

THE SECRETARY OF STATE FOR JUSTICE

BRIDGEND CUSTODIAL SERVICES LIMITED

CONDITIONS OF CONTRACT

for the Design, Construction, Management

and Financing of a Custodial Service in

Bridgend, South Wales

dated 4 January 1996 (as amended by an amending agreement dated 7 November 2008
and as further amended by an amending agreement dated 9 August 2013)

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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 Full Operation Date means the date upon which the Contractor first provides eight hundred (800) Available Prisoner Places;

Actual Houseblock Opening Date means the date on which the Contractor first provides twelve (12) Available Prisoner Places at the Houseblock;

Actual New Houseblock Opening Date means the date on which the Contractor first provides twelve (12) Available Prisoner Places at the New Houseblock;

Actual Increased Capacity Date means the date on which the Contractor first provides the Increased Capacity;

Actual Opening Date means 17 November 1997;

Actual Phase 2 Increased Capacity Date means the date on which the Contractor first provides the Phase 2 Increased Capacity;

Additional Prisoner Place means:

- (a) until the Actual Increased Capacity Date, an Available Prisoner Place additional to the eight hundred (800) Available Prisoner Places (and during the Increased Capacity Phase-In Period an Available Prisoner Place additional to the number of Available Prisoner Places required to be provided pursuant to the Increased Capacity Phase-In Period Timetable);
- (b) from the Actual Increased Capacity Date until the Actual Phase 2 Increased Capacity Date, an Available Prisoner Place additional to the one thousand one hundred and thirty two (1132) Available Prisoner Places (and during the Phase 2 Increased Capacity Phase-In Period an Available Prisoner Place additional to the number of Available Prisoner Places required to be provided pursuant to the Phase 2 Increased Capacity Phase-In Period Timetable); and
- (c) from the Actual Phase 2 Increased Capacity Date, an Available Prisoner Place additional to the one thousand

43 (Additional Prisoner

Places);

Additional Prisoner Place Payment means the fee referred to in **Clause 43.3 (Additional Prisoner Places)** and paragraph 6 of **Schedule E (Payment Mechanism)**;

Additional Young Person Place means:

- (a) from the Actual Increased Capacity Date until the Actual Phase 2 Increased Capacity Date, an Available Prisoner Place for a Young Person, additional to the one thousand one hundred and thirty two (1132) Available Prisoner Places; and
- (b) from the Actual Phase 2 Increased Capacity Date, an Available Prisoner Place for a Young Person, additional to the one thousand five hundred and nineteen (1519) Available Prisoner Places

to be provided by the Contractor on the request of the Authority pursuant to **Clause 43A.1 (Additional Young Person Places)**;

Adult Prisoner means any person aged twenty two (22) or above 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;

Advance Period means the number of Days by which the Revised Opening Date determined pursuant to **Clause 22.2 (Contractual Opening Date)** (and not, for the avoidance of doubt, as the same may be postponed in accordance with the provisions of this Contract) is earlier than the Contractual Opening Date (and therefore by which any date in the Phase-in Timetable is brought forward) as stated in the notice given by the Contractor pursuant to **Clause 22.2 (Contractual Opening Date)**;

Agreed Proportion has the meaning given to it in **Clause 42.3 (Variation of Price)**;

Amended Operating Sub-contract means the amended version of the Operating Sub-contract, delivered to the Authority pursuant to **Clause 2A (Houseblock Documents)**;

Amending Agreement means the amending agreement entered into between the Authority and the Contractor dated 7 November 2008;

Annual Performance System means:

- (a) in respect of Adult and Young Offender Prisoners, the performance system set out in paragraph 2 of **Part 1** of **Schedule F (Performance Measures)**; and
- (b) in respect of Young Persons, the performance system set out in paragraph 2 of **Part 2** of **Schedule F Part 2 Paragraph 2 (Performance Measures)**;

Appropriate Limit has the meaning given to it in **Clause 62.21 (Confidential Information and Documents)**;

Arbitrator has the meaning given to it in **Clause 75.3 (Dispute Resolution)**;

Assets has the meaning given to it in **Clause 6.2 (Insurance)**;

Authority means the Secretary of State for Justice;

Authority's Cabling Specification Requirements means the Quantum Cabling Design Specification & Installation Procedure;

Available Prisoner Place shall have the meaning assigned to it in **Clauses 30.1 (Available Prisoner Places)**, **30A.1 (Available Prisoner Places)**, **30B.1 (Available Prisoner Places)**, and **30C.1 (Available Prisoner Places)**;

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)**;

Bribery Act means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time;

Business Day means a Day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;

Capital Expenditure 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 annual or periodic basis either in order to comply with the requirements of a Notice of Change or in constructing or, as the case may be, reconstructing the Prison as contemplated in paragraph 1(a) of **Schedule G (Payments on Termination for Default)**;

Car Park Works means the works which the Contractor is required to carry out pursuant to **paragraph 10.1.1 of Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)**;

Cash means cash in hand and deposits repayable on demand with any bank or other financial institution and includes cash in hand and deposits in foreign currencies;

Category A Prisoner means a Prisoner who is classified by the Authority as such and whose escape would, in the opinion of the Authority, be highly dangerous to the public, the police or to the security of the state;

CDM Regulations means the Construction (Design and Management) Regulations 2007;

Cell Certificates means certificates issued in accordance with the terms of **Clause 28 (Cell Certification)**;

Commercial Insurer means a person providing commercial insurance in respect of the Prison and/or Houseblock and/or New Houseblock;

Commercially Sensitive Information means the Confidential Information listed in column 1 of **Schedule S (Commercially Sensitive Information)** in each case for the period specified in column 2 of **Schedule S (Commercially Sensitive Information)**;

Completion Defects Period means the period of twelve (12) months from the date of issue of the Engineer's Completion Houseblock Declaration;

Completion Snagging Matters means items of outstanding work in relation to the Completion Works which do not prevent the Engineer's Completion Declaration being issued;

Completion Retention means three per cent (3%) of the Houseblock Works Fee payable during the period between the Engineer's HBJ and Car Park Works Declaration and the Engineer's Completion Declaration which the Authority is entitled to retain pursuant to **Schedule R (Houseblock Works Fee)**;

Completion Works means the works which the Contractor is required to carry out pursuant to **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)** other than the HBJ Works and Car Park Works;

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;

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;
- (c) might prejudice security at the Prison; or
- (d) relates to the calculation of Phase 2 Works Fee;

Construction Sub-contractor means Costain Construction Limited and Skanska International Building A.B. trading in joint venture as "Costain Skanska Joint Venture" or, with the prior written approval of the Authority, such other Construction Sub-contractor appointed by the Contractor, subject to the provisions of **Clause 8 (Sub-Contracting)**, from time to time to execute the Works;

Contract means this Contract as concluded between the Authority and the Contractor on the Date of Contract including all Schedules, annexes, plans and drawings attached thereto, together with any variations agreed by the Authority in accordance with **Clause 66 (Authority to Commit and Variation)**;

Contract Price means the amount payable under **Clause 40 (Price)** by the Authority to the Contractor for the performance of its obligations under the Contract;

Contract Term shall be the period referred to in **Clause 2.1 (Duration of Contract)**;

Contractor means Bridgend Custodial Services Limited, company no. 3045222, whose registered office is at Pembroke House, Banbury Business Park, Aynho Road, Adderbury, Banbury, Oxfordshire, OX17 3NS or any Substitute Entity duly appointed pursuant to the Direct Agreement;

Contractual Houseblock Opening Date shall be 31 October 2010 as the same may be altered pursuant to **Clause 25B (Extension of Time - Increased Capacity)**;

Contractual New Houseblock Opening Date shall be 25 January 2015 as the same may be altered pursuant to **Clause 25C (*Extension of Time – Phase 2 Increased Capacity*)**;

Contractual Increased Capacity Date shall be 12 February 2011 as the same may be altered pursuant to **Clause 25B (*Extension of Time - Increased Capacity*)**;

Contractual Phase 2 Increased Capacity Date shall be 3 May 2015 as the same may be altered pursuant to **Clause 25C (*Extension of Time – Phase 2 Increased Capacity*)**;

Contractual Opening Date shall be 15 December 1997 as the same may be altered pursuant to **Clause 25 (*Extension of Time*)**;

Controller means the person or persons appointed by the Authority under Section 85 (1) (b) of the Criminal Justice Act 1991;

Council means the Council of Bridgend County Borough Council;

Crown includes the Authority;

Custodial Duties means custodial duties at the Prison as defined in the Criminal Justice Act 1991;

Custodial Service means all services to be provided by the Contractor under this Contract (other than the Houseblock Works and/or the Phase 2 Works) after the Actual Opening Date;

Daily Report 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, Additional Prisoner Places and Additional Young Person Places during the Day prior to lock-up and since the previous lock-up and presented in hard form to a representative of the Authority as contemplated in **Clause 37.4 (*Monitoring and Inspection*)**;

Date of Contract is 4 January 1996;

Day means any period of twenty four (24) hours;

Delay Notice has the meaning given to it in **Clause 25.1 (*Extension of Time*)**;

Deputy Director means the person or persons appointed by the Contractor and approved by the Authority under section 85 (1) (a) of the Criminal Justice Act 1991;

Design Objectives means the Design Objectives for the Prison and the Site (including for the avoidance of doubt the New Houseblock) set out in **Schedule P (*Design Objectives*)**;

Detention and Training Order or DTO means a sentence passed on a Young Person (at the date of conviction) varying from four (4) to twenty four (24) months, comprising two parts as follows:

- (a) a period in detention; and
- (b) supervision;

Direct Agreement means the agreement dated 4 January 1996 between the Authority and the Third Party Lenders;

Director means the person or persons appointed by the Contractor, and approved by the Authority under section 85 (1) (a) of the Criminal Justice Act 1991;

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;

DOM means the person appointed by the Authority as the director of Offender Management who is responsible for the reduction of re-offending within Wales;

DPA means the Data Protection Act 1998;

Enabling Works Agreement means the Agreement entered into between the Contractor and the Authority dated 11 April 2013 under Notice of Change Number PAR-NOC-09-12 (PART II);

End Date means the date on which this Contract expires, assuming no early termination occurs in accordance with the provisions of this Contract;

Engineer's Car Park Declaration means the declaration to be given under **Clause 27A.2 (b) (*Engineer's HBJ and Car Park Declaration*)**;

Engineer's Completion Declaration has the meaning given to it in paragraph 2.3 of **Part 2 of Schedule A (*Design and Construction Specification - Houseblock Works*)**;

Engineer's Declaration means the declaration to be given under **Clause 27 (*Engineer's Declaration*)**;

Engineer's HBJ and Car Park Declaration means the declaration to be given under **Clause 27A.2 (c) (*Engineer's HBJ and Car Park Declaration*)**;

Engineer's Interim HBJ Declaration means the declaration to be given under **Clause 27A.2 (a) (Engineer's HBJ and Car Park Declaration)**;

Engineer's Phase 2 Declaration has the meaning given under **Clause 27C.2 (Engineer's Phase 2 Declaration)**;

Environmental Information Regulations 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;

Escape means either:

- (a) a Prison Escape;
- (b) an Escort Escape; or
- (c) a Transitory Escape; (as relevant);

