</i>	has the meaning assigned to it in Clause 12.1 (Planning Approval) ;
<i>Permitted Level</i>	means on any date during the Contract Term the aggregate of: <p>(a) five per cent. (5%) of the</p>

aggregate number of Available Prisoner Places occupied on that date (excluding Additional Prisoner Places occupied); and

- (b) twice the number of Additional Prisoner Places occupied on that date;

Person

means any individual, firm, company, partnership, corporation, joint venture, association, trust, unincorporated association or agency (whether or not having separate legal personality);

Personal Data

means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;

Phase-in Period

means the period starting on the Contractual Opening Date and ending on the date falling seven (7) Days after the Full Operation Date;

Phase-in Timetable

means the timetable set out in paragraph 2 of **Schedule E (Payment Mechanism)** as the same may be adjusted from time to time in accordance with **Clause 24 (Extension of Time)**;

PI Insurance

has the meaning assigned to it in paragraph 4, part 1A of **Schedule O (Construction Sub-contract PI Insurance)**;

Planning Agreement

has the meaning assigned to it in **Clause 12.2 (Planning Approval)**;

Planning Approval

means such planning clearance or permission whether under DoE Circular 18/84 or the Town and Country

	Planning Act 1990 as is necessary for the Contractor to discharge lawfully its obligations under the Contract;
<i>Police Authority</i>	has the meaning assigned to it in Clause 5A1.2(a) (Riot Damages Act 1886) ;
<i>Prison</i>	means the buildings and structures and land enclosed within the boundary of the Land, and each and any of their component parts described in Part 1 of Schedule A (Design and Construction Specification) , and existing on the Land, together with any extensions and alterations thereto existing from time to time within which the Contractor is to provide the Custodial Service including, from the Actual Houseblock Opening Date, the Houseblock;
<i>Prison Cell</i>	means a secure unit of accommodation for occupation by a Prisoner or Prisoners (including segregation units and secure units for occupation by a Prisoner or Prisoners in the healthcare centre of the Prison);
<i>Prison Population</i>	means the number of Prisoners occupying the Prison at any given time;
<i>Prisoner</i>	means any Person for the time being detained in legal custody as a result of a requirement, imposed by a court or otherwise, that he be so detained;
<i>Prisoner Custody Officer or PCO</i>	means a Person, as defined in Section 89(1) of the Criminal Justice Act 1991, in respect of whom a certificate is for the time being in force certifying that he has been approved by the Authority for the purpose of performing Custodial

	Duties in accordance with Clause 32 (Prisoner Custody Officers) ;
<i>Prisoner Day</i>	shall mean any complete Day in which a Prisoner is in custody at the Prison;
<i>Prisoner Escort Fee</i>	means the fee for the Prisoner Escort Service to be provided in accordance with Clause 36.1 (Escort Arrangements) ;
<i>Prisoner Escort Service</i>	shall have the same meaning as "prisoner escort arrangements" in Section 80 of the Criminal Justice Act 1991 and shall be in respect of the Prison;
<i>Prison Escape</i>	has the meaning assigned to it in Clause 41.8(a) (Plans and Performance Measures) ;
<i>Prison Legislation</i>	means any Legislation or any amendment or modification of any Legislation (whether on re-enactment or otherwise) first having legal effect after the date hereof which expressly refers to the provision (including building), holding shares in and/or running of the Prison, prisons generally, contracted out prisons or which otherwise discriminates solely against those in the business of the provision (including building), holding shares in and/or running of prisons generally, contracted out prisons or the provision of prisoner escort services of the type to be provided under Clause 36 (Escort Arrangements) of this Contract (other than any such Legislation which, on the date hereof, has been published in substantially the same form as such Legislation takes when it has legal effect, as a draft Bill in a Governmental Departmental

	Consultation Paper, a Bill, or a draft statutory instrument or published as a proposal, in the Official Journal of the European Communities);
<i>Prisoner Place</i>	means a unit of accommodation for occupation by a Prisoner in a Prison Cell (other than in a Prison Cell which is a segregation unit) at the Prison;
<i>Product of a Prisoner's Labour</i>	has that meaning assigned to it in Clause 59.12 (Miscellaneous) ;
<i>Project</i>	means the provision of the Services;
<i>Project Cash Flow</i>	shall have the meaning set out in Schedule H (Payments on Voluntary Termination) ;
<i>Protocol</i>	means the Media Handling Protocol issued by the Authority (and as may be amended from time to time);
<i>Purposeful Activity</i>	means education (including e-learning), work visits, resettlement (including induction courses and Prisoner behavioural programmes) and other activities such as voluntary work and recreational sporting activities;
<i>Quarterly Performance Measure</i>	means an event or circumstance listed as such in Schedule F (Performance Measures) in respect of which there may be a reduction in the amount payable hereunder as provided in Clause 41.7 (Plans and Performance Measures) ;
<i>Recipient</i>	has the meaning, for the purpose of Clause 30 (Conduct of Operation) only, assigned to it in Clause 30.7 (Conduct of Operation) ;
<i>Recognised Securities Exchange</i>	shall mean a recognised investment exchange within the meaning of the

	Financial Services and Markets Act 2000;
<i>Rectification Notice</i>	has the meaning assigned to it in Clause 45.1 (Rectification and Termination for Default) ;
<i>Rectification Period</i>	has the meaning assigned to it in Clause 45.1 (Rectification and Termination for Default) ;
<i>Referral Criteria</i>	means the criteria set out in paragraph 3.1 of Part 1C of Schedule D (Operational Requirements) ;
<i>Refinancing Date</i>	means the date on which Subsequent Financing Agreements are or are to be effective;
<i>Refinancing Information</i>	has the meaning assigned to it in Clause 3.2(a) (Preliminary Information) ;
<i>Regulations</i>	has the meaning assigned to it in Clause 13.2 (Provision of the Prison) ;
<i>Reinstatement Date</i>	has the meaning assigned to it in Clause 6.4(iii) (Liability for Loss and Damage) ;
<i>Relevant Amount</i>	has the meaning, for the purpose of Clause 4.8 (Indemnities) only, assigned to it in Clause 4.8(f) (Indemnities) ;
<i>Relevant Available Period</i>	has the meaning assigned to it in Clause 40A.2 (Additional Prisoner Places) ;
<i>Relevant Date</i>	means any date on or after the third anniversary of the Full Operation Date PROVIDED THAT prior to that date the Prison Population has exceeded four hundred and thirty (430) for not less

than sixty (60) Days out of any period of ninety (90) Days;

Relevant Event

means any of the following events:

- (a) a change of service is required by the Authority under **Clause 9 (Change to Services Required)** or Prison Legislation is enacted as contemplated in **Clause 39 (Variation of Price)** and that change or Prison Legislation requires the Contractor to perform or procure building works upon the Site or to change the nature or extent of, or to reprogramme, the Works or to redesign or amend the nature or extent of the Custodial Service;
- (b) not used
- (c) any failure or delay by the Authority to comply with any of its obligations under the Contract or the Lease, or any delay by the Authority in allowing the Contractor or Construction Sub-contractor to have access to the Site or any obstruction by the Authority or its contractors or the employees of either;
- (d) strikes or other industrial action in the nature of go slows, lock-outs, blockades by any parties other than any of the employees of the Contractor or any of the Sub-contractors or suppliers to the Contractor or the Sub-contractors;

- (e) civil commotion (other than any civil commotion the primary intention of which is to disrupt the Works or the opening of the Prison) or terrorism;
- (f) exceptionally adverse weather conditions (at least significantly exceeding the worst conditions that have occurred in the area of the Site at the same time of Year over the previous ten (10) Years) other than those which are specified perils under the Construction Sub-contract; or
- (g) specified perils under the Construction Sub-contract, being fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom (except where caused by the wilful or reckless default or breach of a relevant obligation under a Sub-contract by any of the Contractor and the Sub-contractors);
- (h) the discovery of fossils, antiquities or other objects of interest and value, which may be found on the Land or in excavating the same during the progress of the Works;
- (i) any award by an Arbitrator or an Adjudicator (which award is not referred to arbitration) pursuant to **Clause 72 (Dispute Resolution)** to the extent such award includes a determination

that the Contractual Opening Date and/or the Full Operation Date should be deferred and/or necessary adjustments be made to the Phase-in Timetable;

(j) any works undertaken by the Statutory Undertaker to supply services to the Site; and

(k) adverse weather conditions (as defined in the Construction Sub-contract);

Relevant Extent

has the meaning assigned to this term in **Clause 5.13(c) (Insurance)**;

Relevant Insurance Review Date

has the meaning ascribed to this term in **Clause 5.13A.1 (Insurance Review Period)**;

Relevant IP Event

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

Relevant IT/IP Contracts

has the meaning assigned to it in **Clause 59A.3 (Procurement of IP and IT)**;

Relevant Lender Liability Amount

has the meaning, for the purpose of the definition of Lender Liabilities only, assigned to it in the definition of Lender Liabilities;

Relevant Party

has the meaning assigned to it in **Clause 59A.1(b) (Procurement of IP and IT)**;

Relevant Period

means the period from the Transfer Date to the Expiry Date;

Relevant Personnel documentation

has the meaning assigned to it in

	Clause 33B.12 (TUPE Transfers);
Relevant Successor	has the meaning specified in Clause 59.A.3 (Procurement of IP and IT);
Renewal Date	means, in respect of a policy of Insurance, its expiry date or any earlier date when it would cease to be available in accordance with its terms;
Representative of the Authority	means the Person duly authorised by the Authority to act for the purposes of the relevant provision of the Contract pursuant to Clause 62 (Authority to Commit and Variation);
Request for Information	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);
Required Insurance	means those policies of Insurance set out in paragraphs 1 to 8 (inclusive) of Part 1B of Schedule O (Insurance) to be maintained or required to be maintained (or which but for Clauses 5.14 – 5.21 (inclusive) (Unavailability of Insurance) would be required to be maintained) by the Contractor pursuant to the Contract;
Required Licence	has the meaning assigned to it in Clause 59.5 (Existing Work Products incorporated into Contractor's Work Products);
Retail Prices Index or RPI	means the Retail Prices Index as published from time to time in Table 14 (in respect of all items other than mortgage interest payments (RPIX)) of Labour Market trends (ISSN 1361-4819) published by the Office of

	<p>National Statistics or such index in such other journal as shall replace such table (and, for the avoidance of doubt, if RPI is rebased following the date referred to in the definition of RPI_B and RPI_D in paragraph 6 of Schedule E (Payment Mechanism), it shall nevertheless be determined for the purposes hereof as if no such rebasing had occurred);</p>
<i>Retention</i>	<p>means the amount which the Authority is entitled to retain pursuant to Schedule U (Houseblock Works Fee);</p>
<i>Retention Percentage</i>	<p>means three per cent. (3%) of the Houseblock Works Fee;</p>
<i>Review Date</i>	<p>means 1 April of each Year during the term of this Contract save that in the first Year of the Contract Term, it shall mean 1 April of the preceding Year;</p>
<i>Riot</i>	<p>shall be construed in accordance with Sections 1 and 10 (Part 1) of the Public Order Act 1986;</p>
<i>Second Notice</i>	<p>has the meaning assigned to it in Clause 33.7 (The Operational Staff);</p>
<i>Second Threshold</i>	<p>has the meaning assigned to this term in Clause 5.13(a)(ii) (Insurance);</p>
<i>Section 88</i>	<p>has the meaning assigned to it in Clause 55.1 of the Criminal Justice Act 1991 (Intervention by the Secretary of State under Section 88 of the Criminal Justice Act 1991);</p>
<i>Security Technology Change</i>	<p>means any change in the manner in which security and control are or might be maintained in the Prison which</p>

	materially reduces or will materially reduce the number of Prisoner Custody Officers required or otherwise materially reduces or will materially reduce the costs of the Contractor (or the Operating Sub-contractor) in performing its obligations under the Contract (or the Operating Sub-contract);
<i>Services</i>	means all the obligations of the Contractor under the Contract;
<i>Shareholders</i>	means the Direct Shareholders and the Indirect Shareholders;
<i>Single Prison Cell</i>	means a Prison Cell that is not a Double Prison Cell;
<i>Site</i>	means all the Land together with any buildings or structures and parts of buildings or structures and each and any of their component parts, whether temporary or permanent, which may exist thereupon from time to time;
<i>Snagging Matters</i>	means items of outstanding work which do not prevent the Engineer's Houseblock Declaration being issued and which would not prevent a Prisoner Place from being designated as an Available Prisoner Place pursuant to Clause 29 (Available Prisoner Places) ;
<i>Staff</i>	means the Operational Staff, unless otherwise specified;
<i>Standard Requirements</i>	means, in relation to a Prisoner Place, the requirements set out in Part 2 of Schedule D (Operational Requirements) ;
<i>Statutory Obligations</i>	has the meaning assigned to it in

Clause 16.1 (Statutory Obligations, Notices, Fees and Charges);

Statutory Undertaker

means any Person entitled to exercise statutory powers in relation to the Land;

Sub-contract

means the contract between the Contractor and the relevant Sub-contractor, providing for the performance by the Sub-contractor of some or all of the obligations of the Contractor hereunder and approved by the Authority in accordance with **Clause 7 (Sub-contracting);**

Sub-contractor

means the Construction Sub-contractor, the Operating Sub-contractor, the Houseblock Construction Sub-contractor or any Person who has directly contracted with the Contractor (otherwise than under a direct agreement or warranty) for the performance of any obligations of the Contractor hereunder (excluding, for the avoidance of doubt, the Banks), and has been approved by the Authority in accordance with **Clause 7 (Sub-contracting);**

Sub-contractor's Warranty

Collateral

means the collateral warranty between the Authority, the Houseblock Construction Sub-contractor and the Contractor delivered to the Authority pursuant to **Clause 2A (Houseblock Documents);**

Subsequent Financing Agreements

means all agreements entered into after the date of this Contract by the Contractor with any Banks or other financial institutions which amend, reschedule, refinance or replace the Original Financing Agreements and any changes to the financing structure or

	arrangements, interest rates, repayment dates, maintenance of reserve accounts requirements, margins or level of debt under the Finance Plan;
<i>Subsidiary</i>	has the meaning assigned to it in Clause 50.3(b) (Change of Control) ;
<i>Substitute Entity</i>	means a Person duly appointed to be the new contractor in replacement of the Contractor in accordance with the provisions of the Direct Agreement;
<i>Supplemental Fixed Charge</i>	means the agreement dated on or about the date of the Amending Agreement between the Contractor and the Authority relating to the equipment referred to in Clause 14.1A (Supply of Equipment) ;
<i>Supplemental Planning Agreement</i>	has the meaning assigned to it in Clause 12.2 (Planning Approval) ;
<i>Supplier</i>	has the meaning assigned to it in Clause 59A.1 (Procurement of IP and IT) ;
<i>Taxation</i>	has the meaning, for the purpose of Clause 49.5 (Payment for Termination) only, assigned to it in Clause 49.5(b) (Payment for Termination) ;
<i>Tenant</i>	has the meaning assigned to it in the Lease;
<i>Termination Date</i>	means the date on which the Contract terminates in accordance with the relevant terms hereof (but disregarding for these purposes the provisions of the Direct Agreement);

<i>Termination Notice</i>	means a notice issued in accordance with Clause 45.5 (Rectification and Termination for Default) ;
<i>Termination Payment</i>	has the meaning assigned to it in Clause 49.5(a) (Payment for Termination) ;
<i>Third Threshold</i>	has the meaning assigned to this term in Clause 5.13(a)(iii) (Insurance) ;
<i>Transfer Date</i>	means, subject to Clause 39A.6(d) (Benchmarking) , the date (being any Day) which is fifteen (15) months after the date of any notice served by the Authority pursuant to Clause 39A.1 (Benchmarking) ;
<i>Transferring Employees</i>	has the meaning assigned to it in Clause 33B.12 (TUPE Transfers) ;
<i>Transfer Value</i>	means the Equity Value, Lender Liabilities and Other Approved Liabilities all as at the Transfer Date;
<i>Transitory Escape</i>	has the meaning assigned to it in Clause 41.8(c) (Plans and Performance Measures) ;
<i>Treaty Entity</i>	means a Person who is resident (as such term is defined in the Double Taxation Treaty) in a country with which the United Kingdom has a Double Taxation Treaty pursuant to which that Person is entitled to complete exemption from the United Kingdom taxation on interest and who does not carry on business in the United Kingdom through a permanent establishment (as such term is defined in the appropriate Double Taxation Treaty) with which the indebtedness under this Contract in respect of which the interest is paid is effectively

TUPE Regulations

connected;

means the Transfer of Undertakings (Protection of Employment) Regulations 1981 or any successor Legislation;

TUPE Transfer Date

has the meaning assigned to it in **Clause 33B.12 (TUPE Transfers)**;

Unavailable

shall subject to **Clauses 1.4 (Definitions)** and **1.5 (Definitions)** mean, in respect of a relevant Required Insurance, where any of limits of indemnities or the scope of cover are not available at levels and in accordance with the terms set out in this Contract, or where it is so available but not at a commercial premium and provided that in all instances such unavailability (including unavailability at a commercial premium) is not caused by an act or omission of:

- (a) the Contractor; or
- (b) any Sub - contractor; or
- (c) any Subsidiary of (a) and (b) above; or
- (d) any other company within the Sodexo Alliance S.A. Group which has responsibility for managing custodial services at any custody facility,

where such act or omission is not in accordance with Good Industry Practice, is negligent or is in breach of the relevant entity's contractual provisions, and **Available** shall be construed accordingly.