Escort Escape has the meaning given to it in **Clause 44.10(b) (Development Plans and Performance Measures)**;

Estimated Opening Date means the Contractual Opening Date or the Revised Opening Date, whichever is the earlier;

Event of Default means any of the events listed in **Clause 48 (Default by Contractor)**;

Exceptional Legislation means any Legislation (other than Prison Legislation) first having legal effect after the Date of Contract which directly affects the costs to employers and/or contractors of assuring or supplementing the health and/or safety of persons engaged in the construction or operation of prisons (other than any such Legislation which, on the Date of Contract, has been published in substantially the same form as such Legislation takes when it has legal effect, as a draft Bill in a Government Departmental Consultation Paper, a Bill, or a draft statutory instrument, or published as a proposal in the Official Journal of the European Communities);

Excusing Cause means:

- (a) in connection with the Houseblock Works, any of the events listed in the second column of Table 1 in **Part 1 of Schedule W (Excusing Causes)**, to the extent that such events arise as a result of the carrying out of the Houseblock Works by the Houseblock Construction Sub-contractor (or by the Authority where **Clause 49B.2 (Houseblock Works Consequential Arrangements on**

Termination) applies in accordance with the terms of this Contract; and

- (b) in connection with the Phase 2 Works, any of the events listed in the second column of Table 1 in **Part 2 of Schedule W (Excusing Causes)**, to the extent that such events arise as a result of the carrying out of the Phase 2 Works by the Houseblock Construction Sub-contractor (or by the Authority where Clause **49D.2 (Phase 2 Works Consequential Arrangements on Termination)** applies in accordance with the terms of this Contract;

Existing Prison means the Prison but shall:

- (a) 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; and
- (b) during the period from the date of the Phase 2 Amending Agreement up to and including the earlier to occur of the Actual Phase 2 Increased Capacity Date and the date of termination of the Phase 2 Works, exclude the Phase 2 Works Area;

Expert has the meaning given to it in **Clause 75.1 (Dispute Resolution)**;

Facilities has the meaning given to it in **Clause 37.1 (Monitoring and Inspection)**;

Fees Regulations means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

Final Recommendation has the meaning given to it in **Clause 42.5 (Variation of Price)**;

Finance Plan means the Contractor's finance plan as set out in **Schedule K** and as amended pursuant to **Clause 10.4 (Change to Services Required)**;

Financing Agreements means all agreements and documents in the form approved by the Authority in writing from time to time and entered into by or on behalf of the Third Party Lenders in connection with the financing or, as the case may be, to refinancing of the Contractor's obligations hereunder including, for the avoidance of doubt, any Hedging Agreements;

Fixed Availability Fee means the fee referred to in **Clause 41 (Pricing Mechanism)** and paragraph 3 of **Schedule E (Payment Mechanism)**;

FOIA 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 codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

Full Operation Date shall be 30 March 1998, as the same may be altered pursuant to **Clause 25 (Extension of Time)**;

Government Data Network Access Point has the meaning given to it in **Clause 16.2 (Issue of Information Technology Equipment)**;

Governor means a Crown servant or Crown servants appointed by the Authority under Section 88 of the Criminal Justice Act 1991;

HBJ and Car Park Defects Period means the period of twelve (12) months from the date of issue of the Engineer's HBJ and Car Park Houseblock Declaration;

HBJ and Car Park Retention means three per cent (3%) of the Houseblock Works Fee payable prior to the Engineer's HBJ and Car Park Declaration which the Authority is entitled to retain pursuant to **Schedule R (Houseblock Works Fee)**;

HBJ and Car Park Snagging Matters means items of outstanding work in relation to the HBJ Works and Car Park Works which do not prevent the Engineer's HBJ and Car Park Houseblock Declaration being issued and which would not prevent a Prisoner Place (excluding an Additional Young Person Place) from being designated as an Available Prisoner Place pursuant to **Clause 30 (Available Prisoner Places)**;

HBJ Works means the works which the Contractor is required to carry out pursuant to **paragraph 2 of Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)**;

Hedging Agreement means all agreements in the form approved by the Authority in writing from time to time and entered into by or on behalf of the Third Party Lenders for the purposes of hedging the exposure of the Contractor to interest rate variations under any of the other Financing Agreements;

HHJ Works has the meaning given to it in **Clause 13.3 (Planning Approval)**;

Houseblock means the houseblock building provided pursuant to the Amending Agreement (with 326 Prison Cells) and its associated facilities and infrastructure;

Houseblock Construction Sub-contract means the contract entered into on 7 November 2008 between the Contractor and the Houseblock Construction Sub-contractor in respect of the design, execution and completion of the Houseblock Works;

Houseblock Construction Sub-contractor means Galliford Try Construction 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 8 (Sub Contracting)**, from time to time to execute the Houseblock Works and/or the Phase 2 Works (where applicable);

Houseblock Documents means any of the documents listed in **Schedule T (Houseblock Documents)**;

Houseblock Event of Default means any of the events listed in **Clause 48A (Houseblock Default)**;

Houseblock Installation Date has the meaning given to it in **Clause 16.2A(a) (Issue of Information Technology Equipment)**;

Houseblock PIMS has the meaning given to it in **Clause 16.2A(c) (Issue of Information Technology Equipment)**;

Houseblock Regime Approval means approval in accordance with **Clause 29A (Houseblock Regime Approval)**;

Houseblock Relevant Event means any of the following events:

- (a) a change of Service is required by the Authority under, or Prison Legislation is enacted as contemplated in, **Clause 10 (Change to Services Required)** and that change or Prison Legislation requires the Contractor to:
 - (i) perform or procure additional building works at the Houseblock Works Area; or
 - (ii) to change the nature of, or reprogramme, the Houseblock Works; or
 - (iii) to redesign or amend the nature or extent of the Custodial Service;
- (b) any failure by the Authority to comply with any of its obligations under this Contract, 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 including (without limitation):

- (i) delay by the Authority in issuing a certificate where the Authority is obliged to do so under **Clause 21A.5 (*Preparation for Operation of the Increased Capacity*)**;
 - (ii) delay by the Independent Engineer in issuing a certificate or notice when it is obliged to do so pursuant to **Clause 27A.2 (*Engineer's Houseblock Declaration*)**;
 - (iii) delay by the Authority in issuing a Cell Certificate or granting Regime Approval which it is obliged to issue or grant pursuant to **Clause 31A (*Timetable for Approving Availability - Increased Capacity*)**; or
 - (iv) failure by the Authority to comply with its obligations under **Clause 16 (*Issue of Information Technology Equipment*)** with regard to the supply and installation of the equipment listed in **Part 2 of Schedule B (*Equipment for the Houseblock*)** except insofar as the Authority decides not to install, or decides to delay the installation of, such equipment and excuses the Contractor from its obligations in respect of such equipment for the period until such time as the equipment is installed;
- (c) strikes by any parties other than any of the Staff or suppliers to the Contractor or Sub-contractors affecting the Houseblock Works;
 - (d) civil commotion (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 are caused by the wilful or reckless default or breach of a relevant obligation under the Houseblock Construction Sub-contract by the Contractor or the Houseblock Construction Sub-contractor); or
- (g) any Planning Approval Challenge, any instruction or deemed instruction to suspend the Houseblock Works made pursuant to **Clause 13B.2 (Planning Approval Challenge)** or any actions requested of the Contractor pursuant to **Clauses 13B.5 (Planning Approval Challenge)** or **Clause 13B.6 (Planning Approval Challenge)**;

Houseblock Works means:

- (a) the HBJ Works;
- (b) the Car Park Works; and
- (c) the Completion Works;

Houseblock Works Area 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, the areas of land shown in colour on the plan attached at **Schedule U (Houseblock Works Plan)**;

Houseblock Works Fee – definition;

Houseblock Works Monitoring Contract means the contract between the Authority and the Independent Engineer setting out the terms of the Independent Engineer's appointment in respect of the Houseblock Works, as amended from time to time;

Houseblock Works Rectification Notice has the meaning given to it in **Clause 49A.1 (Houseblock Works Termination)**;

Houseblock Works Termination Notice has the meaning given to it in **Clause 49A.4 (Houseblock Works Termination)**;

Incentives and Earned Privileges Scheme or ***IEP*** means the incentives and earned privileges scheme as set out in PSO 4000 as published by the Authority from time to time including any replacement document;

Increased Capacity means an increase in the capacity of the Prison by three hundred and thirty two (332) Available Prisoner Places;

Increased Capacity Delay Notice has the meaning given to it in **Clause 25B.1 (*Extension of Time - Increased Capacity*)**;

Increased Capacity Operation Proposals has the meaning given to it in **Clause 21A.1 (*Preparation for Operation of the Increased Capacity*)**;

Increased Capacity Permission has the meaning given to it in **Clause 13A.1 (*Planning Approval - Increased Capacity*)**;

Increased Capacity Phase-in Period means the period between the Contractual Houseblock Opening Date and the Contractual Increased Capacity Date;

Increased Capacity Phase-in Period Timetable means the timetable set out in **paragraph 2A of Schedule E (*Payment Mechanism*)** as the same may be adjusted from time to time in accordance with **Clause 27A (*Engineer's HBJ and Car Park Declaration*)**;

Indexed Availability Fee means the fee referred to in **Clause 41 (*Pricing Mechanism*)** and paragraph 4 of **Schedule E (*Payment Mechanism*)**;

Independent Engineer means the person or firm appointed by the Authority (jointly with the Contractor in respect of limb (c) below) to act as an independent engineer for the purposes of this Contract, being:

- (a) at the Date of Contract Ove Arup & Partners;
- (b) in respect of the Houseblock Works, White Young Green; and
- (c) in respect of the Phase 2 Works, WYG Management Services Limited;

or any named representative thereof, or subject to the approval of the Contractor (such approval not to be unreasonably withheld) such other person or firm so appointed from time to time by the Authority following consultation with the Contractor;

Independent Monitoring Board or ***IMB*** means a group of independent members of the public appointed by any Relevant Authority to monitor the day

to day life in the Prison and ensure that proper standards of care and decency are maintained;

Indexed Costs Fee means the fee referred to in **Clause 41 (*Pricing Mechanism*)** and paragraph 5 of **Schedule E (*Payment Mechanism*)**;

Intellectual Property Rights include any design right, moral right, goodwill, copyright, patent, trade mark, performing right, or registered design right;

Information has the meaning given under section 84 of the Freedom of Information Act 2000;

Land has the meaning given to it in **Clause 12.2 (*The Land*)**;

Lease has the meaning given to it in **Clause 12.1 (*The Land*)**;

Lease Completion Date has the meaning given to it in **Clause 12.3 (*The Land*)**;

Legislation 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;

Lender Liabilities means the aggregate of:

- (a) all principal, interest and banking fees due to the Third Party Lenders under the terms of the Financing Agreements (other than the Hedging Agreements); and
- (b) all amounts payable to the Third Party Lenders by the Contractor under the terms of the Hedging Agreements (except to the extent that such amounts are payable under paragraph (a) above);

less the aggregate of:

- (i) all amounts payable by the Third Party Lenders to the Contractor under the terms of the Hedging Agreements; and
- (ii) any amounts of Cash deposited or placed by or on behalf of the Contractor to secure obligations owed to the Third Party Lenders under the Financing Agreements;

calculated on the basis that the relevant Financing Agreements have been terminated, accelerated, cancelled and/or closed out as the case may be;

Level of Return means the amount projected in the Finance Plan as being payable by the Authority under this Contract in respect of services rendered less the amount projected in the Finance Plan as being the costs incurred by the Contractor in order to comply with its obligations under this Contract, as such resultant amount accruing from time to time to the Contractor may be changed as a result of circumstances that do not constitute a Significant Change;

Long Stop Date means the date nine (9) months after the Contractual Houseblock Opening Date;

malicious risks has the meaning given to it in **Clause 6.1.2 (Insurance)**;

Media Handling Protocol means the media handling protocol issued by the Authority (and as may be amended from time to time);

member of staff has the meaning given to it in **Clause 34.1 (Prisoner Custody Officers)**;

Monitoring Contract means the contract dated on or around the date of this Contract between the Authority and the Independent Engineer setting out the terms of the Independent Engineer's appointment in respect of the Works as amended from time to time;

Month means a calendar month;

Monthly Statement in the context of the Houseblock Works has the meaning given to it in paragraph 3.1 of **Part 1 of Schedule R (Houseblock Works Fee)** and in the context of the Phase 2 Works has the meaning given to it in paragraph 3.1 of **Part 1A of Schedule R (Phase 2 Works Fee)**;

Named Representatives of the Authority means those persons whose names appear at **Part I of Schedule J (Named Representatives)** as varied pursuant to **Clause 66 (Authority to Commit and Variation)**;

Named Representatives of the Contractor means those persons whose names appear at **Part II of Schedule J (Named Representatives)** as varied pursuant to **Clause 66 (Authority to Commit and Variation)**;

National Security Framework means the web based document entitled "National Security Framework" (**PSO 1000**) published by the Authority from time to time, including any replacement document;

New Houseblock means the new three hundred and eighty seven (387) place houseblock building at the Prison and its associated facilities and infrastructure;

New Houseblock Installation Date has the meaning given to it in **Clause 16.2B(a) (*Issue of Information Technology Equipment – New Houseblock*)**;

New Houseblock Regime Approval means approval in accordance with **Clause 29B (*New Houseblock Regime Approval*)**;

Non Compliance Notice has the meaning given to it in **Clause 28.3 (*Cell Certification*)**;

Notice of Change has the meaning given to it in **Clause 10.1 (*Change to Services Required*)**;

Notice of Proposed Development means the Notice issued by the Authority under the Welsh Office Circular 37/84, and dated 25th October 1993;

Offender Management means the concept of end to end offender management as detailed in the document entitled “The National Offender Management Model” as published by the Authority from time to time, including any replacement document;

Operating Sub-contract means the contract between the Operating Sub-contractor and the Contractor dated 4 January 1996 as amended on the date of the Amending Agreement and the Phase 2 Amending Agreement;

Operating Sub-contractor means G4S Justice Services Limited or, with the prior written approval of the Authority and subject to the provisions of **Clause 8 (*Sub-Contracting*)**, such other Sub-contractor appointed by the Contractor from time to time to perform certain of the Custodial Services (other than those undertaken by the Construction Sub-contractor and/or the Houseblock Construction Sub-contractor in their capacity as such);

Operation Proposals has the meaning given to it in **Clause 21.1 (*Preparation for Operation of the Prison*)**;

Original Contract has the meaning given to it in the Phase 2 Amending Agreement;

Original Value means the aggregate of the Contractor's outstanding third party financing and such amount as will enable the Contractor's shareholders to achieve their internal rate of return of [REDACTED] per annum on all amounts projected in the Finance Plan to be invested by them. Such aggregate shall be calculated as $A + (B - C)$ where the product of $B - C$ can never be less than zero and where:

A = the Lender Liabilities;

- B = the aggregate of all the amounts projected in the Finance Plan as at the date of this Contract to be invested by the Contractor's shareholders (including by way of subordinated debt) prior to the date of termination of this Contract pursuant to **Clause 42.5 (Variation of Price)**, being in the case of each single investment multiplied by $(1.1936)^n$; and
- C = the aggregate of all the amounts ever actually received, by the Shareholders from the Contractor (whether by way of dividend, principal, interest or otherwise, but ignoring any payments due to the Shareholders for services provided to the Contractor under any Sub-contract in accordance with the terms of that Sub-contract), being in the case of each single receipt of any payment by any shareholder multiplied by $(1.1936)^n$.

For the purposes of this definition, n = the number of Days which on the date of termination of this Contract pursuant to **Clause 42.5 (Variation of Price)** have passed since the date of the relevant investment or receipt as appropriate, divided by three hundred and sixty five (365);

Overpayment has the meaning given to it in clause 45.8.3 of this Agreement;

Overpayment Notice has the meaning given to it in clause 45.8.2 of this Agreement;

Performance Measure 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 44.9 (Development Plans and Performance Measures)**;

Performance Measurement System has the meaning given to it in **Part 1 of Schedule F (Performance Measures)**;

Performance Point means each point accruing on the occurrence of a Performance Measure, as more particularly set out in **Schedule F (Performance Measures)**;

Performance Quarter means, in respect of the first Performance Quarter, the period commencing on 1 April 2005 and expiring on 30 June 2005 and, thereafter each period of three (3) Months commencing on the Day following the last Day of the previous Performance Quarter;

Performance Year means, in respect of the first Performance Year, the period commencing on 1 April 2005 and expiring on 31 March 2006 and thereafter each period of twelve (12) Months commencing on the Day following the last Day of the previous Performance Year;

Permitted Level means the aggregate of:

- (a) fifteen per cent. (15%) of the population accommodated two (2) to a Prison Cell for operational reasons; and
- (b) those accommodated two (2) to a Prison Cell for healthcare reasons;
- (c) those accommodated two (2) to a Prison Cell with the approval of the Controller;
- (d) those accommodated two (2) to a Prison Cell with the approval of the Controller in the induction unit (up to twenty four (24) Prisoner Places); and
- (e) those accommodated two (2) to a Prison Cell in the designated double cells in the New Houseblock;
- (f) those allocated to each Prison Cell in accordance with agreed Cell Certificates; and
- (g) twice the number of Additional Prisoner Places and Additional Young Person Places;

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;

PIMS has the meaning given to it in **Clause 16.2(c) (Issue of Information Technology Equipment)**;

Phase 2 Amended Operating Sub-contract means the amended version of the Operating Sub-contract, delivered to the Authority pursuant to Clause 2B (Phase 2 Documents);

Phase 2 Amending Agreement means the amending agreement entered into between the Authority and the Contractor dated 9 August 2013;

Phase 2 Architect's Collateral Warranty means the collateral warranty in relation to the Phase 2 Works to be entered into by the Authority, the Houseblock Construction Sub-contractor and HLN Architects (Midlands) Ltd;

Phase 2 Construction Sub-contract 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 Phase 2 Works;

Phase 2 Documents means any of the documents listed in **Part 2** of **Schedule T (Phase 2 Documents)**;

Phase 2 Event of Default means any of the events listed in **Clause 48B (Phase 2 Default)**;

Phase 2 Increased Capacity means an increase in the capacity of the Prison by three hundred and eighty seven (387) Available Prisoner Places;

Phase 2 Increased Capacity Delay Notice has the meaning given to it in **Clause 25C.1 (Extension of Time – Phase 2 Increased Capacity)**;

Phase 2 Increased Capacity Operation Proposals has the meaning given to it in **Clause 21B.1 (Preparation for Operation of the Phase 2 Increased Capacity)**;

Phase 2 Increased Capacity Permission has the meaning given to it in **Clause 13B.1 (Planning Approval – Phase 2 Increased Capacity)**;

Phase 2 Increased Capacity Phase-in Period means the period between the Contractual New Houseblock Opening Date and the Contractual Phase 2 Increased Capacity Date;

Phase 2 Increased Capacity Phase-in Period Timetable 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 27C (Engineer's Phase 2 Declaration)**;

Phase 2 Long Stop Date means the date nine (9) months after the Contractual New Houseblock Opening Date;

Phase 2 Relevant Event means any of the following events:

- (a) a change of Service is required by the Authority under, or Prison Legislation is enacted as contemplated in, **Clause 10 (Change to Services Required)** and that change or Prison Legislation requires the Contractor to:
 - (i) perform or procure additional building works at the Phase 2 Works Area; or
 - (ii) to change the nature of, or reprogramme, the Phase 2 Works; or

- (iii) to redesign or amend the nature or extent of the Custodial Service;
- (b) any failure by the Authority to comply with any of its obligations under this Contract, or any obstruction by the Authority or any representative of the Authority insofar as such failure or delay is relevant to the Phase 2 Works and/or the provision of the Phase 2 Increased Capacity including (without limitation):
 - (i) delay by the Authority in issuing a certificate where the Authority is obliged to do so under **Clause 21B.5 (*Preparation for Operation of the Phase 2 Increased Capacity*)**;
 - (ii) delay by the Independent Engineer in issuing a certificate or notice when it is obliged to do so pursuant to **Clause 27C.2 (*Engineer's Phase 2 Declaration*)**;
 - (iii) delay by the Authority in issuing a Cell Certificate or granting New Houseblock Regime Approval which it is obliged to issue or grant pursuant to **Clause 31B (*Timetable for Approving Availability – Phase 2 Increased Capacity*)**; or
 - (iv) failure by the Authority to comply with its obligations under **Clause 16.2B (*Phase 2 ICT Requirements*)** with regard to the supply and installation of the Quantum System except insofar as the Authority decides not to install, or decides to delay the installation of, such equipment and excuses the Contractor from its obligations in respect of such equipment for the period until such time as the equipment is installed;
- (c) strikes by any parties other than any of the Staff or suppliers to the Contractor or Sub-contractors affecting the Phase 2 Works;
- (d) civil commotion (other than any civil commotion the primary intention of which is to disrupt the Phase 2 Works or the opening of the New 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 Phase 2 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 are caused by the wilful or reckless default or breach of a relevant obligation under the Phase 2 Construction Sub-contract by the Contractor or the Houseblock Construction Sub-contractor); or
- (g) any Planning Approval Challenge, any instruction or deemed instruction to suspend the Phase 2 Works made pursuant to **Clause 13C.2 (*Planning Approval Challenge*)** or any actions requested of the Contractor pursuant to **Clauses 13C.5 (*Planning Approval Challenge*)** or **Clause 13C.6 (*Planning Approval Challenge*)**;

Phase 2 Works means the works which the Contractor is required to carry out pursuant to **Part 3 of Schedule A (*Design and Construction Specification – Phase 2 Works*)**;

Phase 2 Works Area means during the period from the date of the Phase 2 Amending Agreement up to and including the earlier to occur of the Actual Phase 2 Increased Capacity Date and the date of termination of the Phase 2 Works, the areas of land shown in colour on the plan attached at **Part 2 of Schedule U (*Phase 2 Works Plan*)**;

Phase 2 Works Defects Period means the period of twelve (12) months from the date of issue of the Engineer's Phase 2 Declaration;

Phase 2 Works Fee redacted;

Phase 2 Works Monitoring Contract means the contract between the Authority, the Contractor and the Independent Engineer setting out the terms of the Independent Engineer's appointment in respect of the Phase 2 Works, as amended from time to time;