Utilised Available Prisoner Places

means Available Prisoner Places after the Relevant Date, which the Authority

	is obliged to pay for on a Utilised Basis;
<i>Utilised Basis</i>	means paying for each Available Prisoner Place or Additional Prisoner Place, which is available and occupied by a Prisoner for each Day or part of a Day during the relevant period;
<i>Value Added Tax</i>	means value added tax as referred to in Section 1 of the Value Added Tax Act 1994 or any similar tax replacing or substituting the same;
<i>Virus</i>	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 by including extraneous or redundant code or data or by altering or erasing the program or data in whole or in part or otherwise), including computer viruses, worms, Trojan horses, logic bombs and other similar things;
<i>Wage Costs</i>	means all costs, claims and expenses in respect of the recruitment, training, employment or hiring by any Sub-contractor (or by any other Person who has undertaken to provide any part of the Services, without double-counting) of any employee, servant, agent or representative to carry out any of the Services;
<i>Work Product</i>	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;

Works

means all the works which the Contractor is required to carry out under the Contract as set out in **Part 1 of Schedule A (Design and Construction Specification)**; and

Year

means a calendar Year unless otherwise specified.

1.2 In this Contract, except where the context otherwise requires:

- (a) the masculine includes the feminine;
- (b) the singular includes the plural and vice versa;
- (c) references to **the Contract** or to **this Contract** mean this agreement as concluded between the Authority and the Contractor including all Schedules, annexes, plans and drawings attached thereto, together with any variations agreed by the Authority in accordance with **Clause 62 (Authority to Commit and Variation)**;
- (d) any reference to any enactment, order, regulation, code or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted; and
- (e) the headings to the Clauses contained herein are for the convenience of the parties and are not intended to affect the interpretation thereof.

1.3 This Contract is entered into under the private finance initiative and the consideration due under this Contract is determined in part by reference to the standards attained in the performance of a service and one party to this Contract is a Minister of the Crown. Accordingly, this Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of Clause 4 (Indemnities) of the Construction Contracts Exclusion (England and Wales) Order 1998. The Contractor acknowledges, that the operation of the Housing Grants,

Construction and Regeneration Act 1996 upon any Sub-contract shall not affect the parties' rights or obligations under this Contract.

1.4 Required Insurance shall, for the purposes of the definition of Unavailable and **Clauses 5.13(a)(iv)(bb) (Insurance)** and **5.18.5.1(b) (Unavailability of Insurance)**, only be deemed not to be Available at a Commercial Premium where the cost of the Operational Premiums is equal to or more than 100% over the Base Cost, and otherwise shall be deemed to be Available at a Commercial Premium.

1.5 Any change to the level of any deductible in respect of a relevant Required Insurance shall not be taken into account for the purpose of determining whether a relevant Required Insurance is Available save for an increase to the level of the deductible set out in **paragraphs 1 and 2 of Part 1B of Schedule O (Insurance)** that is equal to or more than [REDACTED].

1.6 For the purposes of the definition of Actual Cost and **Clause 5.13 (Insurance)** and **5.13A (Insurance Review Period)**, the cost of the Operational Premiums for Required Insurance shall be the aggregate of the following:

(a) the actual cost of the premium for each of the Required Insurances detailed in **paragraphs 1, 2, 3 and 4 of Part 1B of Schedule O (Insurance)**, save for those insurances and extensions referred to in Sub-Clause (d) below;

(b) [REDACTED] [REDACTED] (being an amount representing the initial insurance premium tax) (Indexed);

(c) [REDACTED] [REDACTED] [REDACTED] [REDACTED] (being an amount representing the initial Broker Fees) (Indexed); and

(d) [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (being an amount representing the initial actual cost of the premiums for (i) those insurances set out in **paragraphs 5, 6, 7 and 8 of Part 1B of Schedule O (Insurance)**, (ii) Machinery and Computer Breakdown detailed in paragraph 1 of **Part 1B of Schedule O**, and (iii) the Increased Additional Cost of Working Extension detailed in **paragraph 2 of Part 1B of Schedule O (Insurance)** (Indexed).

1.7 The Authority and Contractor hereby confirm that the payments to be made by the Authority pursuant to clause 38.6 and Schedule V (Huseblocht Works fee) (referred to herein for convenience as the "Huseblocht works fee") actually represents the Authority's contribution towards the construction costs of the Huseblocht Works.

2. **Duration of Contract**

- 2.1 The obligations and rights of the parties to this Contract shall commence on the date on which this Contract is executed.
- 2.2 Subject to the terms of Part VII of the Contract (Termination) and any other provisions herein relating to termination and the Direct Agreement, the contract term will be twenty five (25) Years from the Contractual Opening Date.
- 2.3 In the event that the Prison does not open until after the Contractual Opening Date, the Contract Term will nonetheless begin on the Contractual Opening Date, and the Authority shall not be obliged to grant the Contractor any extension of the Contract Term.

2A. **Houseblock Documents**

On or before the date of the Amending Agreement, the Contractor shall provide to the Authority the Houseblock Documents.

3. **Preliminary Information**

- 3.1 The Contractor confirms that it has, on or prior to or on the date hereof provided to the Authority the following Documents:

- (a) the Original Financing Agreements; and
- (b) all Documents creating or purporting to create security interests granted by the Contractor, the Operating Sub-contractor or the Construction Sub-contractor in respect of the Original Financing Agreements or any obligations which relate to the obligations under the Original Financing Agreements and which are Documents referred to as conditions precedent to drawdown under the Original Financing Agreements.

Provided such Documents are in a form and substance satisfactory to the Authority, the Authority shall signify its approval of the Documents referred to in (a) and (b) above by initialling each of them for identification.

- 3.2(a) Prior to concluding any Subsequent Financing Agreements the Contractor shall provide to the Authority the following information and documentation (**Refinancing Information**) relating thereto:-

- (i) certified copies of all relevant documentation;

- (ii) a written summary of the principal commercial and financial terms and the benefits to be obtained from the transaction;
 - (iii) a statement from the Contractor's financial advisers as to whether or not, in their opinion, the arrangements, if implemented, would increase or might increase those amounts owing to Banks comprised within the definition of Lender Liabilities, with supporting reasons; and
 - (iv) any other relevant information.
- (b) The Authority shall provide any comments it may have on the Refinancing Information within twenty eight (28) Days of receipt.
- (c) The Contractor shall respond as promptly as practicable to any questions the Authority may have regarding any of the Refinancing Information.
- (d) The Contractor shall not enter into any Subsequent Financing Agreements which might reasonably be expected to render it incapable of performing any of its obligations under this Contract or to prejudice in any material respect the rights of the Authority under this Contract.
- (e) The Contractor shall not enter into any Subsequent Financing Agreements which directly or indirectly reduce its Cost of Funds or increase the Original Projected Distributions Amount unless the financial benefit resulting from such reduction or increase, as the case may be, has been agreed with the Authority and the Contractor has entered into such documentation as the Authority may reasonably require to pass on to the Authority fifty per cent. (50%) of such financial benefit in the form of a lower Contract Price, a lump sum payment to the Authority or a combination of a lower Contract Price and a lump sum payment to the Authority (as the Authority may elect). For the purposes of the foregoing, **Cost of Funds** shall include (i) an amount equal to the net present value of the aggregate of interest or amounts in the nature of interest and any other sums payable by the Contractor (or a member of any Group of which a Shareholder is a member) to the Banks other than repayments of principal, that would have been payable from the

Refinancing Date to the Expiry Date in the absence of any Subsequent Financing Agreements, using a discount rate equal to the forecast weighted average cost of the senior debt facilities available to the Contractor in the absence of any Subsequent Financing Agreements (ii) costs directly associated with entering into Subsequent Financing Agreements, (iii) any amount of revenue foregone on any sum required to be held as security, and (iv) any other costs which should properly be regarded as part of the cost of debt funding; and **Original Projected Distributions Amount** shall mean an amount equal to the net present value, using a discount rate of fifteen per cent.(15%) per annum applied on a semi-annual basis, of the Distributions projected to be available to the holders of equity share capital and subordinated debt in the Contractor from the Refinancing Date to the Expiry Date in the absence of any Subsequent Financing Agreements and as determined from the Finance Plan; provided that whenever the financial benefit referred to in this paragraph is to be determined, double counting shall be avoided.

- (f) Notwithstanding any other provision of this Contract, unless the Authority expressly agrees otherwise in writing (with express reference to this **Clause 3.2 (Preliminary Information)**), it shall not be obliged to make any payment in respect of Lender Liabilities which would be greater than the payment which it would have been required to make if the Original Financing Agreements had not in any way been amended, rescheduled, refinanced or replaced as the case may be. The Agent may request the Authority to give such agreement but the Authority may withhold its agreement at its discretion or give its agreement subject to such conditions as it thinks fit.
- (g) The Contractor shall pay all reasonable costs of any advisers of the Authority retained in connection with any matter referred to in this **Clause 3.2 (Preliminary Information)**.

4. **Indemnities**

- 4.1 Subject to **Clauses 4.2 (Indemnities), 4.4 (Indemnities), 4.6 (Indemnities)** and **4.8 (Indemnities)**, the Contractor shall fully and effectively indemnify the Authority or any servant, agent or Representative of the Authority in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses (**Losses**) suffered or incurred by the Authority, its servants, agents or

representatives including any payment or charge payable by or on behalf of the Authority to an entity, or a division or agency of an entity, in the public sector which arise in connection with the Contract or its breach, the Lease or its breach, the Project, the Site or the Prison including, without limitation to the generality of the foregoing:

- (a) any Losses which may be incurred or suffered by the Authority or any servant, agent or Representative of the Authority, in respect of personal injury (including injury resulting in death);
- (b) any Losses in respect of any redundancy costs in relation to Persons employed to provide any part of the Services except (i) those arising as a result of the Authority exercising its right under **Clause 46 (Voluntary Termination)** to terminate the Contract and (ii) any other employment costs for which the Authority is liable as provided in **Clauses 9.7 (Change to Services Required)** and **33.7 (The Operational Staff)**;
- (c) subject to **Clause 4.8 (Indemnities)** below, any Losses suffered or incurred by the Authority in connection with its housing Prisoners outside the Prison due to any failure by the Contractor to fulfil its obligation hereunder to provide Available Prisoner Places or Additional Prisoner Places;
- (d) any Losses suffered or incurred by the Authority as a result of any breach by the Contractor of its obligations under **Clause 33B2.1 (TUPE Transfers)**;
- (e) any Losses suffered or incurred by the Authority that are covered by a policy of insurance of the Contractor and/or any Sub-contractor taken out and/or maintained pursuant to the terms of this Contract or any Sub contract (to the extent of such cover); and
- (f) any Losses (including, without limitation to the generality of the foregoing, any legal and professional costs and expenses) suffered or incurred by the Authority in respect of any application for a consent or licence required pursuant to the Lease whether such consent or licence is granted.

4.2 Clause 4.1 (Indemnities) shall not apply to:

- (a) any Losses to the extent that they arise directly from the negligence or wilful default of the Authority or any servant, agent or Representative of the Authority or any failure of the

Authority to comply with its obligations under this Contract, statute or common law other than in respect of any action taken by the Authority pursuant to Section 88 of the Criminal Justice Act 1991;

- (b) Losses to the extent arising directly from the performance by the Authority, its servants, agents or representatives of its obligations under or in respect of the Contract (including, but not limited to, the payment of any part of the Contract Price, any payments due to the Independent Engineer or any other servants, agents or representatives appointed by the Authority in connection with the Contract and any internal costs or expenses incurred by the Authority in monitoring the Contract) or Losses to the extent that the Authority is reasonably able to mitigate them;
- (c) any business rates or council tax in respect of the Prison or the Site (or any contributions made by or requested from a Minister of the Crown in lieu thereof) or any tax or charge imposed in substitution therefor;
- (d) any Losses attributable to any act, event, matter or omission after the expiry of the Contract Term, excluding, for the avoidance of doubt, those attributable to any matters for which the Contractor has accepted responsibility under **Clause 10 (Provision and Interpretation of Information)**;
- (e) any Losses incurred by the Authority or any servant, agent or Representative of the Authority in connection with a breach by the Authority of any public procurement rules; and
- (f) (except as expressly provided in **Clause 4.1(c) (Indemnities)** any indirect or consequential Losses except to the extent that such Losses are (or would have been, had the Contractor not been in default of its obligations under **Clause 5 (Insurance)**) covered by a policy of insurance which is maintained by the Contractor and/or any Sub-contractor or which the Contractor is obliged to maintain pursuant to **Clause 5 (Insurance)** and has failed to maintain.

- 4.3 If the Contractor pays to the Authority an amount in respect of Losses and the Authority subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise howsoever) a sum which

is directly referable to the fact, matter, event or circumstances giving rise to the Losses, the Authority shall forthwith repay to the Contractor:

- (a) an amount equal to the sum recovered (or the value of the savings or benefit obtained) less any reasonable out-of-pocket costs and expenses incurred by the Authority in recovering the same; or
- (b) if the figure resulting under paragraph (a) above is greater than the amount paid by the Contractor to the Authority in respect of the Losses, such lesser amount as shall have been so paid to the Authority.

4.4(a) Unless otherwise expressly provided, the maximum amount for which the Contractor shall be liable under this Clause in respect of Losses against which the Contractor is not required to maintain insurance pursuant hereto shall:

- (i) for the first Year from the date hereof up to but not including the Actual Increased Capacity Date be [REDACTED] for any one incident or series of related incidents and [REDACTED] in aggregate. In subsequent Years, the maximum of [REDACTED] shall be increased on each anniversary of the date hereof cumulatively by the annual increase in RPI; and

- (ii) for the first Year from the Actual Increased Capacity Date be [REDACTED] for any one incident or series of related incidents and [REDACTED] in aggregate. In subsequent Years the maximum of [REDACTED] shall be increased on each anniversary of the Actual Increased Capacity Date by the annual increase in RPI.