Phase 2 Works Rectification Notice has the meaning given to it in **Clause 49C.1 (*Phase 2 Works Termination*)**;

Phase 2 Works Snagging Matters means items of outstanding work in relation to the Phase 2 Works which do not prevent the Engineer's Phase 2 Declaration being issued;

Phase 2 Works Termination Notice has the meaning given to it in **Clause 49C.4 (Phase 2 Works Termination)**;

Phase-in Period means the period defined in **Clause 23 (Phase-in Period)** as extended pursuant to **Clause 25 (Extension of Time)**;

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 25 (Extension of Time)**;

Planning Approval means such planning clearance or permission whether under Welsh Office Circular 37/84 or the Town and Country Planning Act 1990 as is necessary for the Contractor to discharge lawfully its obligations under this Contract in respect of the Site;

Planning Approval Challenge means a challenge to any decision to grant a Planning Approval (or a challenge to any decision to grant reserved matters approval relating to a Planning Approval) relating to the Houseblock or the Phase 2 Works by way of judicial review under the Civil Procedure Rules 1998 (SI 1998/3132) or through any other legitimate means including any appeal to a higher court and any challenge to any decision to grant a Planning Approval (or a challenge to any decision to grant reserved matters approval relating to a Planning Approval) following a questioning of the original decision and a re-determination of the relevant planning application or reserved matters application (as the case may be);

Police Authority has the meaning given to it in Section 101 of the Police Act 1996 as amended from time to time;

Postponement Notice has the meaning given to it in **Clause 25A.1(a) (Postponement)**;

Prison means the buildings, structures and land enclosed within the boundary fencing of the Land including, on and from the Actual Houseblock Opening Date, the Houseblock and on and from the Actual New Houseblock Opening Date, the New Houseblock, and each and any of their component parts described in **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;

Prison Cell 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);

Prison Escape has the meaning given to it in **Clause 44.10(a) (*Development Plans and Performance Measures*)**;

Prisoner 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 and shall, unless stated otherwise, include Young Offender Prisoners and Young Persons;

Prisoner Custody Officer means a person, as defined in 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;

Prisoner Escort Service shall have the same meaning as Prisoner escort arrangements in Section 80 of the Criminal Justice Act 1991;

Prisoner Place means a unit of accommodation for occupation by a single Prisoner in a Prison Cell (other than in a Prison Cell which is a segregation unit);

Prison Legislation means any Legislation first having legal effect after the Date of Contract which expressly refers to the provision or running of the Prison or prisons generally (other than any such Legislation which, on the Date of Contract, 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);

Prison Service Orders* or *PSOs means the mandatory prison service orders published by the Authority from time to time, including any replacement document;

Prohibited Act means committing any offence under the Bribery Act;

Project means the provision of the Services;

Purposeful Activity 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;

Quantum System means the Authority ICT system incorporating PNOMIS and other NOMS systems, for use by the Authority, its employees, agents and contractors;

Quarter means in respect of the first Quarter, the period from the Actual Opening Date until the last Day of the first Quarter Month (inclusive), and thereafter the period of three months beginning on the Day after the last Quarter Month and ending on the last Day of the next succeeding Quarter Month, except in respect of the last Quarter of the final Performance Year, in which case it will be the period commencing on the Day after the previous Quarter Month and ending on the End Date;

Quarter Month means the Month in which the Day falling three months after the Actual Opening Date falls and each third Month thereafter;

Quarterly Performance System means, in respect of all Prisoners, the performance system set out in the relevant section of Paragraph 2 of **Part 1** of **Schedule (Performance Measures)**;

Rectification Notice means any notice issued in accordance with **Clause 49 (Rectification)**;

Regime Approval means approval in accordance with **Clause 29 (Regime Approval)**;

Relevant Audit has the meaning given to it in **Clause 64A.1(c)** of this Contract;

Relevant Authority means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

Relevant Event means any of the following events:

- (a) a change of service is required by the Authority under, or Prison Legislation is enacted as contemplated in, **Clause 10 (Change to Services Required)** and that change or Prison Legislation requires the Contractor to perform or procure building works upon the Site or to change the nature of or reprogramme the Works or to redesign or amend the nature or extent of the Custodial Service;
- (b) the approval granted by Ogwr Borough Council recorded in documents attached to letters dated 23 December 1993 and 22 August 1995 under Welsh Office Circular 37/84 does not or no longer permits the construction or operation of the Prison in accordance with this Contract;

- (c) any failure by the Authority to comply with any of its obligations under this Contract, or any delay by the Authority or any representative of the Authority or other person deriving authority from the Authority in allowing the Contractor to have access to the Site or any obstruction by the Authority or any representative of the Authority or other person deriving authority from the Authority of such access including (without limitation):
 - (i) delay by the Authority in issuing a certificate where the Authority is obliged to do so under **Clause 21.5 (*Preparation for Operation of the Prison*)**;
 - (ii) delay by the Independent Engineer in issuing a certificate or notice when it is obliged to do so pursuant to **Clause 27.2 (*Engineer's Declaration*)**;
 - (iii) delay by the Authority in issuing a Cell Certificate or granting Regime Approval which it is obliged to issue or grant pursuant to **Clause 31 (*Timetable for Approving Availability*)**; or
 - (iv) failure by the Authority to comply with its obligations under **Clause 16 (*Issue of Information Technology Equipment*)** with regard to the supply and installation of the equipment listed in **Part 2 of Schedule B (*Equipment*)** except insofar as the Authority decides not to install, or decides to delay the installation of, such equipment and excuses the Contractor from its obligations in respect of such equipment for the period until such time as the equipment is installed;
- (d) strikes by any parties other than the Staff, Sub-contractors or suppliers to the Contractor;
- (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); or

- (g) specified perils under the Sub-contract entered into between the Contractor and the Construction Sub-contractor, being (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) 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;

A representative of the Authority in any provision of this Contract means the person duly authorised by the Authority to act for the purposes of the provision;

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);

Retail Prices Index or ***RPI*** means the Retail Prices Index as published from time to time in Table 5 (in respect of all items other than mortgage interest payments (***RPIX***)) of Business Monitor (MM23) published by the Central Statistical Office or such index in such other journal as shall replace such table;

Retention Percentage means three per cent. (3%) of the Houseblock Works Fee where that term is used in relation to the Houseblock Works, and three per cent. (3%) of the Phase 2 Works Fee where that term is used in relation to the Phase 2 Works;

Review Date means the first Day of September 1997 and each Review Period thereafter;

Review Month means June 1997 and each third Month thereafter;

Review Period means the three (3) Month period commencing on the first Day of each Review Month;

Revised Full Operation Date means the date to which the Full Operation Date is either brought forward, by virtue of the Advance Period, or postponed, from time to time, in accordance with **Clause 25A (Postponement)**;

Revised Opening Date means the date determined either pursuant to **Clause 22.2 (Contractual Opening Date)** or postponed pursuant to **Clause 25A (Postponement)**;

Revised Phase-in Period means the period either defined in **Clause 23.2 (Phase-in Period)** or postponed pursuant to **Clause 25A (Postponement)**;

Revised Phase-in Timetable means the Phase-in Timetable with:

- (a) references to the Contractual Opening Date construed as references to the Revised Opening Date; and
- (b) references to the Full Operation Date construed as references to the Revised Full Operation Date,

as the same may be postponed from time to time in accordance with **Clause 25A (Postponement)**;

SDT means Service Delivery Target;

Section 106 Agreement means the deed of agreement under section 106 of the Town and Country Planning Act 1990 between the Council of the County Borough of Bridgend, the Contractor and the Authority and dated 3 July 2008;

Section 106 Payment means the fee referred to in **Clause 13A (Planning Approval-Increased capacity)**;

Section 278 Agreement means an agreement under section 278 of the Highways Act 1980;

Security Technology Change means any change in the manner in which security and control are or might be maintained in the Prison which materially reduces or will materially reduce the number of Prisoner Custody Officers required;

Services means all the obligations of the Contractor under this Contract;

Shareholders means those, if any, persons owning shares of any class in the Contractor, and a **shareholding** is the interest the said shareholder derives from the shares;

Significant Change means either:

- (a) a change in the costs of operating and/or maintaining the Prison which have arisen as result of events beyond the control of the Contractor or any of the Sub-contractors occurring after the Date of Contract; or
- (b) a change in factors affecting the costs of operating and/or maintaining prisons generally which have not been accurately reflected in the indexation provisions contained

in **Schedule E (*Payment Mechanism*)** or otherwise in **Clause 42 (*Variation of Price*)** (other than **Clause 42.5 (*Variation of Price*)**), occurring since the Date of Contract;

in each case without taking into account any changes effected voluntarily by the Contractor or to the actual level of costs in comparison with those referred to in the Finance Plan. A Significant Change does not include any of the circumstances which may give rise to a variation of the Contract Price under **Clause 42 (*Variation of Price*)** (other than **Clause 42.5 (*Variation of Price*)**);

Site 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;

Snagging Matters means:

- (a) Completion Snagging Matters; and
- (b) HBJ and Car Park Snagging Matters;

Staff means employees of the Contractor or any Sub-contractor, except in **Clauses 34 (*Prisoner Custody Officers*)** and **35 (*Staff*)** where **staff** shall have the meaning described at **Clause 34.1 (*Prisoner Custody Officers*)**;

Standard Requirements means, in relation to a Prisoner Place, the requirements set out in **Part 2 of Schedule D (*Operational Requirements*)**;

Statutory Obligations has the meaning given to it in **Clause 17.1 (*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;

Sub-contractor means the Construction Sub-contractor, the Operating Sub-contractor, the Houseblock Construction Sub-contractor or any person who has contracted with the Contractor for the performance of any obligation under this Contract, and has been approved by the Authority in accordance with **Clause 8 (*Sub-Contracting*)**;

Sub-contractor's Collateral Warranty 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)**;

Sub-contractor's Phase 2 Collateral Warranty means the collateral warranty between the Authority, the Houseblock Construction Sub-contractor and the Contractor delivered to the Authority pursuant to **Clause 2B (Phase 2 Documents)**;

Substitute Entity means a person duly appointed to be the new contractor in replacement of the Contractor in accordance with the Direct Agreement;

Taxation has the meaning given to it in **Clause 53.6(b) (Taxation)**;

Termination Notice means a notice issued in accordance with **Clause 50 (Termination for Default)**;

Third Party Lenders are those persons who, at any time, have entered into Financing Agreements with the Contractor or become party to the Financing Agreements (whether by assignment, novation or otherwise) Provided that they are neither Shareholders in the Contractor nor beneficial holders of more than five per cent. (5%)of the equity share capital in any of the Shareholders (other than through exercise of their rights in the manner contemplated in the Direct Agreement) and that all such persons and their ultimate parent companies (if any) are both resident and incorporated in countries which are members of the organisation for Economic Co-operation and Development;

Transitory Escape has the meaning given to it in **Clause 44.10(c) (Development Plans and Performance Measures)**;

Woodcock Report means the report of the Woodcock Enquiry dated 12 December 1994 addressed to the Authority which was presented to Parliament by the Authority by Command in December 1994 (CM 2741);

Wage Costs 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;

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)**;

Year means calendar year unless otherwise specified;

Young Offender Prisoner means any person between the ages of eighteen (18) and twenty-one (21) 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;

Young Person means any person between the ages of fifteen (15) and seventeen (17) or a Prisoner or Prisoners held under a Detention and Training Order (DTO) and "Young Persons" shall be construed accordingly;

Young Person Place Fee means the fee referred to in **Clause 43A.3 (Additional Young Person Places)** and paragraph 7 of **Schedule E (Payment Mechanism)**; and

Youth Justice Board or **YJB** means the executive non-departmental government body appointed by the Authority which oversees the youth justice system in England and Wales.