- (b) In respect of other Losses, the maximum amount for which the Contractor shall be liable to indemnify the Authority at any time

under the indemnities contained in this **Clause 4 (Indemnities)** shall be the greater of (i) the maximum amount for which the Contractor could at such time be liable pursuant to **Clause 4.4(a) (Indemnities)** and (ii) the amount of insurance procured or maintained or (if greater) required to be procured or maintained pursuant hereto at such time by or on behalf of the Contractor in respect of such Losses.

- (c) The liability of the Contractor pursuant to **Clause 4.1 (Indemnities)** shall arise at the time the relevant Losses are incurred by the Authority; provided, however, that to the extent the amount referred to in **Clause 4.4(b)(ii) (Indemnities)** exceeds the amount referred to in **Clause 4.4(b)(i) (Indemnities)** in respect of any Losses, the Contractor shall not be required to remit the amount of the excess to the Authority except insofar as the relevant claim has been paid by the Contractor's insurer. The Contractor will use its best endeavours to ensure the prompt settlement of any such claim. Nothing in this **Clause 4.4(c) (Indemnities)** shall in any way affect the Contractor's obligation to make payment up to the amount specified in **Clause 4.4(b)(i) (Indemnities)** in respect of any Losses.

4.5 Subject to **Clause 4.6 (Indemnities)** and except as expressly provided in this Contract, the Contractor shall not make any claim against the Authority or any servant, agent or Representative of the Authority in respect of any Losses sustained by the Contractor (or by any other Person, whether or not employed by the Contractor or by any Sub-contractor) by reason of or arising out of or in any way connected with the performance of the Contract, save that where any such Losses are caused or contributed to by the negligence of the Authority or any servant, agent or Representative of the Authority or the breach by the Authority of its obligations under the Contract, the Authority will fully and effectively indemnify the Contractor to the extent to which such Losses are so caused or contributed to as aforesaid, subject, *mutatis mutandis*, to the limits and qualifications set out in **Clauses 4.2 (Indemnities)** and **4.4 (Indemnities)**.

4.6 The Contractor agrees (and undertakes to procure that its Operating Sub-contractor and Construction Sub-contractor agree) that the Authority has the sole right, on giving written notice to such effect to the Contractor at any time, to control the conduct of any proceedings in relation to any claim from third parties, including employees of the

parties hereto (other than employees of the Construction Sub-contractor), to which the Authority is a party as a defendant, regardless of whether the Contractor (or any Sub-contractor) is also a party thereto.

The Authority agrees that it shall not settle or compromise any claim giving rise to losses exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) for which the Contractor is liable to indemnify the Authority under **Clause 4.1 (Indemnities)** without prior consultation with the Contractor. The Authority shall keep the Contractor reasonably informed as to the progress and status of any such claim until such claim is settled or withdrawn.

If, in contesting, settling or compromising any claim, the Authority takes or fails to take any action which prejudices any entitlement of the Contractor to recover any portion of the claim from any insurer under any insurance policy maintained by the Contractor in accordance with the Contract, the liability of the Contractor to indemnify the Authority in respect of such claim shall be reduced by such portion.

The Contractor undertakes that:

- (i) it will not, without the prior written consent of the Authority, settle or compromise any claim (whether insured or uninsured) to which the Authority is, or is likely to become, a party;
- (ii) where a claim is made against the Contractor and the Authority is not, and is not likely to become, a party to such claim as a defendant, the Contractor will not settle or compromise any claim exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) without prior consultation with the Authority; and
- (iii) it will ensure that its Sub-contractors give undertakings identical to those given by the Contractor to the Authority under this **Clause 4.6 (Indemnities)**.

If conduct of a claim is so assumed by the Authority pursuant to this **Clause 4.6 (Indemnities)**, the Authority shall hold the Contractor and its insurers harmless against all or any Losses which either of them may incur by reason of its conduct of the claim, any settlement of the relevant claim or judgement being given if the settlement is made without their prior written approval (not to be unreasonably withheld or delayed).

4.7 This **Clause 4.7 (Indemnities)** relates solely to the provision of mutual aid within the terms of **paragraph 2.9** of **Part 1** of **Schedule D (Operational Requirements)**.

(a) Where any prison officer is instructed to report for mutual aid purposes to the Prison and either:

- (i) he sustains personal injury; or
- (ii) by his act or omission he causes or contributes to injury, loss or damage to a third party (other than the Contractor, the Operating Sub-contractor and their agents, representatives or employees),

in circumstances giving rise to a liability on the part of the Contractor, then, subject to the following provisions of this **Clause 4.7(a) (Indemnities)**, such liability shall be the responsibility of the Authority and the Authority will fully and effectively indemnify the Contractor in that respect.

If, however, any such liability has arisen in whole or in part as a result of a command given by an agent, representative or employee of the Contractor or the Operating Sub-contractor within the command structure operating at the time for mutual aid purposes at the Prison and either a public duty defence in respect of the claim is unsuccessful, or, with the agreement of the Authority, is not pursued, such liability shall be the responsibility of the Contractor and the Contractor will fully indemnify the Authority in that respect.

(b) Where a Prisoner Custody Officer employed by the Contractor or the Operating Sub-contractor is instructed to report for mutual aid purposes to a directly managed state prison or another contracted-out prison and either:

- (i) he sustains personal injury; or
- (ii) by his act or omission he causes or contributes to injury, loss or damage to a third party (other than the Authority and its employees),

in circumstances giving rise to a liability on the part of the Authority, then, subject to the following provisions of this **Clause 4.7(b) (Indemnities)**, such liability shall be the responsibility of the Contractor and the Contractor will,

notwithstanding the limits set out in **Clause 4.4(a) (Indemnities)**, fully and effectively indemnify the Authority in that respect.

If, however, any such liability has arisen in whole or in part as a result of a command given by an officer being a servant of the Crown within the command structure operating at the time for mutual aid purposes at that directly managed state prison or another contracted-out prison and either a public duty defence in respect of the claim is unsuccessful, or, with the agreement of the Authority, is not pursued, such liability shall be the responsibility of the Authority and the Authority will fully indemnify the Contractor in that respect.

- (c) For the avoidance of doubt, the limits set out in **Clause 4.4 (Indemnities)** shall not apply to any liability arising pursuant to this **Clause 4.7 (Indemnities)**.
- 4.8(a) The provisions of this **Clause 4.8 (Indemnities)** shall apply to claims made by the Authority under **Clause 4.1(c) (Indemnities)**.
- (b) Losses shall not be recoverable under **Clause 4.1(c) (Indemnities)** in respect of a failure by the Contractor to provide Available Prisoner Places, during the period up to and ending on the Actual Full Operation Date and the Contractor shall not otherwise be liable for damages as a result of a breach of **Clauses 21 (Contractual Opening Date), 22 (Phase-in Period)** and/or **23 (Full Operation Date)** where the Contractor has fully complied with its obligations under **Clause 25 (Liquidated Damages)**.
- (c) If the Authority has to house Prisoners outside the Prison as a result of a failure by the Contractor to fulfil its obligations under the Contract to provide Available Prisoner Places and/or Additional Prisoner Places, the Authority shall:
 - (i) on the Contractor's written request, increase the Permitted Level (either on a temporary or a permanent basis) if and to the extent that such increase, in the Authority's opinion, will not prejudice the level of security and safety in the Prison and the control of Prisoners as required

- under the operating procedures referred to in the Operational Proposals;
- (ii) to mitigate the relevant Losses where it is reasonably practicable to do so, for example taking reasonable steps to arrange for Prisoners to be housed in alternative accommodation that is not more costly than other suitable accommodation reasonably available to the Authority at the relevant time (having regard to the circumstances from time to time); and
 - (iii) to the extent practicable (having regard to the then existing circumstances) consult with the Contractor as to where the relevant Prisoners should be accommodated.
- (d) In the case of Prisoners housed in alternative accommodation not managed by the Authority, the Authority shall not be entitled to recover Losses under **Clause 4.1(c) (Indemnities)** to the extent that the payment by the Authority for such accommodation exceeds that which the Authority ordinarily makes to the relevant provider of that accommodation for such services.
- (e) The amount of Losses recoverable under **Clause 4.1(c) (Indemnities)** shall be calculated by deducting (to the extent not already taken into account) from the total of the relevant Losses the aggregate of the following:
- (i) any damages for breach of contract received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places and/or Additional Prisoner Places (whether pursuant to **Clause 22 (Phase-in Period)**, **Clause 23 (Full Operation Date)** or **Clause 40A (Additional Prisoner Places)** or otherwise);
 - (ii) any insurance proceeds received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places and/or Additional Prisoner Places; and

- (iii) the amount of the Contract Price the Authority would have paid the Contractor if the Contractor had provided the required number of Available Prisoner Places and/or Additional Prisoner Places.
 - (f) If the Authority recovers any amount (the "**Relevant Amount**") pursuant to **Clause 4.1(c) (Indemnities)** and subsequently receives amounts of the type described in (e)(i) or (ii) above or **Clause 25 (Liquidated Damages)** in circumstances which amount to double recovery, the Authority shall (subject to the other provisions hereof and any rights of set-off) to the extent of such double recovery reimburse the party from whom the Relevant Amount was received within thirty (30) Days of written demand for reimbursement.
 - (g) No amount shall be due under **Clause 4.1(c) (Indemnities)** in respect of an Available Prisoner Place or an Additional Prisoner Place if the Agent and/or the Banks are required to make a payment in respect of the relevant place pursuant to **Clause 6 (Liability for Loss and Damage)** and Schedule 1, both of the Direct Agreement.
- 4.9 For the avoidance of doubt, this **Clause 4 (Indemnities)** shall take effect without prejudice to the Contractor's obligations under **Clause 6 (Liability for Loss and Damage)** and **Clause 25 (Liquidated Damages)**.
5. **Insurance**
- 5.1 Subject to **Clauses 5.14 (Unavailability of Insurance), 5.15 (Unavailability of Insurance), 5.16 (Unavailability of Insurance), 5.17 (Unavailability of Insurance), 5.18 (Unavailability of Insurance), 5.19 (Unavailability of Insurance), 5.20 (Unavailability of Insurance)** and **5.21 (Unavailability of Insurance)**, but without prejudice to any of its obligations hereunder, including, without limitation, **Clause 4 (Indemnities)** and **Clause 6 (Liability for Loss and Damage)**, the Contractor shall effect and maintain in full force and effect insurances naming the Contractor and the Authority as co-insured as detailed in the Minimum Insurances Requirements specified in **Schedule O (Insurance)** except for the insurance required in **Part 1A of Schedule O (Minimum Insurance Requirements - Insurance During Construction Phase)**, paragraph **2 (Delay in Start-Up)**, paragraph **2A (Delay in Start-up - Houseblock Works)** and paragraph **7 (Statutory Insurance)** and in

Part 1B of Schedule O (Minimum Insurance Requirements - Insurance during Operational Period), paragraph 2 (Business Interruption), paragraph 5 (Comprehensive Crime), paragraph 6 (Employers Liability) and paragraph 7 (Directors' and Officers' Liability)) as detailed in **Part 1A of Schedule O (Minimum Insurance Requirements - Insurance During Construction Phase)** and **Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Phase)** in respect of the Prison, the Site and, from the date of the Amending Agreement, the Houseblock Works, together with the plant, fixtures, fittings, materials, chattels, machinery or other equipment therein or thereupon (the "**Assets**").

5.2 Such insurances except the insurance required in **Schedule O (Minimum Insurance Requirements), Part 1A, paragraph 4 (Professional Indemnity) (PI Insurance)** and **Schedule O (Minimum Insurance Requirements), Part 1A, paragraph 4A (Professional Indemnity) (PI Insurance)** shall include, (except to the extent otherwise agreed with the Authority and save in respect of Sub-Clause (j) below), in the form set out in the endorsements in **Schedule O (Minimum Insurance Requirements)**:

- (a) a waiver of subrogation against the Crown, its agents, servants, officers, employees and contractors (including, for the avoidance of doubt and without prejudice to **Clause 5A (Riot (Damages) Act 1886**, any Police Authority) and a waiver of subrogation against the Construction Sub-contractor and the Operating Sub-contractor (as applicable), their agents, servants, officers, employees and contractors (except that this requirement shall not apply to the insurance required in **Schedule O (Minimum Insurance Requirements), Part 1B, paragraph 7 (Directors' and Officers' Liability)**);
- (b) a provision whereby such insurances shall apply to each of the insured parties as if a separate policy had been issued to each of them other than in the event of exhaustion of the sum insured or limit of indemnity (except that this requirement shall not apply to the insurance required in **Schedule O (Minimum Insurance Requirements), Part 1B, paragraph 7 (Directors' and Officers' Liability)**);
- (c) a breach of condition or warranty/severability/non vitiation provision acceptable to the Authority or if such provision is not generally available in equivalent policies written in the appropriate insurance market (after taking appropriate

insurance advice), each of the Contractor and the Sub-contractors shall covenant, for the duration of such non-availability, with the Authority in writing that it will not make any misrepresentation to, or breach any condition or warranty made to, the insurer or take or omit to take any action which would cause the relevant insurance policy to fail (except that this requirement shall not apply to the insurances required in **Schedule O (Minimum Insurance Requirements), Part 1B, paragraph 7 (Directors' and Officers' Liability)**);

- (d) a provision which requires the insurer to send copies of all notices of cancellation or any other notices given under or in relation to the policy to the Authority;
- (e) a provision whereby the policy shall only be cancelled subject to ninety (90) Days' notice, or thirty (30) Days' notice in respect of non-payment of premium. However in respect of Construction All Risks, Advance Loss of Profits and Third Party Liability (as such terms are defined in **Schedule O (Minimum Insurance Requirements)**) insurances during the construction period, there shall be no provision for cancellation except in respect of non payment of premium;
- (f) a provision that a notice of a claim given to the insurer by the Authority or the Contractor or any other insured party under the policy, shall in the absence of manifest error, be accepted by the insurer as valid notification of a claim in respect of the interests of all insured parties;
- (g) a provision that such insurance shall be primary and no other policy shall be called into contribution;
- (h) a loss payee provision in accordance with **Clause 5.6(a) (Insurance)** or the relevant provisions of Schedule 2 to the Direct Agreement; and
- (i) a provision providing the Authority with the right to negotiate and settle any claims received from third parties, subject to prior consultation with the Contractor and insurers on any claim exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) and;

- (j) a waiver from the insurer of any rights it may have (as subrogee or otherwise) to bring any claim under the Riot (Damages) Act 1886 in respect of (i) any damage to; or (ii) any monies paid for or in respect of, the Prison, the Site or any Assets. Such waiver shall be expressed to be binding upon each of the insurer's successors and permitted assigns and shall be expressly provided for the benefit of any Police Authority (as defined in Clause 5A1.2 (Riot Damages Act 1886)) in the United Kingdom and the statutory successors of any such Police Authority, each of which may enforce such waiver against the insurer and/or its successors and permitted assigns (as appropriate).

- 5.2A.1 In relation to **paragraph 4 (Medical Malpractice Insurance)** of **Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period)**, the Contractor will be deemed to have satisfied its obligations under **Sub-Clauses 5.2(c) (Insurance)** and **5.2(e) (Insurance)** if it uses its best endeavours to include the provisions referred to in such Sub-Clause in the insurance detailed in that **paragraph 4 (Medical Malpractice Insurance)**.
- 5.2A.2 In relation to **paragraph 5 (Comprehensive Crime)** of **Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period)**, the Contractor will be deemed to have satisfied its obligations under **Sub-Clauses 5.2(b) to (i)(Insurance)** if it uses its best endeavours to include the provisions referred to in such Sub-Clauses in the insurance detailed in that **paragraph 5 (Comprehensive Crime)** (provided that there shall be a waiver of subrogation against the Crown in respect of such insurance).
- 5.2A.3 In relation to **paragraph 6 (Employers Liability)** of **Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period)**, the Contractor will be deemed to have satisfied its obligations under **Clause 5.2(b) (Insurance)**, **Clause 5.2(c) (Insurance)**, **Clause 5.2(e) (Insurance)**, **Clause 5.2 (f) (Insurance)**, and **Clause 5.2 (h) (Insurance)** if it uses its best endeavours to include the provisions referred to in those Sub-Clauses in the insurance detailed in that **paragraph 6 (Employers Liability)**.
- 5.2A.4 In relation to **paragraph 7 (Directors' and Officers' Liability)** of **Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period)**, the Contractor will be deemed to have satisfied its obligations under **Clause 5.2 (Insurance)** if it uses its best endeavours to include the provisions referred to in that Clause in the

insurance detailed in that **paragraph 7 (Directors' and Officers' Liability)**.

- 5.2A.5 In relation to **paragraph 8 (Motor)** of **Part 1B** of **Schedule O (Minimum Insurance Requirements - Insurance During Operational Period)**, the Contractor will be deemed to have satisfied its obligations under **Sub-Clauses 5.2(c) (Insurance), 5.2(e) (Insurance)** and **5.2(h) (Insurance)** if it uses its best endeavours to include the provisions referred to in those Sub-Clauses in the insurance detailed in that **paragraph 8 (Motor)**.
- 5.3 Such insurances shall be taken out with an insurer approved by the Authority in writing (such approval shall not be unreasonably withheld or delayed).
- 5.4 The insurances to be effected under **paragraphs 1 (Construction All Risks), 2 (Advance Loss of profits for CAR (Delay in Start-Up), 3 (Third Party Liability), 4 (Professional Indemnity)** and **7 (Statutory Insurance)** of **Schedule O (Minimum Insurance Requirements), Part 1A (Construction Phase)** shall be effected from the date of the Contract and continue in force in accordance with **Schedule O (Minimum Insurance Requirements)**.
- 5.4A The insurances to be effected under **paragraphs 1A (Construction All Risk Insurances - Houseblock Works), 2A (Advance Loss of Profits for CAR (Delay in Start-Up)), 3A (Third Party Liability - Houseblock Works)** and **4A (Professional Indemnity - Houseblock Works)** of **Schedule O (Minimum Insurance Requirements), Part 1A (Construction Phase)** shall be effected from the date of the Amending Agreement and continue in force in accordance with **Schedule O (Minimum Insurance Requirements)**.
- 5.5 The insurances to be effected under **Schedule O (Minimum Insurance Requirements), Part 1B (Operational Phase)** shall be effected from the date of commencement of operations or the date when the Construction Period insurances lapse, whichever is the earlier, and remain in force until the end of the Contract Term.
- 5.6(a) Save only as provided in Clause 5.6A (Insurance), unless otherwise agreed by the Authority, on each and every occasion when any part or the whole of the Prison, the Site or the Assets is destroyed or damaged, where the amount of the Insurance Proceeds (excluding proceeds from the insurances detailed in **Schedule O (Minimum Insurance Requirements), Part 1A, paragraph 2 (Advance Loss of Profits for**

CAR (Delay in Start-Up)), Schedule O (Minimum Insurance Requirements), Part 1A, paragraph 2A (Advance Loss of Profits for CAR (Delay in Start-Up) - Houseblock Works) and Schedule O (Minimum Insurance Requirements), Part 1B, paragraph 2 (Loss of revenue (Business Interruption)) and required to be maintained under this **Clause 5 (Insurance)** in respect of any one event is less than or equal to the Insurance Threshold Amount:

- (i) the Contractor shall (and shall procure that the Construction Sub-contractor and the Operating Sub-contractor shall) pay the amount of the Insurance Proceeds received under any insurance policy taken out in accordance with this **Clause 5.6(a) (Insurance)** into an account in the joint names of the Authority and the Contractor at a bank to be nominated by the Authority (and advised to the insurers accordingly) (the "**Joint Insurance Proceeds Account**");
- (ii) the Contractor shall certify to the Agent (within a reasonable time of the relevant damage or destruction being sustained and in any event not later than six (6) months thereafter) that it wishes to reinstate or repair the asset which is the subject of the Insurance Claim;
- (iii) the Insurance Proceeds referred to in this **Clause 5.6(a) (Insurance)** shall be released to the Contractor upon its application to the Authority, provided the Contractor has provided all information which the Authority reasonably requires in determining whether to grant its consent and the Authority is satisfied (acting reasonably) that the proceeds will be used to comply with its obligations set out in this paragraph (iii). Subject to receiving such consent from the Authority (which consent may not be unreasonably withheld or delayed), the Contractor shall forthwith lay out all Insurance Proceeds and at its own expense all such other money as shall be necessary (including the fees of the Independent Engineer acting in connection with the claims and the reinstatement, replacement or

rebuilding of the Prison as the case may be) (x) pursuant to **Clause 6 (Liability for Loss and Damage)**, fully to reinstate, rebuild and/or replace the Prison and the Houseblock in a workmanlike manner to the reasonable satisfaction of the Independent Engineer *mutatis mutandis* in accordance with **Clause 26 (Engineer's Declaration)** and **Clause 26A (Engineer's Houseblock Declaration)** and in accordance with all such consents and approvals as shall be necessary and (to the extent that the Authority and the Contractor agree that any reinstatement, rebuilding or replacement shall not be to a specification as set out in Parts 1 and/or 2 of **Schedule A (Specifications)** in accordance with drawings and specifications which shall first be submitted for approval in writing by the Authority and/or (y) subject to **Clause 4 (Indemnities)**, to make good any loss sustained or settle any claim made as a result of the relevant damage/destruction. The Independent Engineer will, in such case of reinstatement, rebuilding or replacement have the same rights and obligations as those contained in **Clause 13 (Provision of the Prison)** and **Clause 13A (Provision of the Increased Capacity)**.

- (b) Where the amount of the Insurance Proceeds referred to in **Clause 5.6(a) (Insurance)** in respect of any one event received in respect of damage to the Prison, the Site or the Assets exceeds the Insurance Threshold Amount, the Contractor shall, unless the Authority otherwise agrees, certify to the Agent that it wishes to reinstate or repair the asset which was the subject of the Insurance Claim and submit a certificate to the Agent in accordance with paragraph 3(a) of Schedule 2 to the Direct Agreement and shall, in the circumstances set out in paragraph 3(b) of Schedule 2 to the Direct Agreement, apply such proceeds provided in **Clause 5.6(a)(iii)(x) (Insurance)** or **(y) (Insurance)**. In the circumstances set out in paragraph 4 of Schedule 2 to the Direct Agreement, the Authority undertakes to authorise the joint insurance account bank to release forthwith the Insurance

Proceeds received into the Joint Insurance Proceeds Account to the Agent.

- (c) Any certification, submission or report required under (a) or (b) above to be provided to the Agent shall no longer be required once all sums due to the Banks under the Financing Agreements have been irrevocably paid in full and the Credit Agreement has been cancelled, in which case all Insurance Proceeds shall be applied as provided in **Clause 5.6(a)(iii)(x) (Insurance)** or **(y) (Insurance)** above.
- (d) The Authority shall pay all Insurance Proceeds it receives under any insurance policy taken out in accordance with this **Clause 5 (Insurance)** into the Joint Insurance Proceeds Account to be applied in accordance with the terms of Schedule 2 to the Direct Agreement, except to the extent such Insurance Proceeds are in respect of a liability of the Authority under a third party liability policy or a loss suffered by the Authority.

5.6A

- (i) On each and every occasion when any part or the whole of the Houseblock is destroyed or damaged (and where no claim may be made in respect of the relevant event under the insurance effected under **paragraph 1 (Material Damage All Risks) of Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Phase))**, the amount of the Insurance Proceeds received under the insurance effected under **paragraph 1A (Construction All Risk Insurances - Houseblock Works) of Part 1A of Schedule O (Minimum Insurance Requirements - Insurance During Construction Phase)** shall be paid into the Joint Insurance Proceeds Account. All such insurance proceeds shall be applied to repair, reinstate and replace each part or parts of the Houseblock in respect of which the proceeds were received as agreed with the Authority. If the Contractor and the Authority are unable to agree on the application of such proceeds, the matter shall be determined pursuant to **Clause 72 (Dispute Resolution)**.

For the avoidance of doubt, if an event gives rise to claims under each of the insurances effected under **paragraph 1A (Construction All Risk Insurances - Houseblock Works) of Part 1A of Schedule O (Minimum Insurance Requirements - Insurance During Construction Phase)** and under **paragraph 1 (Material Damage All Risks) of Part 1B of Schedule O (Minimum Insurance Requirements**

- **Insurance During Operational Phase**), the provisions of **Clause 5.6(a), (b), (c) and (d) (Insurance)** shall apply.

- (ii) If the Authority confirms that no repair or reinstatement is required pursuant to **Clause 5.6A(i)(Insurance)** or if no agreement is reached between the Contractor and the Authority (or no determination is made pursuant to **Clause 72 (Dispute Resolution)**) on the restatement works within six (6) months of receipt of the insurance proceeds, the Authority undertakes to authorise the joint insurance account bank to release forthwith the insurance proceeds received into the Joint Insurance Proceeds Account pursuant to **Clause 5.6A(i) (Insurance)** to the Agent.

5.7 The Contractor shall within thirty (30) Days from the date of this Contract, and within sixty (60) Days after any renewal or replacement of any insurance policy maintained pursuant to this Clause, and further whenever required by the Authority, provide evidence, including copies of all insurance policies to the Authority confirming that insurance has been taken out and is being maintained by the Contractor as required by this Clause. The Contractor shall also on or immediately after execution of this Contract, and within seven (7) Days after any renewal or replacement of any Required Insurance, provide satisfactory evidence to the Authority that the Required Insurance has been taken out and is being maintained as required by this Contract.

5.8 The Contractor shall inform the Authority in writing as soon as reasonably practicable after it becomes aware of the occurrence of any event that may give rise to a claim under a policy of insurance required by this Clause and will ensure that the Authority is kept fully informed of subsequent action and developments concerning the claim; such written information shall not be required in relation to any claim of less than [REDACTED] [REDACTED] [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof). The Contractor will take such steps as are necessary or appropriate to ensure that each Sub-contractor, in respect of any event or claim of a like nature arising out of or relating to the operation or responsibility of the Sub-contractor, takes in relation to the Contractor like action to that which the Contractor is required to take under this **Clause 5.8 (Insurance)** in relation to the Authority, and shall inform the Authority promptly of information thus received from any Sub-contractor. Notwithstanding, and without prejudice to, any other provision hereof, the Contractor undertakes that it will not (and that it shall procure that its Construction Sub-contractor and Operating Sub-contractor will not) settle any insurance claim (except in respect of a claim under the insurances to be effected under

paragraph 2 (Delay in Start-Up) of Part 1A to Schedule O (Minimum Insurance Requirements) and paragraph 2 (Loss of Revenue (Business Interruption)) of Part 1B to Schedule O (Minimum Insurance Requirements) and except in accordance with the provisions in respect of settling claims set out in **Clause 5.6 (Insurance))** without the prior written agreement of the Authority.

- 5.9 The Contractor shall procure (within seven (7) Days of execution of this Contract and thereafter on or before the effective date of the relevant insurance policy, relevant Renewal Date and the date of appointment of any replacement broker) the issue of a broker's letter of undertaking in the form of **Schedule O (Minimum Insurance Requirements), Part 2A of Schedule O (Minimum Insurance Requirements), Part 2B of Schedule O (Minimum Insurance Requirements), Part 2C of Schedule O (Minimum Insurance Requirements)** (as appropriate) in relation to each policy of insurance maintained in accordance with this **Clause 5 (Insurance)**.
- 5.10 Without prejudice to **Clauses 5.14 (Unavailability of Insurance) – 5.20 (Unavailability of Insurance)** (inclusive), where the Contractor has failed to take out or procure insurance pursuant to its obligations hereunder, the Contractor shall notify the Authority of such failure immediately and, where relevant, the insurance broker shall notify the Authority pursuant to the broker's letter of undertaking in the form set out in **Part 2 of Schedule O (Minimum Insurance Requirements)** and the Authority shall have the right to take out such insurance in the Contractor's name and to be indemnified by the Contractor in respect of any costs or expenses incurred in so doing.
- 5.11 Without prejudice to the obligations of the Contractor under this **Clause 5 (Insurance)**, the Contractor shall effect and maintain in full force those insurances, which it is required to have by any applicable law.
- 5.12 The Contractor undertakes with the Authority in relation to the insurances referred to in this Clause (and undertakes to procure that the Construction Sub-contractor and Operating Sub-contractor shall give the same undertakings to the Authority):
- (a) to comply with all requirements and recommendations of the insurers to the extent reasonable or necessary to preserve the benefit of the relevant cover;

- (b) not to do or omit to do anything that could cause any policy of insurance to become void or voidable wholly or in part;
- (c) to comply with all requirements and reasonable recommendations of the fire authority as to fire precautions relating to the Prison, the Site and the Assets; and
- (d) to give notice to the Authority immediately upon the happening of any event that might adversely affect any policy of insurance effected in accordance with this Clause.
- (e) In the event that the Contractor considers that the requirements of **Clauses 5.12(a) (Insurance), (b) (Insurance) or (c) (Insurance)** may conflict with any other Clause herein, the Contractor shall immediately notify the Authority.

5.13(a) Subject to Clause **5.13(c) (Insurance)**, if on any Insurance Review Date and annually during the relevant period, during the Contract Term, the annual Actual Cost exceeds the annual Base Cost then the parties shall bear the Net Insurance Cost as follows:

- (i) if the Actual Cost exceeds the Base Cost at the Insurance Review Date but is not more than 17.5% over the Base Cost, the Contractor shall bear the full amount of the Net Insurance Cost;
- (ii) if the Actual Cost is more than 17.5% over the Base Cost (the "**First Threshold**"), but less than or equal to 40% over the Base Cost (the "**Second Threshold**"), then the Contractor shall bear that part of the Actual Cost below the First Threshold and 20% of any amount of the Actual Cost exceeding the First Threshold, and the Authority will bear 80% of any amount of the Actual Cost that exceeds the First Threshold. The Authority shall pay to the Contractor the Authority's share of the Actual Cost by increasing accordingly the "ICF" payment (based on full availability of Prisoner Places) set out in **Schedule E (Payment Mechanism)**, until the next Insurance Review Date;

- (iii) if the Actual Cost exceeds the Second Threshold but is less than or equal to 100% over the Base Cost (the "**Third Threshold**"), then the Contractor shall bear (A) that part of the Actual Cost below the First Threshold; and (B) 20% of any amount of the Actual Cost that exceeds the First Threshold but is less than or equal to the Second Threshold; and (C) 10% of any amount of the Actual Cost that exceeds the Second Threshold but is less than or equal to the Third Threshold, and the Authority will bear (A) 80% of any amount of the Actual Cost that exceeds the First Threshold but is less than or equal to the Second Threshold, and (B) 90% of that amount of the Actual Cost that exceeds the Second Threshold but is less than or equal to the Third Threshold. The Authority shall pay to the Contractor the Authority's share of the Actual Cost by increasing accordingly the "ICF" payment (based on full availability of Prisoner Places) set out in **Schedule E (Payment Mechanism)**, until the next Insurance Review Date; and
- (iv) if the Actual Cost exceeds 100% over the Base Cost, then, at the sole discretion of the Authority, either:
 - (aa) the Contractor shall bear (A) that part of the Actual Cost below the First Threshold; and (B) 20% of any amount of the Actual Cost that exceeds the First Threshold but is less than or equal to the Second Threshold; and (C) 10% of any amount of the Actual Cost that exceeds the Second Threshold but is less than or equal to the Third Threshold, and the Authority will bear (A) 80% of any amount of the Actual Cost that exceeds the First Threshold but is less than or equal to the Second Threshold; (B) 90% of any amount of the Actual Cost that exceeds the Second Threshold but is less than or equal to the Third Threshold; and (C) 100% of any amount that exceeds the Third Threshold. The Authority shall pay to the Contractor the Authority's share of the

Actual Cost by increasing accordingly the "ICF" payment (based on full availability of Prisoner Places) set out in **Schedule E (Payment Mechanism)**, until the next Insurance Review Date; or

- (bb) the Contractor shall be deemed to be unable to obtain the Required Insurance at a Commercial Premium, for the purposes of **Clauses 5.14-5.20 (Unavailability of Insurance)** (inclusive) of the Contract.
- (b) Subject to **Clause 5.13(c) (Insurance)**, if on any Insurance Review Date and annually during the relevant period, during the Contract Term, the annual Actual Cost is lower than the annual Base Cost then the savings received by each of the parties in respect of the amount by which the Actual Cost is lower than the Base Cost shall be calculated as follows:
 - (i) if the difference between the Base Cost and the Actual Cost is less than or equal to 5% of Base Cost, then the Contractor shall retain the whole of the Net Insurance Cost savings;
 - (ii) if the difference between the Base Cost and the Actual Cost is greater than 5% of Base Cost but is less than or equal to 40% of Base Cost, then the Contractor shall retain the initial 5% saving and 20% of any additional saving by which the Actual Cost is less than the amount which is 5% less than the Base Cost. The Authority shall be entitled to adjust accordingly the "ICF" payment (based on full availability of Prisoner Places) in **Schedule E (Payment Mechanism)**, until the next Insurance Review Date; and
 - (iii) if the difference between the Base Cost and the Actual Cost is greater than 40% of Base Cost, then the Contractor shall retain (A) the initial 5% saving; and (B) 20% of any additional saving by which the Actual Cost is less than the amount which is 5% less than Base Cost, and (C) 10% of any amount by which the Actual Cost is less than the amount which 40% less than the Base Cost.