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

- (a) the masculine includes the feminine;
- (b) the singular includes the plural;
- (c) without prejudice to the provisions of **Clauses 10.4 (Change to Services Required)** and 42.2 (**Variation of Price**), any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted;
- (d) reference to a prison includes a Young Offender's Institution and a Remand Centre;
- (e) the headings in this Contract are for convenience only; and
- (f) words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.

2. **Duration of Contract**

2.1 Subject to the terms of Part VII of this Contract (**Termination**) and the Direct Agreement, the Contract Term will be twenty five (25) Years from the Contractual Opening Date.

2.2 In the event that the Prison does not open on or before the Contractual Opening Date in accordance with **Clause 22 (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.

2B Phase 2 Documents

2B.1 On or before the date of the Phase 2 Amending Agreement, the Contractor shall provide to the Authority the Phase 2 Documents.

2B.2 The Contractor shall provide to the Authority the Phase 2 Architect's Collateral Warranty within thirty (30) days of the date of the Phase 2 Amending Agreement.

3. Binding Effect

This Contract shall have binding effect from the Date of Contract.

4. Preliminary Information

4.1 The Contractor shall provide to the Authority the following documents, in form and substance satisfactory to the Authority, within fourteen (14) Days of the Date of Contract:

- (a) the Financing Agreements;
- (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 Financing Agreements or any obligations which relate to the obligations under the Financing Agreements and which are documents referred to as conditions precedent to drawdown under the Financing Agreements.

The Authority shall signify its satisfaction as to the documents referred to in **Clause 4.1(a) (Preliminary Information)** and **Clause 4.1(b) (Preliminary Information)** above by initialling each of them for identification.

4.2 In the event that the Authority does not receive the documents referred to in **Clause 4.1 (Preliminary Information)** within fourteen (14) Days of the Date of Contract, the Authority shall have the right to terminate this Contract at will without any sum being payable by either party to the other in the event of such termination.

4A **Schedules D, F, O and R**

- 4A.1 The parties shall complete and agree **Schedule D (Operational Requirements)**, **Schedule F (Performance Measures)**, **Schedule O (Management and Control of Documentation)** and **Part 1 of Schedule R (Houseblock Works Fee)** within ninety (90) Days of the date of the Amending Agreement or such other date as agreed between the parties.
- 4A.2 For the avoidance of doubt, on and from the date of the Phase 2 Amending Agreement, the parties acknowledge that the contents of **Schedule D (Operational Requirements)**, **Schedule F (Performance Measures)**, **Schedule O (Management and Control of Documentation)** and **Schedule R (Houseblock Works Fee)** are agreed and that any reference in this Agreement to a provision of those schedules shall on and from the date of the Phase 2 Amending Agreement be a reference to the versions attached hereto.

4B **Incorporation of Notices of Change**

4B.1 The Parties agree that:

- 4B.1.1 from the date of the Phase 2 Amending Agreement all Notices of Change made prior to the date of the Phase 2 Amending Agreement and listed in **Schedule Y (Notices of Change)** have been incorporated into the Contract as more fully set out in **Schedule Y (Notices of Change)**; and
- 4B.1.2 any Notice of Change made prior to the Phase 2 Amending Agreement which is not listed in **Schedule Y (Notices of Change)**, and whether specifically incorporated into the terms of this Contract or not, shall be deemed to have been incorporated into the Contract for the period (whether expired or continuing) of its relevance to the Contractor's obligations under this Contract.
- 4B.2 To the extent that the terms of any Notice of Change listed in Schedule Y (Notices of Change) are inconsistent with any terms of this Contract, the terms of the relevant Notice of Change shall prevail.
- 4B.3 The Parties acknowledge that upon the date of the Phase 2 Amending Agreement:
- 4B.3.1 the Enabling Works Agreement shall cease to have effect;
- 4B.3.2 all works carried out under the Enabling Works Agreement shall be subsumed into this Contract and shall be deemed to be part of the Phase 2 Works;
- 4B.3.3 any payments which have been made under the Enabling Works Agreement (such payments being identifiable as such in part 3 of

Schedule R (Houseblock Works Fee)) shall be deemed to be payment of part of the Phase 2 Works Fee; and

4B.3.4 any payments which are due under the Enabling Works Agreement (such payments being identifiable as such in part 3 of Schedule R (Houseblock Works Fee)) shall become due and payable under this Contract as part of the Phase 2 Works Fee.

5. **Indemnity**

5.1 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 which arise in connection with this Contract or its breach, the Project, the Site or the Prison including, without limitation to the generality of the foregoing, 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).

5.2 **Clause 5.1 (*Indemnity*)** shall not apply to:

- (a) any Losses to the extent arising 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; or
- (b) any indirect or consequential Losses except to the extent that such Losses are covered by a policy of insurance which is maintained by the Contractor or which the Contractor is obliged to maintain pursuant to **Clause 6 (*Insurance*)**;
- (c) Losses which are directly attributable to any matter of fact or circumstance occurring either prior to the Date of Contract or after this Contract terminates;
- (d) 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 this 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 this 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;

- (e) any Losses incurred by the Authority or any servant, agent or representative of the Authority in respect of any claim made under Regulation 32 of the Public Services Contracts Regulations 1993 (S.I. No. 3228); or
- (f) in respect of the Houseblock Works, any Losses incurred by the Authority which may arise out of, or in consequence of, the Authority exercising its rights under **Clause 49B.1 (Houseblock Works Consequential Arrangements on Termination)** (other than to the extent such Losses would not have occurred but for a breach by the Contractor of its obligations under **Clause 49B.2.2 (Houseblock Works Consequential Arrangements on Termination)**); or
- (g) in respect of the Phase 2 Works, any Losses incurred by the Authority which may arise out of, or in consequence of, the Authority exercising its rights under **Clause 49D.1 (Phase 2 Works Consequential Arrangements on Termination)** (other than to the extent such Losses would not have occurred but for a breach by the Contractor of its obligations under **Clause 49D.2.2 (Phase 2 Works Consequential Arrangements on Termination)**);

5.3 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 by the Authority;

5.4 The maximum amount payable under the indemnity contained in this Clause shall:

- (a) for the first Year from the Date of Contract be [REDACTED] for any one incident or series of related incidents and [REDACTED] in aggregate and in subsequent Years up to the Contractual Houseblock Opening Date the maximum of [REDACTED] and [REDACTED] shall be increased cumulatively by three per cent. (3)% per annum;
- (b) in the first Year from the Contractual Houseblock Opening Date be [REDACTED] for any one incident or series of related incidents and [REDACTED] in aggregate and in subsequent Years up to the Contractual New Houseblock Opening Date the maximum of [REDACTED] and [REDACTED] shall be increased cumulatively by three per cent. (3)% per annum; and
- (c) in the first year from the Contractual New Houseblock Opening Date be [REDACTED] for any one incident or series of related incidents and [REDACTED] in aggregate and in subsequent Years the maximums of [REDACTED] shall be increased cumulatively by three per cent. (3)% per annum.

5.5 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 employed by the Contractor or his Sub-contractors) 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 **Clause 5.2 (Indemnity)** and **Clause 5.4 (Indemnity)**.

6. Insurance

6.1 Without prejudice to its obligations under **Clause 7 (Liability for loss and damage)** and subject to **Clause 6.4 (Insurance)**, the Contractor shall:

- 6.1.1 from the date of commencement of the Houseblock Works until the Actual Houseblock Opening Date, insure the Houseblock Works together with the plant, fixtures, fittings, materials, chattels,

machinery or other equipment for use in connection with or incorporation in the Houseblock Works in accordance with **Part 1** of **Schedule X (Minimum Insurance Requirements)**; and

6.1.1A from the date of commencement of the Phase 2 Works until the Actual New Houseblock Opening Date, insure the Phase 2 Works together with the plant, fixtures, fittings, materials, chattels, machinery or other equipment for use in connection with or incorporation in the Phase 2 Works in accordance with **Part 1A** of **Schedule X (Minimum Insurance Requirements)**; and

6.1.2 from the date of issue of the Engineer's Declaration until the date of the Phase 2 Amending Agreement, insure in the joint names of the Contractor (and/or the Construction Sub-contractor in respect of risks relating only to the construction of the Existing Prison) and of the Authority the Prison and the Site together with the plant, fixtures, fittings, materials, chattels, machinery or other equipment therein or thereupon (the "**Assets**") to the full replacement value as agreed on an annual basis with the Authority. Such insurance shall:

- (a) subject to exceptions agreed with the Authority cover all risks relating to damage to the Assets applicable to the relevant stage of the Project including from the Actual Opening Date, the Actual Houseblock Opening Date and the Actual New Houseblock Opening Date (as the case may be) all loss and damage arising from malicious risks (being for the purposes of this Clause the risks of arson, riot or any other damage caused wilfully by any Prisoner);
- (b) have maximum deductibles of not more than [REDACTED] for any one incident of loss and damage; not more than [REDACTED] in respect of all such claims other than claims arising from malicious risks occurring within the period of the relevant insurance policy; and not more than [REDACTED] in respect of all claims arising from malicious risks occurring within the period of the relevant insurance policy. Each insurance policy shall be for a term not exceeding one (1) Year, and such figures (or such higher amounts as are agreed by the parties) shall be increased in the same way as provided in respect of the Indexed Availability Fee in Schedule E (Payment Mechanism);
- (c) contain no rights of subrogation against the Crown;
- (d) contain a breach of warranty/severability provision or, if such provision is not generally available in equivalent

(e) comply with the requirements of Clause 6.3 (Insurance).

6.1.3 On and from the date of the Phase 2 Amending Agreement, Clause 6.1.2 shall cease to apply and the Contractor shall procure that the insurances, details of which are set out in paragraph 1 of **Part 2B of Schedule X (Minimum Insurance Requirements)** are taken out and maintained. To avoid doubt, on and from the date of the Phase 2 Engineer's Declaration the Insured Property in relation to the insurances set out in paragraph 1 of **Part 2B of Schedule X (Minimum Insurance Requirements)** shall include the New Houseblock.

6.2 Subject to **Clause 6.2A (Insurance)** and **Clause 6.2B (Insurance)** and without prejudice to its obligations under **Clause 5 (Indemnity)**, the Contractor shall take out a policy of public liability insurance in respect of risks which are applicable to the relevant stage of the Project in the joint names of the Contractor and the Authority, which shall comply with the terms of this **Clause 6 (Insurance)**, in respect of their respective liabilities (and the liabilities of their agents, servants, officers, employees and contractors) to third parties for death or personal injury to any person or loss or damage to any property arising out of the operation or execution of the Contract including any such liability in respect of acts or omissions of any and all Sub contractors. The Authority shall only be entitled to the proceeds of such insurance policy to the extent of its liability in respect of the risks covered by such insurance.