The Authority shall be entitled to adjust accordingly the "ICF" payment (based on full availability of Prisoner Places) set out in **Schedule E (Payment Mechanism)**, until the next Insurance Review Date.

(c) Notwithstanding the foregoing, the Authority will in no circumstances be liable to pay any increase (which, for the avoidance of doubt, shall include the amount of any decrease that would have occurred) to the Actual Cost to the extent (the "**Relevant Extent**") that such increase has been caused by, or is the result of, a breach of this Contract by the Contractor, the claims history or any act or omission of:

- (i) the Contractor;
- (ii) any Sub-contractor;
- (iii) any Subsidiary of (a) and (b) above; or
- (iv) or any other company within the Sodexho Alliance S.A. Group that has responsibility for managing custodial services at any custodial facility,

where such act or omission is not in accordance with Good Industry Practice, is negligent or is in breach of the relevant entity's contractual provisions, and accordingly any increase in the Actual Cost shall be ignored for the purposes of this **Clause 5 (Insurance)** to the extent of the Relevant Extent.

(d) The Contractor shall use its reasonable endeavours to minimise any increase and maximise any reduction to the Operational Premiums provided that nothing herein will require the Contractor to act in breach of this Contract and/or the Credit Agreement.

INSURANCE REVIEW PERIOD

5.13A.1 Not later than sixty (60) Days prior to the expiry of the relevant period of insurance for the immediately preceding period (the "**Relevant Insurance Review Date**"), the parties shall meet to discuss, in respect of the relevant Required Insurance, the options available to the parties with regard to the period of insurance cover which is obtainable by the Contractor in the relevant insurance market and shall agree, by the date falling 50 Days prior to the Relevant Insurance Review Date, which

option represents best value for money in the context of this Project taking into account:

- (a) the Operational Premiums;
- (b) the terms upon which the relevant Required Insurance is available;
- (c) the likely changes to Operational Premiums over the relevant period; and
- (d) the identity and credit standing of the relevant insurers.

5.13A.2 If the parties are unable to agree which option represents the best value for money then, notwithstanding the dispute resolution provisions of **Clause 72 (Dispute Resolution)**, this matter will be referred to an expert for determination and the provisions of **Clauses 5.18.2 (Unavailability of Insurance), 5.18.7 (Unavailability of Insurance)** and **5.18.8 (Unavailability of Insurance)** shall apply save that, for the purposes of this Clause:

- (a) the reference in **Clause 5.18.2.3 (Unavailability of Insurance)** to "Deadline Date" shall be replaced with "request referred to in **Clause 5.18.2.1 (Unavailability of Insurance)**"; and
- (b) the reference in **Clause 5.18.7 (Unavailability of Insurance)** to "Renewal Date" shall be replaced with the "Relevant Insurance Review Date" and the words "Subject to **Clause 5.18.9 (Unavailability of Insurance)** and" shall be deleted.

5.13A.3 Where the matter is referred to the Expert pursuant to this Clause, the Expert shall determine which option represents the best value for money for the Project (after taking into account those matters referred to in Sub-Clauses **5.13A.1(a) to (d) (inclusive) (Insurance Review Period)** and shall decide such matter taking due and proper account of the submissions of the parties (copies of such submissions, if any, to be provided by each party to the Expert and the other party within five (5) Days of the Expert being appointed in accordance with **Clause 5.18.2 (Unavailability of Insurance)**).

UNAVAILABILITY OF INSURANCE

5.14 If the Contractor considers that a Required Insurance will be or is likely to be Unavailable after the Renewal Date, it shall no later than forty five (45) Days before the Renewal Date (the "**Notification Date**") provide the Authority with written notification of such Unavailability (**Insurance Notice**), which Insurance Notice shall be headed "Insurance Unavailability Notice", make clear reference to this **Clause 5.14 (Unavailability of Insurance)** and contain:

- (a) one or more proposals for effecting, or as the case may be, replacing the Required Insurance for at least the twelve (12) month period following the Renewal Date; and
- (b) all information that the Authority might reasonably require to determine whether the relevant Required Insurance is or will be likely to be Unavailable including, but not limited to, full details of the terms on which the relevant Required Insurance will, or is likely to, be available in the appropriate insurance market (having taken appropriate insurance advice) as at the Renewal Date.

5.15(a) If the Contractor fails to notify the Authority in accordance with **Clause 5.14 (Unavailability of Insurance)**, then the Contractor shall pay all amounts and take all action necessary in order to obtain the relevant Required Insurance on the Renewal Date.

- (b) The Authority shall have the right to terminate the Contract if the Contractor fails to comply with paragraph (a) of this **Clause 5.14 (Unavailability of Insurance)**.

5.16 If, following receipt of the Insurance Notice, the Authority:

- (a) considers that a Required Insurance referred to in the Insurance Notice is Unavailable; and
- (b) agrees with the Contractor's proposals as set out in the Insurance Notice,

then the Authority shall notify the Contractor within ten (10) Days of receipt of the Insurance Notice, that it accepts a proposal set out in the Insurance Notice. The parties will take all action necessary to ensure that this proposal is put into effect by the Renewal Date.

5.17.1 If, following receipt of an Insurance Notice, the Authority does not:

- (a) consider that the relevant Required Insurance referred to in the Insurance Notice is Unavailable; and/or
- (b) agree with any of the Contractor's proposals set out in the Insurance Notice,

then the Authority shall notify the Contractor, within ten (10) Days of receipt of the Insurance Notice, that it does not consider that the relevant Required Insurance is Unavailable and/or agree with the Contractor's proposals set out in the Insurance Notice.

5.17.2 The parties shall meet as soon as is reasonably practicable, and in any event no later than five (5) Days, following the service of the Authority's notification in accordance with **Clause 5.17.1 (Unavailability of Insurance)**, to hold discussions in good faith to resolve any area(s) of disagreement arising out of the proposal(s) set out in the Insurance Notice. The discussions will take into account the following matters:

- (a) the state of the insurance market generally and whether other commercial enterprises are paying premiums and obtaining cover which is broadly comparable to the Required Insurance that the Contractor has notified is Unavailable; and
- (b) the terms obtained by the Contractor when the Required Insurance was last Available, any claims made during that period and any changes in the insurance market; and
- (c) any circumstances particular to the custodial sector; and
- (d) the terms of any proposal(s) submitted by the Authority in accordance with **Clause 5.17.3 (Unavailability of Insurance)**.

5.17.3 The Authority may (notwithstanding and without prejudice to the fact that it may dispute whether the relevant Required Insurance is Unavailable), within five (5) Days following the issuance of its notification pursuant to **Clause 5.17.1 (Unavailability of Insurance)**, submit one or more of its own proposals for effecting the Required Insurance for at least the twelve (12) month period following the Renewal Date, including, without limitation, proposals providing for the Authority to insure one or more of the insured risks. If the Authority submits one or more proposals in accordance with this **Clause 5.17.3 (Unavailability of Insurance)**, the Contractor shall consider such proposal(s) in good faith.

5.17.4 If the parties are unable to reach agreement within twenty five (25) Days before the Renewal Date (the "**Deadline Date**") then, notwithstanding the provisions of **Clause 72 (Dispute Resolution)**, the matter will be referred to an expert pursuant to **Clause 5.18 (Unavailability of Insurance)**.

5.18.1 Where pursuant to **Clause 5.17.4 (Unavailability of Insurance)** a matter is to be referred to an expert, the terms of reference of such expert (the "**Expert**") shall require limits to resolve the matter in accordance with the following provisions of **Clause 5.18 (Unavailability of Insurance)**.

5.18.2 The Expert shall be selected as follows:

5.18.2.1 the parties shall, in the first instance, request that Mr Stephen Tester accept an appointment as the expert for the purpose of **Clause 5.18 (Unavailability of Insurance)**.

5.18.2.2 if, for whatever reason, the individual referred to in **Clause 5.18.2.1 (Unavailability of Insurance)**:

- (a) is unavailable or declines; or
- (b) fails to respond to any request submitted in accordance with **Clause 5.18.2 (Unavailability of Insurance)** within two (2) Days of such a request,

the parties shall jointly nominate and appoint an Expert by agreement; or

5.18.2.3 if the parties are unable to reach an agreement pursuant to **Sub-Clause 5.18.2.2 (Unavailability of Insurance)** within five(5) Days of the Deadline Date, the president for the time being of the Association of British Insurers, upon application by either of the parties, shall within five (5) Days of the receipt of such an application appoint an appropriately qualified and experienced professional who is knowledgeable of and experienced in:

- (a) United Kingdom insurance matters, and is an appropriately qualified independent insurance consultant competent to act as the Expert in relation to insurance matters arising under or in connection with this Contract, and
- (b) the United Kingdom custodial services sector.

- 5.18.3 Where the matter is referred to the Expert pursuant to **Clause 5.17.4 (Unavailability of Insurance)**, the Expert shall determine whether the Required Insurance which is the subject of the Insurance Notice is Unavailable and shall decide such matter taking due and proper account of the submissions of the parties (copies of such submissions, if any, to be provided by each party to the Expert and the other party within five (5) Days of the Expert being appointed in accordance with Clause **5.18.2 (Unavailability of Insurance)**).
- 5.18.4 If the Expert determines that the relevant insurance is Available then the Contractor shall effect such insurance cover in accordance with the requirements of this Contract.
- 5.18.5.1 If the parties agree or the Expert determines that the relevant Required Insurance is Unavailable, then the Expert shall:
- (a) assess the Contractor's proposal(s) submitted in accordance with **Clause 5.14(a) (Unavailability of Insurance)** and the Authority's proposal(s), if any, submitted in accordance with **Clause 5.17.3 (Unavailability of Insurance)**;
 - (b) determine which of the parties' proposals should be implemented. In making this determination, the Expert shall not be entitled to choose a proposal where, following the implementation of the proposal, risks which were intended to be insured against in accordance with **Schedule O (Minimum Insurance Requirements)** will thereafter be uninsured or where the premium payable in respect of insurances set out in the proposal does not constitute a Commercial Premium (as that term is used in **Clause 1.4 (Definitions)**), provided that:
 - (i) a risk shall not be regarded as uninsured for the purpose of this **Clause 5.18.5.1(b)(Unavailability of Insurance)** to the extent that a proposal submitted in accordance with **Clauses 5.14(a)(Unavailability of Insurance)** or **5.17.3 (Unavailability of Insurance)** provides that an uninsured risk is to be assumed by the Authority; and/or
 - (ii) a proposal shall be regarded as constituting the provision of Insurance at a Commercial Premium where:

- (AA) the aggregate cost of any Operational Premiums payable, and/or any additional measures to be assumed, by the Contractor in order to implement a proposal does not exceed an amount that would be considered to be a Commercial Premium in accordance with **Clause 1.4 (Definitions)**; and
- (BB) any additional measures included within a proposal are reasonable, relevant to and shall assist in the prevention, management or mitigation of a particular risk; and
- (c) specify a timetable (including a deadline) for the implementation of the proposal selected by the Expert that shall, in any event, be implemented no later than the Renewal Date save in respect of the implementation of any additional measures referred to in **Sub-Clause (BB)** which shall implemented as soon as is reasonably practicable.

5.18.5.2 For the purposes of this **Clause 5.18.5 (Unavailability of Insurance)**, the Authority shall be deemed to have assumed an uninsured risk notwithstanding that the Authority has the right to terminate the Contract instead of making a payment under the insurance it provides provided that, upon such termination, the Authority is required to pay at least the sums referred to in **Clauses 5.19.3(b) (Unavailability of Insurance)** and **(f) (Unavailability of Insurance)**.

5.18.5.3 Prior to making his determination, the Expert shall have the right, upon giving reasonable notice, to convene meetings with either or both of the parties at which he may require either of them to clarify and explain their respective proposals. Each party may present its own expert opinion or evidence at any such meeting.

5.18.5.4 The Expert may suggest his own proposal(s) but the parties shall be under no obligation to accept such proposal(s).

5.18.6 The Expert shall be required to select either the Contractor's or the Authority's proposal when making a determination as to what proposal should be implemented by the parties, unless the parties agree to accept his proposal (if any). The parties shall ensure that the implementation of the proposal selected by the Expert is undertaken in accordance with the

timetable specified by the Expert and, in any event, shall procure that the proposal is implemented no later than the Renewal Date.

- 5.18.7 The Expert shall be required to make his determination and provide to both parties his written decision on the matter, no later than ten (10) Days prior to the Renewal Date. Subject to **Clause 5.18.9 (Unavailability of Insurance)** and save in the case of fraud, impartiality or manifest error, any determination by the Expert made in accordance with **Clause 5.18.5 (Unavailability of Insurance)** shall be final and binding upon the parties.
- 5.18.8 All information, data or documentation disclosed or delivered by a party to the Expert in consequence of or in connection with his appointment as an Expert shall be treated as confidential. The Expert shall not, save as is permitted by **Clause 58 (Information and Confidentiality)**, disclose to any Person or company 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 shall be returned to such party on completion of the Expert's work.
- 5.18.9 Subject to **Clauses 5.19.2 (Unavailability of Insurance)** and **5.19.3 (Unavailability of Insurance)** the Authority shall have the right to terminate the Contract:
- (a) within five (5) Days of any determination by the Expert except where the determination is that the relevant Required Insurance is Available; or
 - (b) if the Contractor fails to accept or act in accordance with any determination made by the Expert; or
 - (c) if the Expert fails to comply with **Clause 5.18.7 (Unavailability of Insurance)**.

Where the Authority elects to terminate this Contract pursuant to this **Clause 5.18.9 (Unavailability of Insurance)**, it shall serve notice thereof in writing (the "**Insurance Termination Notice**") to the Contractor, receiver, liquidator, or any Person in whom the Contract may be vested, specifying the Termination Date which, shall be at least ninety (90) Days after the date of the Insurance Termination Notice provided that, if the Authority elects to serve an Insurance Termination Notice pursuant to this **Clause 5.18.9 (Unavailability of Insurance)** following receipt of an Insurance Notice and prior to the Renewal Date, the Contract

shall terminate no later than the Renewal Date which, in this instance, shall be the Termination Date. The Contract shall terminate on the Termination Date and the termination shall take effect in accordance with the provisions of **Clause 5.19 (Unavailability of Insurance)** and **Clause 54 (Consequential Arrangements on Termination)**.

Where the Authority elects to terminate this Contract pursuant to this **Clause 5.18.9 (Unavailability of Insurance)**, the service of an Insurance Termination Notice shall be irrevocable. A Named Representative of the Authority shall serve any Insurance Termination Notice served pursuant to this **Clause 5.18.9 (Unavailability of Insurance)**.

5.18.10

- (a) If:
 - (i) the Authority puts forward a proposal pursuant to **Clause 5.17.3 (Unavailability of Insurance)** that the Contractor rejects but which the Expert determines would be reasonable for the parties to adopt; and/or
 - (ii) the Expert determines that the insurance is not Unavailable,then the Contractor shall be liable for all of the Expert's costs in making his determination.
- (b) If:
 - (i) the Expert determines that the insurance is Unavailable; and
 - (ii) the Expert determines it would be reasonable for the parties to adopt a proposal made by the Contractor pursuant to **Clause 5.14(a) (Unavailability of Insurance)** but which the Authority had rejected,then the Authority shall be liable for all of the Expert's costs in making his determination.
- (c) Except to the extent set out in paragraphs (a) and (b), each of the parties shall bear its own costs (including legal costs and

the costs and expenses of any witnesses), and the costs incurred by the Expert in making his determination will be split equally between the parties.

- 5.19.1 The rights of the Authority to terminate the Contract pursuant to **Clause 5 (Insurance)** are in addition to and without prejudice to any other rights of the Authority under the Contract to terminate the Contract including, without limitation under **Clauses 45 (Rectification and Termination for Default), 46 (Voluntary Termination), 47 (Unilateral Termination) and 48 (Force Majeure)**.
- 5.19.2 If the Authority terminates the Contract pursuant to **Clauses 5.15(b) (Unavailability of Insurance)** or **5.18.9(b) (Unavailability of Insurance)** then the provisions of **Clause 49 (Payment for Termination)** shall apply as if the Contract had been terminated pursuant to **Clause 45 (Rectification and Termination for Default)**.
- 5.19.3 If the Authority terminates the Contract pursuant to **Clauses 5.18.9(a)(Unavailability of Insurance)** or **5.18.9(c)(Unavailability of Insurance)**, then the Authority shall pay the Contractor:
- (a) any amounts fallen due pursuant to **Schedule E (Payment Mechanism)** but that has not yet been paid;
 - (b) the Lender Liabilities as at the Termination Date less any costs (if any) required to remedy any breach by the Contractor of its obligations under the terms of the Contract;
 - (c) an amount representing the amount payable pursuant to the Contract for the Services performed from the end of the previous Performance Month until the Termination Date (assuming no Performance Points or Significant Performance Failures);
 - (d) any Demobilisation Costs up to a maximum of [REDACTED]
[REDACTED]
[REDACTED]) (Indexed) provided that:
 - (i) in each case, the Contractor shall use all reasonable endeavours to minimise the amount in question and provide the Authority with reasonable evidence supporting each amount claimed;
 - (ii) without prejudice to the generality of (i) above the Contractor shall mitigate the cost related to

employees by allowing any such employees to be redeployed on other facilities of the Authority to the extent reasonable and practicable;

- (e) the amount payable shall take account of the (A) period between the date of termination and the scheduled expiry of the Contract; and (B) the amount that the Contractor would reasonably be expected to pay in respect of Demobilisation Costs on such scheduled expiry; and
- (f) equity and subordinated debt subscribed and/or advanced by the Shareholders at par value.

5.20 Where the Insurance Notice has been provided pursuant to **Clause 5.14 (Unavailability of Insurance)** and the parties have not reached agreement and/or the Expert has not made a determination by the Renewal Date, then, the Contractor's obligation to effect the relevant Required Insurance shall be suspended until the earlier of the (i) the parties agreeing otherwise, (ii) 3 Days after the Expert making a determination, or (iii) the Required Insurance becoming Available provided that, on the occurrence of a risk which, but for the Unavailability, would have been the subject of any Required Insurance, the Authority shall:

- (a) pay to the Contractor an amount equal to the insurance proceeds that would have been payable had the relevant Required Insurance continued to be Available; and
- (b) have the right to terminate the Contract and the provisions of **Clause 5.19 (Unavailability of Insurance)** shall apply as if the Contract had been terminated pursuant to **Clauses 5.18.9(a) (Unavailability of Insurance)** or (c).

Where the Authority exercises its right to terminate the Contract pursuant to paragraph (b) above, the Authority shall be relieved from paying to the Contractor any amount pursuant to paragraph (a) above to the extent that such amount is to be used to meet a liability or perform an obligation from which the Contractor has been relieved as a result of such termination of the Contract.

For the avoidance of doubt, where the Authority does not terminate the Contract, the Contractor shall continue to remain liable for all its other obligations under the Contract.

5.21 Without prejudice to any of the Contractor's other obligations under this Contract, where any of the Required Insurances are not Available, and such unavailability is caused by an act or omission of:

- (a) the Contractor; or
- (b) any Sub-contractor; or
- (c) any Subsidiary of (a) and (b) above; or
- (d) any other company within the Sodexo Alliance S.A. Group that has responsibility for managing custodial services at any custodial facility,

where such act or omission is not in accordance with Good Industry Practice, is negligent or is in breach of the relevant entity's contractual provisions, the Contractor shall be relieved from its obligations to effect such insurance to the extent affected by such acts or omissions. Every three (3) months the Contractor shall review, in respect of any such insurance which is not Available, whether such insurance remains not Available. In the event that such insurance becomes Available, the Contractor shall effect and maintain such insurance in accordance with the provisions of this **Clause 5 (Insurance)** as soon as reasonably practicable thereafter.

5.22 Without prejudice to the Authority's rights under **Clause 9 (Change to Services Required)**, the Authority retains the right to require the Contractor to amend the insurance programme detailed in **Schedule O (Minimum Insurance Requirements)** throughout the Contract Term as it may reasonably require to reflect changes in the circumstances surrounding the Contract save that, the prior written consent of the Contractor shall be required where the Authority requires the insurance programme to be amended in a manner that would result in a reduction to the level of insurance cover detailed in **Schedule O (Minimum Insurance Requirements)**. Any such amendment shall be deemed an amendment to an obligation of the Contractor under the Contract for the purposes of **Clause 5.1 (Insurance)**, and shall be effected in accordance with **Clause 5.1 (Insurance)**.

5.23 Except for **Clauses 5.3 (Insurance), 5.4 (Insurance), 5.4A (Insurance), 5.9 (Insurance), 5.12 (Insurance)** and **5.20 (Unavailability of Insurance)** the provisions of **Clause 5 (Insurance)** shall not apply to the PI Insurance. The Contractor undertakes in respect

of the PI Insurance, and to procure that the Construction Sub-contractor undertakes to the Authority, to:

- (a) effect and maintain in full force and effect the PI Insurance referred to in **paragraph 4 of Part 1A of Schedule O (Minimum Insurance Requirements – Insurance during Construction phase)** from the date of Contract signature;
- (b) provide evidence satisfactory to the Authority (as and when reasonably required by the Authority) that the PI Insurance is in full force and effect from the date of Contract signature (such evidence to include details of the cover (including confirmation of vicarious liability and retro cover as specified in **Schedule O (Insurance)**), territorial limits, indemnity limit, levels of excess, insurers and policy number);
- (c) provide the Authority with copies of all notices under the PI Insurance relative to the Project;
- (d) provide the Authority with notice of:
 - (i) any cancellation of the PI Insurance not less than ninety (90) Days prior to the relevant cancellation date;
 - (ii) any material changes to or suspension of cover relevant to the Project;
 - (iii) any event of which it becomes aware, or could reasonably be expected to become aware which may vitiate the PI Insurance; and
 - (iv) any act, omission or event which may adversely affect the terms and scope of the PI Insurance relevant to the Project or invalidate or render it unenforceable;
- (e) provide information to the Authority regarding any claim or circumstance notified under the PI Insurance in respect of the Project to the Authority as may be reasonably required and of any potential breach of the aggregate limit of the policy;
- (f) disclose to the relevant insurers any matters, which could reasonably be expected to be material in the context of the

Project and any of the other insurances required to be maintained under this **Clause 5 (Insurance)**;

- (g) indemnify the Authority in respect of any subrogation claim by the insurers brought in connection with any claim made under the PI Insurance; and
- (h) include the interests of the Authority (if any) in any claim or circumstances notified under the PI Insurance and provide a copy of such notification to the Authority.

5.23A Except for **Clauses 5.3 (Insurance), 5.4 (Insurance), 5.4A (Insurance), 5.9 (Insurance), 5.12 (Insurance)** and **5.20 (Unavailability of Insurance)** the provisions of **Clause 5 (Insurance)** shall not apply to the Houseblock PI Insurance. In respect of the Houseblock PI Insurance, the Contractor undertakes and shall procure that the Houseblock Construction Sub-contractor undertakes to the Authority, to:

- (a) effect and maintain in full force and effect the Houseblock PI Insurance referred to in **paragraph 4A of Part 1A of Schedule O (Minimum Insurance Requirements – Insurance during Construction Phase)** from the date of the Amending Agreement;
- (b) provide evidence satisfactory to the Authority (as and when reasonably required by the Authority) that the Houseblock PI Insurance is in full force and effect from the date of the Amending Agreement (such evidence to include details of the cover (including confirmation of vicarious liability and retro cover as specified in **Schedule O (Insurance)**), territorial limits, indemnity limit, levels of excess, insurers and policy number);
- (c) provide the Authority with copies of all notices under the Houseblock PI Insurance relative to the Project;
- (d) provide the Authority with notice of:
 - (i) any cancellation of the Houseblock PI Insurance not less than ninety (90) Days prior to the relevant cancellation date;
 - (ii) any material changes to or suspension of cover relevant to the Project;

- (iii) any event of which it becomes aware, or could reasonably be expected to become aware which may vitiate the Houseblock PI Insurance; and
 - (v) any act, omission or event which may adversely affect the terms and scope of the Houseblock PI Insurance relevant to the Project or invalidate or render it unenforceable;
- (e) provide information to the Authority regarding any claim or circumstance notified under the Houseblock PI Insurance in respect of the Project to the Authority as may be reasonably required and of any potential breach of the aggregate limit of the policy;
- (f) disclose to the relevant insurers any matters, which could reasonably be expected to be material in the context of the Project and any of the other insurances required to be maintained under this **Clause 5 (Insurance)**;
- (g) indemnify the Authority in respect of any subrogation claim by the insurers brought in connection with any claim made under the Houseblock PI Insurance; and
- (h) include the interests of the Authority (if any) in any claim or circumstances notified under the Houseblock PI Insurance and provide a copy of such notification to the Authority.

5A. Riot (Damages) Act 1886

5A1.1 The Contractor shall not, and undertakes to procure that no (i) Commercial Insurer; or (ii) Commercial Insurer's successors or permitted assigns; or (iii) other Person claiming by or through a Commercial Insurer, shall, bring any claim under the Riot (Damages) Act 1886 in respect of any damage to the Prison, the Site or any Assets. This undertaking shall be for the benefit of any Police Authority in the United Kingdom and the statutory successors of any such Police Authority, each of which may enforce the terms of this **Clause 5A (Riot (Damages) Act 1886)** against the Contractor and/or its successors and permitted assigns (as appropriate).

5A1.2 For the purposes of this **Clause 5A (Riot (Damages) Act 1886)**:

- (a) '**Police Authority**' shall have the meaning ascribed to it in section 101 of the Police Act 1996 as amended; and

- (b) '**Commercial Insurer**' shall mean a Person providing commercial insurance in respect of the Prison.

5A1.3 **Clause 5A1.1 (Riot (Damages) Act 1886)** shall be binding upon the Contractor and each of its successors and permitted assigns .

6. **Liability for Loss and Damage**

6.1 The Contractor shall be liable for all loss and/or damage to the Prison, the Site or the Assets except to the extent that such loss or damage was caused or contributed to by an act or omission by, or directly as a result of, an express written request or instruction of the Authority, its servants or agents or the breach by the Authority of any of its obligations under the Contract; provided that the Contractor shall remain liable for any such loss and/or damage occurring by reason of the exercise by the Authority of its powers under Section 88 of the Criminal Justice Act 1991 except to the extent such loss or damage is caused by the negligence of an employee of the Authority in exercising such powers.

6.2 The Contractor shall at its own cost reinstate, replace or make good to the reasonable satisfaction of the Authority, or if the Authority agrees, compensate the Authority for, any loss or damage for which the Contractor is responsible under **Clause 6.1 (Liability for Loss and Damage)**.

6.3 The Contractor shall perform its obligations under **Clause 6.2 (Liability for Loss and Damage)** as soon as practicable and shall in any event following the issuance of the Engineer's Declaration pursuant to **Clause 26 (Engineer's Declaration)** use all reasonable endeavours to complete any works required within forty eight (48) hours of the loss or damage occurring, subject to the following provisions of this **Clause 6 (Liability for Loss and Damage)**.

6.4 In circumstances following the issuance of the Engineer's Declaration pursuant to **Clause 26 (Engineer's Declaration)** where any of:

- (a) the Prison;
- (b) the Site; or
- (c) the Assets,

is destroyed or damaged with the result that the Certified Normal Accommodation is not provided the Contractor shall, at its own cost

provide the Authority with a report from an independent expert (the "**Independent Report**") identifying:

- (i) the work required to reinstate, replace or make good the relevant loss or damage;
- (ii) the estimated cost of such work; and
- (iii) the earliest date (the "**Reinstatement Date**") by which such work may reasonably be expected to be completed, having regard to such factors as shall be identified in the Independent Report.

PROVIDED THAT an Independent Report shall not be required if the cost of repair or reinstatement is less than [REDACTED] if the Contractor provides its own report to the Authority on the above matters within five (5) Days of the relevant loss or damage occurring.

6.5 The Contractor shall ensure that the Independent Report is produced as soon as possible and in any event within fourteen (14) Days of the date the relevant loss or damage occurs.

6.6 If the Authority does not agree with the Independent Report or any report provided by the Contractor, it shall as soon as reasonably practicable and in any event within fourteen (14) Days of the date on which it receives the Independent Report, or the report provided by the Contractor, inform the Contractor in writing and the parties shall agree such changes thereto as may be appropriate within fourteen (14) Days from the date the Authority informs the Contractor in writing. Failing such agreement the matter shall be referred for resolution pursuant to **Clause 72 (Dispute Resolution)**. Notwithstanding **Clause 72.2 (Dispute Resolution)**, the Adjudicator shall be required to resolve such matter within twenty one (21) Days of the matter being referred to him.

6.7 The Contractor shall undertake the work required by the Independent Report (or by the report of the Contractor if no Independent Report is required) and shall use its reasonable endeavours to complete the same on or before the Reinstatement Date.

7. **Sub-contracting**

7.1(a) The Contractor shall not at any time permit any of its obligations under the Contract to be performed or undertaken by any other Person without the Authority's prior written consent to both the identity of such other Person and the terms of such performance or undertaking, provided that

the Authority in executing this Contract hereby provides such prior written consent to the sub-contracting to the Construction Sub-contractor and the Operating Sub-contractor of such of the Contractor's obligations hereunder as are contained in, respectively, the Construction Sub-contract and the Operating Sub-contract (but, for the avoidance of doubt, not to any replacements or changes to either Sub-contract or Sub-contractor). In executing the Amending Agreement the Authority provides its prior written consent to the Sub-contracting of the Houseblock Works to the Houseblock Construction Sub-contractor.