6.2.1 The policy of public liability insurance shall include a breach of warranty/severability provision (or, if such provision is not generally available in equivalent policies written in the United Kingdom insurance market, each of the Contractor and the Operating Sub contractor shall covenant, for the duration of such non availability, with the Authority in writing that it will not make any misrepresentations to, or breach any warranty made to, the insurer which would cause the relevant insurance policy to fail); and a clause in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons insured and for the purpose of which the insurer accepts the term insured shall apply to the Contractor or the Operating Sub contractor and the Crown and their respective

- 6.2.2 In the first two (2) Years from the Date of Contract the policy of public liability insurance shall be for an amount of not less than [REDACTED] for any one incident or series of related incidents and shall be limited to [REDACTED] per annum. The amounts insured shall be increased cumulatively by three percent (3%) per annum thereafter.
- 6.2A Without prejudice to its obligations under **Clause 5 (Indemnity)**, the Contractor shall take out a policy of construction third party liability insurance in respect of risks which are applicable to the Houseblock Works in accordance with paragraph 3 of **Part 1 of Schedule X (Minimum Insurance Requirements)** and policies of insurance in respect of risks which are applicable to the Phase 2 Works in accordance with paragraphs 2 and 3 of **Part 1A of Schedule X (Minimum Insurance Requirements)**.
- 6.2B On and from the date of the Phase 2 Amending Agreement, Clause 6.2 shall cease to apply and the Contractor shall procure that the insurances, details of which are set out in paragraphs 2 and 3 of **Part 2B of Schedule X (Minimum Insurance Requirements)** are taken out and maintained.
- 6.3 The Contractor shall ensure that each and any policy of insurance required under this **Clause 6 (Insurance)**:
- (a) contains provisions which require 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;
 - (b) provides that a notice of claim given to the insurer by the Authority or the Contractor shall, in the absence of manifest error, be accepted by the insurer as valid notification of a claim;
 - (c) is taken out with an insurer approved by the Authority in writing (such approval not to be unreasonably withheld or delayed) and, subject as provided in **Clauses 6.4 (Insurance)** and **Clause 6.9 (Insurance)**, is maintained from the date of this Contract until the End Date; and
 - (d) includes the endorsements set out in **Part 3 of Schedule X (Minimum Insurance Requirements)**.
- 6.3A On each renewal date following the date of the Phase 2 Amending Agreement, the limit of indemnity and maximum deductibles for each of the Required Insurances as detailed in Schedule X shall be indexed cumulatively by three per cent (3%) per annum provided such limits of indemnity and maximum deductibles shall only be increased on each renewal date such that the limit that

is indexed becomes equal to or exceeds the next whole insurable amount available in the insurance market.

6.4 The obligations of the Contractor under **Clause 6.1.2 (Insurance)** to insure in respect of malicious risks to the extent therein stated shall apply only to the extent that, in the reasonable opinion of the Authority, such insurance is available to prison operators generally at a commercial price in the United Kingdom insurance market. To the extent that such malicious risks insurance is considered by the Authority not to be available, and such unavailability is not caused by any action or omission of the Contractor or any of the Sub contractors, the Authority itself will (subject to the remainder of this **Clause 6.4 (Insurance)**) provide insurance to the Contractor on terms which are normal in the United Kingdom insurance market in respect of malicious risk damage mutatis mutandis as set out in **Clause 6.1.2 (Insurance)** and with the level of deductibles referred to as the maximum in **Clause 6.1.2(b) (Insurance)** provided that:

- 6.4.1 the Authority acquires a right of subrogation against the ultimate parent company or companies of the Sub contractor operating the Prison to the extent that such right existed in favour of the previous Commercial Insurer and the relevant operating Sub contract does not contain a clause limiting liability beyond what the Authority regards as reasonable;
- 6.4.2 the Authority is entitled over the term of the insurance cover to deduct from the Contract Price one hundred and twenty per cent. (120%) of the difference between the amount which the previous Commercial Insurer charged for assuming risks in respect of the Prison and the amount such insurer charges in respect of risks previously covered other than the malicious risks in the insurance policy granted on the expiry of the previous policy which covered malicious risks (or offers as the premium for such policy), such amount increasing proportionately to the increase in the actual cost of reinstatement or replacement, or, if no Commercial Insurer has previously covered malicious risks, the Authority is entitled over the term of the insurance cover to deduct from the Contract Price one hundred and twenty per cent. (120%) of the annual amount stated in the Finance Plan as the cost attributable to malicious risk insurance; and
- 6.4.3 such insurance continues only until malicious risk insurance becomes available generally in the United Kingdom market again.

In the event that insurance in respect of malicious risks is not considered by the Authority to be available to prison operators generally at a commercial price in the United Kingdom insurance market but would be considered to be so available

if it did not comply with the requirements of **Clause 6.1.2(b) (Insurance)**, the Contractor shall inform the Authority of the level of deductibles required in order for the Contractor to obtain such insurance at a commercial price. The Authority may, in its absolute discretion, and instead of providing insurance itself in accordance with this **Clause 6 (Insurance)**, then require the Contractor to procure such insurance with such deductibles, in which case the Contractor shall be excused from its obligation under **Clause 6.1.2(b) (Insurance)** for the duration of such insurance policy.

6.5 On each and every occasion where any part of the Prison or the Assets (as defined in **Clause 6.1.2 (Insurance)**) is or are destroyed or damaged, the Contractor shall, unless otherwise agreed by the Authority and except where the amount of the Insurance Proceeds exceeds the Insurance Threshold Amount:

- (a) pay all monies received under any insurance policy taken out in accordance with **Clause 6.1 (Insurance)** into an account in the joint names of the Authority and Contractor at a bank to be nominated by the Authority and advise the insurers accordingly, such moneys and any moneys due from the Authority pursuant to **Clause 6.4 (Insurance)** to be released to the Contractor against application by or on behalf of the Contractor with such supporting information as the Authority may reasonably require; and
- (b) forthwith lay out all monies received under such insurance policies or from the Authority pursuant to **Clause 6.4 (Insurance)** 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) (i) well and substantially to reinstate rebuild and/or replace the Prison in a workmanlike manner to the reasonable satisfaction of the Independent Engineer mutatis mutandis in accordance with **Clause 27 (Engineer's 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 **Schedule A (Design and Construction Specification)**) in accordance with drawings and specifications which shall first be submitted for approval in writing by the Authority (such approval not to be unreasonably withheld or delayed) or (ii) to make good any loss sustained or settling any claim made. The Independent Engineer will,

Where the amount of the Insurance Proceeds received in respect of damage to the Prison or the Assets under any insurance policy taken out in accordance with **Clause 6.1.2 or 6.1.3 (Insurance)** 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 report to the Agent showing whether or not the Insurance Proceeds (when taken together with any other funds available to the Contractor) are equal to or greater than the amount required to repair or reinstate the relevant asset; provided that such certification and submission to the Agent shall no longer be required once all sums due to the Third Party Lenders under the Financing Agreements have been irrevocably paid in full and the Credit Agreement has been cancelled. For the purposes of this **Clause 6.5 (Insurance)**, the expressions Insurance Proceeds, Insurance Threshold Amount, Agent and Credit Agreement shall have the meanings given to them in the Direct Agreement.

- 6.5A On each and every occasion where any part of the Houseblock Works (up to and including the Actual Houseblock Opening Date) or the Assets is or are destroyed or damaged, the Contractor shall, unless otherwise agreed by the Authority:
- (a) pay all monies received under any insurance policy taken out in accordance with **Clause 6.1.1 (Insurance)** into an account in the joint names of the Authority and Contractor at a bank to be nominated by the Authority and advise the insurers accordingly; and
 - (b) forthwith pay out all monies received under such insurance policies 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 Houseblock Works as the case may be) (i) well and substantially to reinstate rebuild and/or replace the Houseblock Works in a workmanlike manner to the reasonable satisfaction of the Independent Engineer mutatis mutandis in accordance with **Clause 27A (Engineer's HBJ and Car Park 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 **Part 2 of Schedule A (Design and Construction Specification - Houseblock Works)**) in accordance with drawings and specifications which shall first be submitted for approval in writing by the Authority (such approval not to be unreasonably withheld or delayed) or (ii) to make good any loss sustained or settling any claim made. The

Independent Engineer will, in such case of reinstatement, rebuilding or replacement have the same rights as those contained in **Clause 14A (Provision of the Increased Capacity)**.

6.5B On each and every occasion where any part of the Phase 2 Works (up to and including the Actual New Houseblock Opening Date) or the Assets is or are destroyed or damaged, the Contractor shall, unless otherwise agreed by the Authority:

- (a) pay all monies received under any insurance policy taken out in accordance with **Clause 6.1.1A (Insurance)** into an account in the joint names of the Authority and Contractor at a bank to be nominated by the Authority and advise the insurers accordingly; and
- (b) forthwith pay out all monies received under such insurance policies 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 Phase 2 Works as the case may be) (i) well and substantially to reinstate rebuild and/or replace the Phase 2 Works in a workmanlike manner to the reasonable satisfaction of the Independent Engineer mutatis mutandis in accordance with **Clause 27C (Engineer's Phase 2 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 **Part 3 of Schedule A (Design and Construction Specification – Phase 2 Works)**) in accordance with drawings and specifications which shall first be submitted for approval in writing by the Authority (such approval not to be unreasonably withheld or delayed) or (ii) to make good any loss sustained or settling any claim made. The Independent Engineer will, in such case of reinstatement, rebuilding or replacement have the same rights as those contained in **Clause 14B (Provision of the Phase 2 Increased Capacity)**.

6.6 The Contractor shall within thirty (30) Days from the Date of Contract, and thereafter whenever any insurance policy maintained pursuant to this **Clause 6 (Insurance)** expires, and further whenever required by the Authority, provide evidence, including copies of all insurance policies, to satisfy the Authority that insurance has been taken out and is being maintained by the Contractor as required by this Clause.

6.7 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

- 6.8 Subject to **Clause 6.4 (Insurance)**, as soon as the Contractor considers that, on expiry of any policy of insurance maintained by it in compliance with its obligations under Clause 6, it will be unable to obtain replacement policy of insurance at a commercial price in the United Kingdom insurance market which complies with **Clause 6 (Insurance)**, it shall inform the Authority by notice thereof. Such notice shall contain the Contractor's proposals (Proposals) as to what it reasonably considers reasonable and appropriate to mitigate, manage and control the relevant uninsured risks (which proposals will include measures to share the risks and costs associated with the absence of insurance and may include, without limitation, proposals to amend or vary the Services or the regime and/or to alter the Prison).
- 6.9 Upon receiving such notice the Authority shall, if it reasonably considers that such insurances are not available at a commercial price in the United Kingdom insurance market (and such unavailability is not caused by an action or omission of the Contractor or any of the Sub contractors) promptly consult with the Contractor. The Authority and the Contractor shall use all reasonable endeavours to agree the Proposals (or the Proposals as they may be amended pursuant to discussions). If the existing policies in issue expire before the conclusion of the consultations properly commenced pursuant to this **Clause 6.9 (Insurance)**, the Contractor shall be relieved of its obligation to maintain such insurance until such time as such insurance becomes available again in the United Kingdom insurance market.
- 6.10 The Authority and the Contractor shall consult in respect of such matters in good faith for a period of sixty (60) Days from the Authority receiving a notice from the Contractor pursuant to Clause 6.8 (Insurance). If, at the end of such period, the parties cannot agree the Proposals (or any amendments to them) then the Authority may, by notice in writing served within thirty (30) Days of the end of such sixty (60) Day period submit the issue to arbitration pursuant to **Clause 75.3 (Dispute Resolution)** (failing which the Authority will be deemed to have accepted the Proposals). If the Contractor does not agree or will not comply with the decision of the arbitrator, the Authority shall be entitled to terminate the Contract by thirty (30) Days' written notice and shall pay to the Contractor an amount equal to the Lender Liabilities. If the Authority does not agree or will not comply with the decision of the arbitrator or is unable to reach an agreement with the Contractor pursuant to this **Clause 6.10 (Insurance)**, the Authority

- 6.11 In the event that the Authority does not serve a notice within thirty (30) Days of the final date for the agreement of the Proposals or, as the case may be, within thirty (30) Days of the arbitrator's decision in either case in accordance with **Clause 6.10 (Insurance)** then the Contract will continue and the Contractor shall not (until such time as such insurance becomes available again in the United Kingdom insurance market) be in breach of the terms of the Contract simply by virtue of its failure to obtain the insurance referred to at **Clause 6.8 (Insurance)**.
- 6.12 On the date of the Phase 2 Amending Agreement and within thirty (30) days following each renewal of the insurances which are required to be procured pursuant to this **Clause 6 (Insurance)** and **Schedule X (Minimum Insurance Requirements)** (the "**Required Insurances**"), the Contractor shall deliver to the Authority a broker's letter of undertaking signed by the insurance broker to the Contractor in the agreed form as set out in **Part 4A (Broker's Letter of Undertaking)** of **Schedule X (Minimum Insurance Requirements)**.
- 6.13 The Contractor shall procure that any broker(s) appointed during the currency of this Agreement shall:
- 6.13.1 Owe the Authority such obligations and give to the Authority such warranties as are substantially the same as set out in Part 4A (**Broker's Letter of Undertaking**) of **Schedule X (Minimum Insurance Requirements)**; and
- 6.13.2 Enter into an agreement in substantially the same form as that set out in **Part 4A (Broker's Letter of Undertaking)** of **Schedule X (Minimum Insurance Requirements)**.

7. **Liability for Loss and Damage**

- 7.1 The Contractor shall be liable for all loss and damage to the Prison and the Site, save where the said loss or damage was caused by an act or omission of the Authority, its servants or agents.
- 7.2 The Contractor shall at his own cost re-instate, replace or make good to the reasonable satisfaction of the Authority, or if the Authority agrees, compensate

8. Sub-Contracting

- 8.1 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 prior written consent of the Authority (not to be unreasonably withheld or delayed), provided that the Authority in executing this Contract hereby provides its prior written consent to the sub-contracting of such obligations as are contained in the Sub-contract entered into by the Contractor with the Construction Sub-contractor and such part of the Custodial Services as are sub-contracted to the Operating 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, and in executing the Phase 2 Amending Agreement the Authority provides its prior written consent to the Sub-contracting of the Phase 2 Works to the Houseblock Construction Sub-contractor.
- 8.2 In the event that the Authority does consent to the sub-contracting of any obligation of the Contract to a Sub-contractor, the Contractor shall, unless the Authority otherwise agrees, ensure that such Sub-contractor assumes obligations direct to the Authority corresponding to those imposed in **Clauses 61 (*Public Relations and Publicity*)** and **62 (*Confidential Information*)**, and shall procure that the Construction Sub-contractor provides collateral warranties to the Authority in respect of the amounts payable under **Clause 26 (*Liquidated Damages*)** in a form reasonably acceptable to the Authority and that any limitation of the liability of the 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 Sub-contractor of all such obligations.
- 8.2A 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 shall not fall below the minimum levels agreed in the Houseblock Construction Sub-contract; and the Contractor shall take all reasonable steps to secure the due observance by the Houseblock Construction Sub-contractor of all such obligations.
- 8.2B The Contractor shall procure that the Houseblock Construction Sub-contractor provides, pursuant to **Clause 2B (*Phase 2 Documents*)**, the Sub-Contractor's Phase 2 Collateral Warranty in respect of the performance of the Phase 2 Works

in accordance with **Part 3 of Schedule A (*Design and Construction Specification – Phase 2 Works*)** and that any limitation of the liability of the Houseblock Construction Sub-contractor shall not fall below the minimum levels agreed in the Phase 2 Construction Sub-contract; and the Contractor shall take all reasonable steps to secure the due observance by the Houseblock Construction Sub-contractor of all such obligations.

8.3 The Contractor shall be directly responsible for the management and supervision of approved Sub-contractors unless otherwise requested by the Authority.

8.4 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 thirty (30) Days from receipt of a valid invoice as required by the terms of the Sub-contract.

8.5 The Contractor undertakes and warrants to the Authority that it will not change its commercial arrangements in any manner which will increase the calculation of NPV in accordance with either **Schedule G (*Payments on Termination for Default*)** or **Schedule H (*Payments on Voluntary Termination*)** where the aforementioned change is effected solely or mainly for the purpose of increasing the value of the NPV.

9. **Assignment**

Subject to **Clause 8 (*Sub-contracting*)** and any security or assignment by way of security or other encumbrance in favour of the Third Party Lenders pursuant to the Financing Agreements, the Contractor shall not 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, 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.

10. **Change to Services Required**

10.1 Subject to **Clauses 10.2 (*Change to Services Required*)** and **Clause 10.9 (*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, or add to the obligations of the Contractor under the Contract, (including in relation to the Houseblock Works and Phase 2 Works) by giving written notice (the “**Notice of Change**”) to the Contractor of the required change. 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 and/or Phase 2 Works Fee shall be varied as set out below. Otherwise than in the case

- (a) elect to allow the Notice of Change to lapse; or
- (b) elect that the changes referred to in the Notice of Change shall come into immediate effect (in the same manner and subject to the same conditions as to time allowed to the Contractor as aforesaid) but that the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee shall be varied or not varied in accordance with **Clause 75 (*Dispute Resolution*)**.

In the case of an emergency, or when the Authority elects as referred to in paragraph (b) above, the Authority shall set such provisional change to the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee as it considers fair and until such time as the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee is varied (or not varied) as agreed by the Authority and the Contractor or determined in accordance with **Clause 75 (*Dispute Resolution*)** and the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee shall be deemed to be so changed on a provisional basis. In the event that the provisional Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee set by the Authority is less than the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee as so agreed or determined pursuant to **Clause 75 (*Dispute Resolution*)**, an adjusting payment shall be made by the Authority to the Contractor in the amount of such difference over 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 and/or Phase 2 Works Fee was so agreed or determined pursuant to **Clause 75 (Dispute Resolution)** and vice versa by the Contractor to the Authority if the provisional Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee set by the Authority is more than the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee as so agreed or determined pursuant to **Clause 75 (Dispute Resolution)**.

- 10.2 In the event that the Notice of Change would result in an obligation on the Contractor to incur any Capital Expenditure following the Date of Contract, the Contractor shall use all reasonable endeavours to obtain finance at a reasonable cost from the Third Party Lenders or other commercial sources for such Capital Expenditure. If the Contractor does obtain 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 weeks) of the date of the Notice of Change, the Contractor shall provide two estimates of the increase or decrease in the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee which it believes should occur as a result of the changes set out in the Notice of Change, one to include the cost of such reasonable finance, and one to exclude it, but to estimate the amount of the relevant Capital Expenditure which the Contractor believes is required to comply with the Notice of Change. If despite the use of the Contractor's reasonable endeavours and the operation of **Clause 42 (Variation of Price)** the Contractor fails to obtain finance for such Capital Expenditure, the Contractor shall within two 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 and/or Phase 2 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, following which:

- (a) 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 10.1 (Change to Services Required)** following the Authority's acceptance of the Contractor's estimate;
- (b) 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

- (i) the Authority shall be liable to reimburse the Contractor for such Capital Expenditure as is set out in such estimate in accordance with **Clause 10.3 (*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 10.3 (*Change to Services Required*)**;
 - (ii) 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 10.3 (*Change to Services Required*)**; and
 - (iii) the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee shall be varied once the Notice of Change comes into effect;
- (c) if the Authority rejects the Contractor's single estimate or both its estimates (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 **Clause 10.3 (*Change to Services Required*)** and any change to the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee be determined in accordance with **Clause 75 (*Dispute Resolution*)**.

10.3 Where the Contractor fails to obtain finance at a reasonable cost for the relevant Capital Expenditure from the Third Party Lenders or other commercial sources and the Authority rejects the Contractor's estimate of the amount of the relevant Capital Expenditure, or 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 10.3 (*Change to Services Required*)**. 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 original estimates, the amount of the Capital Expenditure shall be decided in accordance with **Clause 75 (*Dispute Resolution*)**. Once the estimate has been agreed or determined, the Contractor shall procure that all that is necessary is done in

- 10.4 At the same time that the Contractor provides any estimate or estimates to the Authority under either **Clause 10.1 (*Change to Services Required*)** or 10.2 (***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 the proviso below, 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 75 (*Dispute Resolution*)**. Provided that if any matter referred to in **Clauses 10.1 (*Change to Services Required*)**, **10.2 (*Change to Services Required*)** or **10.3 (*Change to Services Required*)** is determined pursuant to **Clause 75 (*Dispute Resolution*)**, the manner in which the Finance Plan is to be changed shall be determined at the same time and in the same way.
- 10.5 The Contractor may propose changes to the Custodial Services, the Works, the Houseblock Works or the Phase 2 Works pursuant to this **Clause 10.5 (*Change to Services Required*)**. Any such change to the Custodial Services will require the written consent of the Authority by using the relevant procedure and form in Schedule M. A change to the Works may only be requested by the Contractor in the manner set out in Schedule M, Part 2 (***Compliance Monitoring***). A change to the Houseblock Works may only be requested by the Contractor in the manner set out in Schedule M, Part 2 (***Compliance Monitoring***). A change to the Phase 2 Works may only be requested by the Contractor in the manner set out in Schedule M, Part 2 (***Compliance Monitoring***). A change to the Works, Houseblock Works or Phase 2 Works which falls within the Design Objectives will require the written consent of the Authority, not to be unreasonably withheld. A change to the Works, Houseblock Works or Phase 2 Works which falls outside the Design Objectives will require the written consent of the Authority. In the event of any change in the costs of the Contractor resulting from any changes to the Works, Houseblock Works or Phase 2 Works (as the case may be) or any change to their design, there shall be no variation in the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee unless such changes in cost arise from either Prison Legislation or Exceptional Legislation in which case

10.6 Where any Prison Legislation alters the costs incurred by the Contractor in fulfilling his obligations under the Contract, the Contractor may notify the Authority of such fact and request that an adjustment be made to the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee. Following such notification, the parties shall endeavour to agree such adjustment as soon as practicable in accordance with the following provisions:

- (a) the Contractor shall provide the Authority with a quotation to decrease or increase the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee;
- (b) the Contractor shall submit all the information referred to in **Clause 64 (*Contractor's Records*)** as the Authority may reasonably require together with break-downs of price and supporting material as the Authority may require including wage rates, suppliers costs, overhead and profit calculations, for the purpose of satisfying the Authority that the proposed revised price is fair and reasonable.