- (b) The Contractor agrees not to make any amendment to, nor grant any extension of time, nor waive any right to liquidated damages under, either the Construction Sub-contract or the Operating Sub-contract without the prior written consent of the Authority unless the Authority has agreed to a like amendment, extension or waiver under this Contract provided that in respect of any Sub-contract which has been approved by the Authority in accordance with this **Clause 7.1 (Sub-contracting)** such consent may not be withheld or delayed where the Sub-contractor is legally entitled to such extensions of time under the relevant Sub-contract.
- (c) The Authority shall be deemed to have approved any amendment to any Sub-contract which is required as a result of any change made to this Contract (provided that any changes made correspond exactly in each of the Sub-contracts and this Contract).
- (d) If the Contractor wishes to replace any Sub-contractor, the procedure set out in **Schedule Q (Appointment of a new Sub-contractor)** shall apply and the Contractor shall provide the Authority with the information set out therein in relation to any replacement Sub-contractor together with any other information which the Authority requests for the purpose of deciding whether or not it should consent to any Sub-contractor or Sub-contract.

For the avoidance of doubt neither the giving of consent by the Authority to the identity of any Sub-contractor nor the knowledge, review or approval of the terms of any Sub-contract shall relieve the Contractor of any of its obligations under this Contract nor render the Authority in any way liable to any Sub-contractor or in any way bound by the terms of any Sub-contract.

- 7.2 In the event that the Authority does consent to any Sub-contract pursuant to **Clause 7.1 (Sub-contracting)**, the Contractor shall, unless the Authority otherwise agrees, ensure that such Sub-contractor (whether self employed or otherwise) and its employees (which shall, for the purpose of this Clause, save in respect of **Clause 33B (TUPE**

Transfers), include any of its agents and representatives providing services to the Prison and Site) assume obligations directly to the Authority corresponding to those imposed in **Clauses 33.3 (The Operational Staff), 33.6 (The Operational Staff) and 33.9 (The Operational Staff), 33A (The Construction Staff), 33B (TUPE Transfers), 57 (Public Relations and Publicity) and 58 (Information and Confidentiality).**

- 7.3 The Contractor shall procure that the Construction Sub-contractor and the Operating Sub-contractor each provide an undertaking to the Authority in respect of the amounts equal to those payable under **Clause 25 (Liquidated Damages)** and that the Construction Sub-contractor provides a collateral warranty to the Authority in respect of the construction of the Prison in accordance with **Schedule A (Specifications)** in each case substantially in the form agreed between the Authority and the Contractor and that any limitation of the liability of the Construction Sub-contractor and the Operating Sub-contractor is at a level agreed to in writing by the Authority. The Contractor shall further take all reasonable steps to secure the due observance by the Construction Sub-contractor and the Operating Sub-contractor of all obligations under such undertakings and collateral warranty and the relevant Sub-contract and, at the Authority's request, will provide any assistance reasonably required by the Authority in its pursuit of any claim against the Construction Sub-contractor and/or the Operating Sub-contractor pursuant to such collateral warranty and/or undertaking.
- 7.3A The Contractor shall procure that the Houseblock Construction Sub-contractor provides, pursuant to **Clause 2A (Houseblock Documents)** the Sub-Contractor's Collateral Warranty in respect of the performance of the Houseblock Works in accordance with **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)** and that any limitation of the liability of the Houseblock Construction Sub-contractor does not fall below a minimum level agreed to in writing by the Authority; and the Contractor shall take all reasonable steps to secure the due observance by the Houseblock Construction Sub-contractor of all such obligations.
- 7.4 The Contractor shall be directly responsible for the management and supervision of approved Sub-contractors.
- 7.5 Where the Contractor enters into an approved Sub-contract with a Sub-contractor for the purpose of performing any of the obligations of the Contract, it shall cause a term to be included in such Sub-contract which requires payment by the Contractor to the Sub-contractor within a

specified period not exceeding forty five (45) Days from receipt of a valid invoice as required by the terms of the Sub-contract.

8. **Assignment**

Subject to **Clause 7 (Sub-contracting)** and any security, charge or assignment by way of security or other encumbrance in favour of the Banks pursuant to the Financing Agreements, the Contractor shall not (and shall not purport to) give, bargain, sell, assign, sub-let, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, or grant, declare, create or dispose of any right or interest in it or any part of it save that nothing in this Clause shall prevent the assignment and/or transfer of the Contract with the consent of the Authority in accordance with the provisions of the Direct Agreement.

9. **Change to Services Required**

9.1(a) Subject to **Clauses 9.2 (Change to Services Required)** and **9.8 (Change to Services Required)**, the Authority may delete, amend or alter the extent of any obligation to be met by the Contractor under the Contract in respect of the Works, the Houseblock Works, the Custodial Service, or add to such obligations of the Contractor under the Contract, by giving written notice (the "**Notice of Change**") to the Contractor of the required change.

(b) In the case of emergency, the requirements set out in the Notice of Change shall come into immediate effect, and the Contract Price and/or Houseblock Works Fee shall be varied as set out below.

(c) Otherwise than in the case of emergency, following service of any Notice of Change, the Authority will consult with the Contractor with respect to the deletion, alteration, extension of or addition to the obligations hereunder, and the Contractor shall provide the Authority on or before the date falling ten (10) Business Days after the date of the Notice of Change with either:

- (i) a reasonable estimate of the increase or reduction in the Contract Price and/or Houseblock Works Fee (if any), such estimate to be accompanied by a reasonably detailed breakdown of the manner in which that estimate is calculated and to include as a separate item and not as part of the estimated Contract Price and/or Houseblock Works Fee

details of any redundancy costs which are reasonably expected to be incurred by reason of the proposed change; or

- (ii) proposal of other changes to the terms set out herein (including any extension of time for completion), which it believes should occur as a result of the changes set out in the Notice of Change.

The Authority may accept or reject such estimate or proposal.

- (d) In the event that the Authority accepts such estimate or proposal:

- (i) the changes referred to in the Notice of Change shall come into immediate effect;
- (ii) the Contract Price and/or Houseblock Works Fee (or other relevant terms hereof) shall change as set out in the Contractor's estimate or proposal; and
- (iii) the terms of the Contract shall be deemed changed as set out in the Notice of Change (except where the changes referred to in the Notice of Change require the Contractor to procure building works upon the Site or the changes cannot be reasonably effected immediately, in which case the Authority shall allow the Contractor such further period to effect such changes as is reasonably necessary).

- (e) If the Authority rejects such estimate or proposal, it may either, without prejudice to its rights under **Clause 39A (Benchmarking)**:

- (i) elect to allow the Notice of Change to lapse; or
- (ii) elect that the changes referred to in the Notice of Change shall come into immediate effect (in the same manner as set out in Sub-Clause (d)) but that the Contract Price and/or Houseblock Works Fee shall be varied or not varied in accordance with **Clause 72 (Dispute Resolution)**.

- (f) In the case of an emergency, or when the Authority elects as referred to in Sub-Clause (e)(ii) above, the Authority shall set such provisional change to the Contract Price and/or Houseblock Works Fee and extension of time as it considers fair, such change to be effective until such time as the Contract Price and/or Houseblock Works Fee is varied (or not varied) and/or a time extension granted as agreed by the Authority and the Contractor (or determined in accordance with **Clause 72 (Dispute Resolution)**), and the Contract Price and/or Houseblock Works Fee shall be deemed to be so changed on a provisional basis.
- (g) In the event that the provisional Contract Price and/or Houseblock Works Fee set by the Authority is less than the Contract Price and/or Houseblock Works Fee as so agreed or determined pursuant to **Clause 72 (Dispute Resolution)**, an adjusting payment shall be made by the Authority to the Contractor. Such payment will be made on or before the date falling thirty (30) Days after the date of such agreement or determination, in the amount of such difference, covering the period from the date the changes referred to in the Notice of Change became effective until the date upon which the Contract Price and/or Houseblock Works Fee was so agreed or determined pursuant to **Clause 72 (Dispute Resolution)** and vice versa by the Contractor to the Authority if the provisional Contract Price and/or Houseblock Works Fee set by the Authority is more than the Contract Price and/or Houseblock Works Fee as so agreed or determined pursuant to **Clause 72 (Dispute Resolution)**.

For the avoidance of doubt, no Notice of Change may require the Contractor to provide Additional Prisoner Places (as to which the provisions of **Clause 40A (Additional Prisoner Places)** shall apply).

- 9.2(a) In the event that the Notice of Change would result in an obligation on the Contractor to incur any Capital Expenditure following the date hereof, the Contractor shall use all reasonable endeavours to obtain finance at a reasonable cost from the Banks or other commercial sources for such Capital Expenditure.
- (b) If the Contractor successfully obtains an offer of such reasonable finance within two (2) weeks (or, in respect of any Notice of Change served after the date of the Engineer's Declaration, within four (4) weeks) of the date of the Notice of Change, the Contractor shall (within fourteen (14) Days of receiving such offer of finance) provide the following two (2) estimates of the increase or decrease in the Contract Price which it believes should occur as a result of the changes set out in the Notice of Change:

- (i) one to include the cost of such reasonable finance; and
 - (ii) the other to exclude the cost of such reasonable finance, but to estimate the amount of the relevant Capital Expenditure which the Contractor believes is required to comply with the Notice of Change.
- (c) If despite the use of the Contractor's reasonable endeavours and the operation of **Clause 39 (Variation of Price)** the Contractor fails to obtain finance for such Capital Expenditure, the Contractor shall within two (2) weeks of the date of the Notice of Change provide the Authority with a written estimate of the amount of such Capital Expenditure together with its estimate of any increase or decrease in the Contract Price and/or Houseblock Works Fee which it believes should occur as a result of the changes set out in the Notice of Change. Any such estimate or estimates shall be accompanied by a reasonably detailed breakdown of the manner in which that estimate is calculated. The Authority may accept such estimate or estimates or request that it or they be changed, and following such request the Contractor may submit a different estimate or estimates within two (2) weeks of receipt of such request.
- (d) Following the submission by the Contractor of a different estimate or estimates:
 - (i) if the Authority accepts the Contractor's estimate (which includes the cost of financing the relevant Capital Expenditure), the Notice of Change shall come into effect in the same manner and subject to the same conditions as those referred in **Clause 9.1 (Change to Services Required)** (assuming for these purposes that no emergency has occurred) following the Authority's acceptance of the Contractor's estimate;
 - (ii) if the Authority rejects the Contractor's estimate (which includes the cost of financing the relevant Capital Expenditure), or the Contractor fails to provide such an estimate, but accepts the Contractor's estimate which excludes the cost of financing the relevant Capital Expenditure, then:
 - (A) the Authority shall be liable to reimburse, or pay on behalf of, the Contractor the amount of such Capital Expenditure as is set out in such estimate in accordance with **Clause 9.3 (Change to Services Required)** or, if the Authority does not accept

such estimate, for such amount of Capital Expenditure as is agreed or determined in accordance with **Clause 9.3(Change to Services Required)**;

(B) the Notice of Change shall come into effect once the amount of the Capital Expenditure has been agreed or determined as set out in **Clause 9.3(Change to Services Required)**; and

(C) the Contract Price and/or Houseblock Works Fee shall be varied once the Notice of Change comes into effect;

(e) if the Authority rejects the Contractor's single estimate or both its estimates submitted pursuant to **Clause 9.2(b) (Change to Services Required)** and any different estimates submitted in accordance with **Clause 9.2(d) (Change to Services Required)** (as appropriate), then the Authority may elect either to allow the Notice of Change to lapse, or that the amount of the Capital Expenditure be agreed or determined in accordance with **(Change to Services Required)** and any change to the Contract Price and/or Houseblock Works Fee be determined in accordance with **Clause 72 (Dispute Resolution)**.

9.3(a) Where either (i) the Contractor fails to obtain finance at a reasonable cost for the relevant Capital Expenditure from the Banks or other commercial sources and the Authority rejects the Contractor's estimate of the amount of the relevant Capital Expenditure, or (ii) the Authority rejects any estimate from the Contractor which includes the cost of such financing, the amount of such Capital Expenditure and the manner of its payment shall be determined in accordance with this **Clause 9.3 (Change to Services Required)**.

(b) The parties shall attempt to agree an estimate of such Capital Expenditure but if no agreement is reached within seven (7) Days of the Authority's rejection of the initial and different estimates, the amount of the Capital Expenditure shall be determined in accordance with **Clause 72 (Dispute Resolution)**.

(c) Once the estimate has been agreed or determined, the Contractor shall procure that all that is necessary is done in order to comply with the Notice of Change (unless the Authority notifies the Contractor within seven (7) Days of the date of determination of the estimate that the Notice of Change

should lapse). During execution by the Contractor of all necessary works to comply with the Notice of Change, the Authority shall either (a) promptly reimburse the Contractor, or, (b) at the option of the Contractor, pay on behalf of the Contractor against invoices in respect of those parts of such works which have been completed, subject to an aggregate maximum payment of the agreed estimate or, as the case may be, the amount determined in accordance with **Clause 72 (Dispute Resolution)**, in either case within thirty (30) Days of presentation of the relevant invoice(s) by the Contractor.

- 9.4(a) At the same time that the Contractor provides any estimate or estimates to the Authority under either **Clause 9.1 (Change to Services Required)** or **9.2 (Change to Services Required)**, it shall also provide the Authority with a proposal as to whether the Finance Plan should change, and if so, in what manner. Subject to **Clause 9.4(b) (Change to Services Required)**, once the contents of the Notice of Change have come into effect, the Authority must accept such proposal or reject it within seven (7) Days. If the Authority accepts the proposal, the Finance Plan will automatically be deemed changed as proposed; if the Authority rejects the proposal, the parties shall attempt to agree the manner in which the Finance Plan should be changed but if no agreement is reached within seven (7) Days of the Authority's rejection, the matter shall be decided in accordance with **Clause 72 (Dispute Resolution)**.
- (b) Notwithstanding the above, if any matter referred to in **Clauses 9.1 (Change to Services Required)**, **9.2 (Change to Services Required)** or **9.3 (Change to Services Required)** is determined pursuant to **Clause 72 (Dispute Resolution)**, the manner in which the Finance Plan is to be changed shall also be determined at the same time and in the same way in accordance with **Clause 72 (Dispute Resolution)**.
- 9.5(a) The Contractor may (and shall, if necessary to ensure that the Works and the Houseblock Works comply with applicable Legislation) propose changes to the Custodial Service or to the Works or to the Houseblock Works pursuant to this **Clause 9.5 (Change to Services Required)** which may be accompanied by proposed changes to the Contract Price and/or Houseblock Works Fee or the other terms hereof. Any such changes shall require the prior written consent of the Authority, provided that the Authority shall not be entitled to withhold or delay its consent where (i) the proposed change to the Custodial Service or the Works or the Houseblock Works is necessary to enable the Contractor to comply

with any applicable Legislation first having effect after the date of this Contract; (ii) such proposed change is the minimum change necessary to enable the Contractor to comply with such Legislation and (iii) it would as a result of such legislation be illegal for the Contractor to perform the relevant obligation relating to the Custodial Service or the Works or the Houseblock Works unless the proposed change was implemented. A change to the Works may only be requested by the Contractor in the manner set out in **Schedule M, Part 3 (Change Control Procedure)** or **Part 4 (Change Control Procedure Post Engineer's Declaration)**, as appropriate. A change to the Houseblock Works may only be requested by the Contractor in the manner set out in **Schedule M, Part 3A (Change Control Procedure - Houseblock Works)** or **Part 4A (Change Control Procedure Post Engineer's Houseblock Declaration)**, as appropriate.

- (b) In the event of any increase in the costs to the Contractor, the Operating Sub-contractor, the Construction Sub-contractor or the Houseblock Construction Sub-contractor resulting from any changes to the Custodial Service, the Works, the Houseblock Works or to their design requested by the Contractor pursuant to this **Clause 9.5 (Change to Services Required)**, there shall be no variation in the Contract Price and/or Houseblock Works Fee unless such changes in cost arise from Prison Legislation, in which case **Clause 39.2 (Variation of Price)** shall apply or unless the Authority otherwise agrees.
- (c) If any change proposed by the Contractor arises from a Security Technology Change, the provisions of **Clause 39.3 (Variation of Price)** shall take precedence over this **Clause 9.5 (Change to Services Required)**.
- 9.6(a) If at any time the costs incurred by the Contractor, the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor have decreased as a result of any changes to the Custodial Service, the Works, the Houseblock Works or any change to their design proposed, in each case, by the Contractor pursuant to **Clause 9.5 (Change to Services Required)** (but not as a result of any Design Development as defined in **Schedule M (Compliance Monitoring)**), then the Authority may request a variation in the Contract Price and/or Houseblock Works Fee pursuant to this **Clause 9 (Change to Services Required)**.
- (b) Such variation shall take into account such cost savings to the Contractor, the Construction Sub-contractor, the Operating Sub-contractor and/or the Houseblock Construction Sub-contractor to reduce the amount of the Contract Price and/or Houseblock Works Fee as though

the request of the Authority under this **Clause 9.6 (Change to Services Required)** were a Notice of Change.

- 9.7 If a Notice of Change served by the Authority under **Clause 9.1 (Change to Services Required)** is implemented, then the Authority shall reimburse to the Contractor any redundancy costs estimated in the Notice of Change and reasonably suffered by the Contractor and/or the Sub-contractors as a result of the implementation of the Notice of Change within thirty (30) Days from the presentation by the Contractor of a valid notice and such other documentation as may reasonably be required by the Authority.
- 9.8 Any change to the Contract Price and/or Houseblock Works Fee which is determined under this **Clause 9 (Change to Services Required)** shall be determined in accordance with the principles set out in **Clause 39.4 (Variation of Price)** and shall include any costs arising as a result of any delay in completion caused by a Notice of Change becoming effective and shall take into account the reimbursement by the Authority of any redundancy costs, as provided in **Clause 9.7 (Change to Services Required)**.
- 9.9 For the avoidance of doubt, it shall not be deemed a change to any obligation hereunder and there shall not be any variation of the Contract Price and/or Houseblock Works Fee if:
- (a) the Authority requires any Additional Prisoner Places in accordance with the terms of this Contract;
 - (b) the operation of the Prison changes in any way within the parameters set out in **Part 1 of Schedule D (Operational Requirements)**;
 - (c) the Authority requires any amendments to be made pursuant to **Clause 20.2 (Preparation for operation of the Prison)**.
- 9.10 The Authority will be entitled to serve a notice under **Clause 9.1 (Change to Services Required)** which deletes, amends or alters the extent of any obligation hereunder provided that such deletion, amendment or alteration would not result in the Prison being used as a fully juvenile prison under the auspices of the Youth Justice Board or as an open prison.
10. **Provision and Interpretation of Information**
- 10.1 The Contractor shall be deemed to have inspected the Site and its surroundings and to be in possession of information connected therewith

and to accept responsibility for and have satisfied itself before signing the Contract as to all matters relating to the Land, including without limitation:

- (a) the form, nature and condition of the Site and its surroundings, including the ground and sub-soil (for the avoidance of doubt, including the incidence of any contaminated land or toxic or hazardous waste);
- (b) the extent of the work and materials necessary for constructing, completing and maintaining the Works;
- (c) the means of communication with and access to the Site; and
- (d) the provision and location of utilities.

10.2 The Contractor is responsible for obtaining all surveys and information necessary for carrying out its obligations under the Contract. The Contractor shall not rely on any information provided by the Authority with regard to these matters.

10.3 The Authority shall not be liable for any costs arising from the Contractor's failure to perform its obligations under this Clause or from any lack of knowledge which the Contractor is deemed to have under **Clause 10.1 (Provision and Interpretation of Information)**.

10A Provision and Interpretation of Information - Houseblock Works

10A.1 The Contractor shall be deemed to have inspected the Houseblock Works Area and its surroundings and to be in possession of information connected therewith and to have satisfied itself before signing the Amending Agreement as to all matters relating to the Houseblock Works, including, without limitation:

- (a) the form, nature and condition of the Houseblock Works Area and its surroundings, including the ground and sub soil (for the avoidance of doubt, including the incidence of any contaminated land or toxic or hazardous waste);
- (b) the extent of the work and materials necessary for constructing, completing, and maintaining the Houseblock Works;
- (c) the means of communication with and access to the Houseblock Works Area; and
- (d) the provision and location of utilities.

10A.2 The Contractor is responsible for obtaining all surveys and information necessary for carrying out its obligations in relation to the Houseblock Works and the Increased Capacity. The Contractor shall not rely on any information provided by the Authority with regard to these matters.

10A.3 The Authority shall not be liable for any costs arising from the Contractor's failure to perform its obligations under this **Clause 10A (Provision and Interpretation of Information - Houseblock Works)** or from any lack of knowledge which the Contractor is deemed to have under **Clause 10A.1 (Provision and Interpretation of Information - Houseblock Works)**.

PART II - PROVISION

11. The Land

11.1.1 The Land upon which the Contractor shall provide the Prison shall be within the piece of land edged in red upon the plan attached to the Lease.

11.1.2 The Authority will grant to the Contractor and the Construction Sub-contractor a licence (the "**Licence**") to permit the Contractor and the Construction Sub-contractor entry to the Authority's adjoining land as shown edged in green on the plan attached to the Licence (the "**Open Space Land**") for the purposes of the Contractor complying with the obligations under the Contract

11.2.1 The Lease for the demise of the Land to the Contractor and the Operating Sub-contractor is for a term of twenty eight (28) Years. The Lease shall be completed on the Day on which the Contractor enters into the Contract and the Authority and the Contractor hereby agree that they will enter into, and the Contractor agrees that it will procure that the Operating Sub-contractor enters into, the Lease.

11.2.2 The Licence shall also be completed on the Day on which the Contractor enters into the Contract and the Authority and the Contractor hereby agree that they will enter into the Licence and the Contractor agrees that it will procure that the Construction Sub-contractor will enter into the Licence.

11.3 It is hereby acknowledged that in accordance with the terms of the Lease any and all interests in the Land and in the Prison shall vest in the Landlord thereunder upon the termination of the leasehold interest of the Contractor and/or the Operating Sub-contractor whether through

forfeiture, surrender, effluxion of time or some other cause and the Contractor agrees that it will comply with all the provisions of the Lease and will procure that the Operating Sub-contractor will comply with all the provisions of the Lease.

11.4.1 The land made available to the Contractor for the purpose of providing the Prison under the Contract shall not be used for any purpose other than the purposes of the Contract save with the prior written approval of the Authority.

11.4.2 The land made available to the Contractor and the Construction Sub-contractor for the purpose of the Contractor complying with the obligations under the Contract shall not be used for any purpose other than for the carrying out of such obligations under this Contract.

11.5.1 The Contractor shall not, without prior written approval from the Authority (such approval not (except in the case of Sub-Clause (iii) below) to be unreasonably withheld or delayed), except in the performance of its obligations under the Contract:

- (i) execute any structural or other material work to the Prison;
- (ii) carry out any business or trading activity within the confines of the Prison except activities in the ordinary course of delivering the Services nor display any advertisement, sign or notice of any description outside the Prison, unless such sign or notice is required to be displayed by Legislation;
- (iii) permit the Prison to be used for any purpose other than the performance of the Services.

11.5.2.1 The Contractor shall not, without prior written approval from the Authority (such approval not to be unreasonably withheld or delayed), except in the performance of assuming the obligations on the part of the Authority contained in the Contract:

- (i) execute any structural or other material works to the Open Space Land;
- (ii) carry out any business or trading activity on the Open Space Land nor display any advertisement,

sign or notice on the Open Space Land unless such sign or notice is required to be displayed by Legislation; or

- (iii) permit the Open Space Land to be used for any purpose other than for the performance of the obligations contained in the Contract.

11.6.1 In accordance with Condition 13 attached to the Permission the Contractor will seek approval from the Council for the construction of bridges over the River Ash. Once such bridges have been constructed in accordance with all appropriate and necessary conditions and consents the Contractor shall maintain such bridges until such time as the Engineer's Certificate is issued in accordance with the provisions of the Preamble to **Schedule A (Specifications)**.

11.6.2 The Contractor shall be responsible for the maintenance of the Open Space Land (including any grass-cutting or arboricultural operations thereon) until such time as the Engineer's Certificate is issued in accordance with the provisions of the Preamble to **Schedule A (Specifications)** and following the issue of such Engineer's Certificate the Contractor shall remain responsible for the carrying out of any remaining outstanding obligations in respect of the Open Space Land as contained in Condition 5 to the Permission

11.7 In the event of the assignment and/or transfer of the Contract with the consent of the Authority in accordance with the provisions of the Contract or the Direct Agreement, or in the event of another Operating Sub-contractor being appointed by the Contractor from time to time to perform the Custodial Service in accordance with the provisions of this Contract, the Tenant and the Operating Sub-contractor named in the Lease then subsisting will surrender their Lease to the Authority and immediately thereafter the Authority shall grant a new lease (the "**New Lease**") to the Person who has the benefit of the Contract and the Person who has been appointed by the Contractor to perform the Custodial Service (such Persons respectively constituting the new Tenant and the new Operating Sub-contractor for the purposes of the New Lease) save that nothing in this Clause shall prevent the assignment of the Lease to a Substitute Entity in the circumstances envisaged by Clause 6.10 of the Lease. This procedure shall be repeated whenever there is a change in the identity of the Contractor and/or Operating Sub-

contractor (save in the circumstances envisaged by Clause 6.10 of the Lease) whilst the Contract is still subsisting.

- 11.8 The New Lease shall contain all those covenants, conditions and provisions as are set out in the Lease, except that the term of Years granted by the New Lease shall be equal to the unexpired residue, at the date the New Lease is granted of the term of Years granted by the Lease.
- 11.9 In the event of the assignment and/or transfer of the Contract as set out in **Clause 11.7 (The Land)**, the Contractor and Construction Sub-contractor shall surrender the Licence to the Authority and immediately thereafter the Authority shall grant a new licence on similar terms to the Licence to the Person who has the benefit of the Contract and the Person appointed by the Contractor as construction sub-contractor in order to fulfil the obligations of the Contractor pursuant to the Contract.
- 11.10 It shall be the responsibility of the Contractor, at its own expense, to obtain all easements, rights, licences and privileges that the Contractor and the Operating Sub-contractor require to enable them to carry out their obligations under the Contract where such easements, rights, licences and privileges are:
- (i) not specified or referred to in the Lease and/or the Licence; and
 - (ii) are under, over and upon the property and land that does not form part of the land and/or the land referred to in the Licence.

The Contractor shall inform the Authority in writing of any such easements, rights, licences and privileges which have been obtained or are being sought by the Contractor and/or the Operating Sub-contractor and where requested in writing by the Authority the Contractor shall (and shall procure that the Operating Sub-contractor shall) at its (or their) own expense take all appropriate and necessary steps to ensure that the freehold owner of the property and land over, under and upon which easements, rights, licences and privileges have been or are to be granted also grants such easements, rights, licences and privileges to the Authority in fee simple as owner of the freehold interest in the Land for the benefit of the Land and each and every part thereof and the Contractor shall (and shall procure that the Operating Sub-contractor shall) indemnify the Authority against all liabilities and obligations that the Authority enters into with such freehold owner in respect of the easements, rights, licences and privileges that are granted to the Authority pursuant to this **Clause 11 (The Land)** for so long as the Lease

subsists. For the avoidance of doubt, the maximum amount payable under this indemnity shall be limited as specified in **Clause 4.4 (Indemnities)**.

11.11 Not used.

11.12 Notwithstanding any other provisions of this Contract the Authority will indemnify and keep indemnified the Contractor against all actions, proceedings, costs, charges, claims and demands losses and damages (liquidated or otherwise) suffered or incurred by the Contractor or any of its Sub-contractors whatsoever that may arise as a result of any rights of drainage and rights in respect of water, gas and electricity supply services at any stage during the subsistence of the Contract being exercised or attempting to be exercised by any party save where the existence of such right or rights has been specifically disclosed to the Contractor by:

- (a) Transco in a letter to Ashurst Morris Crisp dated 4 March 2002 (Ref S3 NRSWA 21065);
- (b) British Telecommunications in a letter to Ashurst Morris Crisp dated 14 March 2002;
- (c) Thames Water in a formal response to a Technical Conveyancing Enquiry addressed to Ashurst Morris Crisp dated 24 February 2002 (Ref TCE/127851 CON/188567);
- (d) Scottish and Southern Energy in a letter to Ashurst Morris Crisp dated 28 February 2002 (Ref MSS129187);
- (e) Energis in a letter to Ashurst Morris Crisp dated 20 March 2002 (Ref GFEE/02/SJ057);
- (f) A deed of Grant dated 4th December 1962 and made between Her Majesty's Principal Secretary of State for the Home Department (1) and Esso Petroleum Company Limited (2) as referred to in Entry 5 to the Charges Register to Title Number SY405298;
- (g) A Deed of Grant dated 14 April 1969 and made between Her Majesty's Principal Secretary of State for the Home Department (1) and Esso Petroleum Company Limited (2) as referred to in Entry 6 to the Charges Register to Title Number SY405298;
- (h) A Deed of Grant dated 16th October 2002 and made between Her Majesty's Principal Secretary of State for the Home Department (1) and

Southern Electric Power Distribution as referred to in Entry 11 to the Charges Register for Title Number SY405298; and

- (i) A Supplemental Wayleave Agreement dated 25th November 2002 and made between Her Majesty's Principal Secretary of State for the Home Department (1) and Southern Electric Power Distribution plc (2).

12. **Planning Approval**

- 12.1 The Contractor will note the decision of the Council dated 2 February 1999 whereby the Authority was granted outline clearance under the Department of the Environment Circular 18/84 to proceed with the development of a prison in accordance with its notice of proposed development (the "**Outline Clearance**"). The Contractor will further note the decision of the Council dated 1 February 2000 whereby HM Prison Service was granted outline planning permission to proceed with the development of a prison in accordance with its planning application (the "**Permission**"). The Contractor will further note the decision of the Council dated 27 February 2002 whereby the Contractor was granted detailed planning approval to proceed with the development of a prison in accordance with the Permission ("**Detailed Planning Approval**") and, without prejudice to the generality of the foregoing, in the course of providing the Prison the Contractor shall be responsible for making application(s) for all necessary planning clearances and planning permissions for the development of the Prison not covered by the Outline Clearance, the Permission and the Detailed Planning Approval. The Contractor shall bear any costs consequent upon and caused by such application including any costs in respect of any delay to the Works caused by such application.
- 12.2 During the subsistence of the Contract the Contractor shall comply with any conditions recommendations and obligations contained in the Permission and any other clearance or planning permission implemented by the Contractor and shall comply with any conditions recommendations and obligations as may be subsequently amended or superseded and the Contractor shall observe and perform all of the agreements and obligations on the part of the Authority contained in an Agreement made under Section 299A of the Town and Country Planning Act 1990 dated 27 January 2000 and made between the Council and the Authority (the "**Original Planning Agreement**") as varied by an Agreement dated 12 March 2001 and made between the Council and the Authority (the "**Supplemental Planning Agreement**") (both such Agreements together being called the "**Planning Agreement**") with the exception of those obligations contained in paragraphs 2.4 2.5 2.6 2.7