In the event of failure by the parties to agree, either party may refer the matter in accordance with **Clause 75 (*Dispute Resolution*)**.

10.7 Any change to the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee which is determined under this **Clause 10 (*Change to Services*)**

10.8 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 and/or Phase 2 Works Fee if:

- (a) the Authority requires any Additional Prisoner Places and/or Additional Young Person Places;
- (b) the categories of Prisoner or the numbers of Prisoners or of any particular category of Prisoner which the Authority provides to fill the Prisoner Places changes (except if the change is beyond the parameters set out in **Part 1** of **Schedule D (Operational Requirements)**);
- (c) the Authority requires the recommendations of the Woodcock Report (as referred to and to the extent interpreted in **Part 1** of **Schedule D (Operational Requirements)**) to be put into effect in the Prison; or
- (d) the operation of the Prison changes in any way within the parameters set out in **Part 1** of **Schedule D (Operational Requirements)**; or
- (e) the Authority requires any amendments to be made pursuant to **Clause 21.2 (Preparation for Operation of the Prison)**.

10.9 The Authority will be entitled to serve a notice under **Clause 10.1 (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 any of the events referred to in **Schedule N (Limitation on Changes to Services)**.

11. Provision and Interpretation of Information

11.1 The Contractor shall be deemed to have inspected the Site and its surroundings and to be in possession of information connected therewith and to have satisfied itself before signing the Contract as to:

- (a) the form and nature of the Site and its surroundings, including the ground and sub-soil;
- (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.

11.2 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.

11.3 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 11.2 (*Provision and Interpretation of Information*)**.

11A **Provision and Interpretation of Information - Houseblock Works**

11A.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:

- (a) the form and nature of the Houseblock Works Area and its surroundings, including the ground and sub-soil;
- (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.

11A.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 under the Contract. The Contractor shall not rely on any information provided by the Authority with regard to these matters.

11A.3 The Authority shall not be liable for any costs arising from the Contractor's failure to perform its obligations under this **Clause 11A (*Provision and Interpretation of Information - Houseblock Works*)** or from any lack of knowledge which the Contractor is deemed to have under **Clause 11A.1 (*Provision and Interpretation of Information - Houseblock Works*)**.

11B **Provision and Interpretation of Information – Phase 2 Works**

11B.1 The Contractor shall be deemed to have inspected the Phase 2 Works Area and its surroundings and to be in possession of information connected therewith and to have satisfied itself before signing the Phase 2 Amending Agreement as to:

- (e) the form and nature of the Phase 2 Works Area and its surroundings, including the ground and sub-soil;
- (f) the extent of the work and materials necessary for constructing, completing and maintaining the Phase 2 Works;
- (g) the means of communication with and access to the Phase 2 Works Area; and
- (h) the provision and location of utilities.

11B.2 The Contractor is responsible for obtaining all surveys and information necessary for carrying out its obligations in relation to the Phase 2 Works and the Phase 2 Increased Capacity under the Contract. The Contractor shall not rely on any information provided by the Authority with regard to these matters.

11B.3 The Authority shall not be liable for any costs arising from the Contractor's failure to perform its obligations under this **Clause 11B (*Provision and Interpretation of Information – Phase 2 Works*)** or from any lack of knowledge which the Contractor is deemed to have under **Clause 11B.1 (*Provision and Interpretation of Information – Phase 2 Works*)**.

PART II - PROVISION

12. The Land

12.1 Annexed to the Original Contract at Appendix AX2 was a form of draft Lease that had been agreed between the Authority, the Contractor and the Operating Sub-contractor (the "**Lease**").

12.2 The land upon which the Contractor shall provide the Prison (the "**Land**") is more particularly described in clause 1.3 of the Lease.

12.3 The Authority shall grant and the Contractor shall accept (and shall procure that the Operating Sub-contractor shall accept) a Lease of the Land in the following manner:

- (a) On such date as shall be the first working Day after the night when fifty (50) Prisoners were first held in the

- (b) Completion of the grant of the Lease shall take place at the offices of the Authority's solicitors or elsewhere as they may reasonably require.
- (c) Vacant possession of the Land shall be given to the Contractor and the Operating Sub-contractor on the date that the Lease is completed.

12.4 It is hereby acknowledged that upon completion of the Lease the Contractor and the Operating Sub-contractor shall acquire all those rights and shall be subject to all those reservations and covenants contained in the Lease.

12.5 Pending the completion of the Lease the Contractor shall (and shall procure that the operating Sub-contractor shall) observe and perform the following matters:

- (a) The matters specified in the Charges Register (except financial charges) to Title Number WA 132751 at the date of this Contract
- (b) The matters specified in the Charges Register (except financial charges) to Title Number WA 195011 at the date of this Contract
- (c) The matters specified in the Charges Register (except financial charges) to Title Number WA 712315 at the date of this Contract
- (d) Agreements between The Minister of Health (1) and The South Wales Electricity Board (2) dated 23rd Day of August 1956 6th Day of April 1961 1st Day of February 1964 and 3rd Day of May 1965
- (e) Consent to the Post Office dated 18th Day of April 1979

in so far as they affect the Land and the Contractor shall (and shall procure that the Operating Sub-contractor shall) fully and effectively indemnify the Authority and the Crown in respect of any liability claim action proceeding demand cost charge or expense which may be made against the Authority and the Crown by reason of or arising out of or in any way caused by the non-performance of such matters by the Contractor and the Operating Sub-contractor (including acts or omissions of their servants agents or sub-contractors).

12.6 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

- 12.7 The New Lease shall contain all those covenants conditions and provisions as are set out in the form of Lease annexed to the Original Contract at Appendix AX2 except that the term of Years granted by the New Lease shall be equal to the then unexpired residue of the term of Years granted by the Lease that was completed on the Lease Completion Date.
- 12.8 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.
- 12.9 It will be the responsibility of the Contractor at its own expense (except in relation to the HHJ works defined in **Clause 13.3 (Planning Approval)** 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 this Contract where such easements, rights, licences and privileges are not specified in the Lease and are under over and upon the property and land that does not form part of the Land. The Contractor will 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 will (and will procure that the Operating Sub-contractor will) 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 such 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 will (and will procure that the Operating Sub-contractor will) indemnify the Authority against all liabilities and obligations

13. Planning Approval

13.1 The Contractor will note the decisions of the Ogwr Borough Council recorded in documents attached to letters dated 23 December 1993 and 22 August 1995 in relation to the Notice of Proposed Development and further note the conditions and/or recommendations (howsoever described) contained in those decisions.

13.2 To any extent that Planning Approval has not already been given the obtaining of Planning Approval is an obligation under the Contract to be discharged by the Contractor.

13.3

(a) In this sub-clause the "**HHJ works**" means:

- (i) the construction of a footway co-extensive with Heol Hopcyn John including any necessary associated kerbing and drainage;
- (ii) the provision of two bus lay-bys and shelters on Heol Hopcyn John including any necessary associated road widening or construction of footways;
- (iii) the provision of street lighting on Heol Hopcyn John; and
- (iv) the resurfacing of the carriageway of Heol Hopcyn John.

(b) The Contractor shall at its own expense give effect to all conditions and/or recommendations (howsoever described) in the decisions noted at **Clause 13.1 (Planning Approval)** (unless otherwise agreed by Ogwr Borough Council (or any successor as local planning authority)) save for those relating to the HHJ works, and subject to **Clause 13.3(c) (Planning Approval)** shall not thereby (or otherwise) be obliged to cause the HHJ works to be carried out (whether or not the HHJ works are embodied in the conditions and/or recommendations).

(c) The Contractor shall use its reasonable endeavours to procure that a Section 278 Agreement is entered into by the Authority and the relevant Highways Authority with

(d) If, notwithstanding the reasonable endeavours of the Contractor pursuant to **Clause 13.3(c) (*Planning Approval*)**, a Section 278 Agreement is not entered into by the Authority and the relevant Highways Authority with the Contractor, the Authority shall procure, by any means it sees fit, the carrying out of the HHJ works and the Contractor shall pay to the Authority the sum of [REDACTED] exclusive of any Value Added Tax payable. The Contractor shall pay the sum of [REDACTED] plus (to the extent the same shall be irrecoverable) any Value Added Tax payable to the Authority on the Day seven (7) Days after the Day on which the Authority notifies the Contractor that the HHJ works are to be commenced (by whomsoever to be carried out) or if no such notification has been given by the Contractual Opening Date on the Contractual Opening Date. The sum shall not be payable to the Authority if the Contractor carries out the HHJ works on behalf of the Authority and without payment but otherwise than as provided by a Section 278 Agreement.

- 13.4 Without prejudice to **Clause 53.4 (*Payment for Termination*)** no termination payment is payable under the Contract in the event that the Contractor defaults on its obligations under the Contract and that default is by reason of there being no Planning Approval for the Prison.
- 13.5 The Contractor shall for the purposes of any matter governed by Welsh Office Circular 37/84 under this clause and for that purpose only, act as the Authority's sole and exclusive agent in matters relating to the obtaining of any Planning Approval.
- 13.6 If the Contractor so elects and if the Authority consents (such consent not to be unreasonably withheld) the Contractor shall be entitled to submit to the Ogwr Borough Council (or any successor as local planning authority) amended details pursuant to the Notice of Proposed Development to obtain Planning Approval and the Contractor shall bear any and all costs consequent upon and caused by the

- 13.7 The Authority as owner of the freehold estate in the land will, upon the reasonable written request of the Contractor, enter into any agreement containing planning obligations with the Ogwr Borough Council (or any successor as local planning authority) under section 299A of the Town and Country Planning Act 1990 unless in the Authority's absolute discretion it considers such agreement to be contrary to public policy; and in any event the Contractor shall indemnify the Authority in respect of any expense or liability incurred by the Authority in consequence of any agreement containing planning obligations. The Authority will not enter into any agreement containing planning obligations without the consent of the Contractor unless notice to terminate the Contract has been given.
- 13.8 In the event that any further Planning Approval is obtained by the Contractor it shall within seven (7) Days of having received such Planning Approval serve a copy thereof on the Authority.
- 13A **Planning Approval - Increased Capacity**
- 13A.1 The Contractor will note the decision of the Council dated 9 August 2007 whereby the Contractor was granted full planning permission in respect of the Houseblock Works under planning permission number P/07/642/FUL granted on 1 July 2008 (the "***Increased Capacity Permission***").
- 13A.2 To the extent necessary for the purposes of Planning Approval, the Contractor shall comply with the conditions and recommendations contained in the Increased Capacity Permission and, without prejudice to the generality of the foregoing, in the course of providing the Increased Capacity the Contractor shall be responsible for applying for all planning permissions and/or clearances for the reserved matters not covered by **Clause 13A.1 (*Planning Approval - Increased Capacity*)**.
- 13A.3 Subject to **Clause 25B (*Extension of Time - Increased Capacity*)**, the Contractor shall use its reasonable endeavours to obtain all necessary planning permissions and/or clearances for the development of the Houseblock upon the Land and shall bear its own costs consequent upon and caused by such application, including its costs in respect of any delay to the Houseblock Works caused by such application.
- 13A.4 Nothing in the Contract nor in any consent granted by the Authority under the Contract shall be deemed to imply or warrant that the Houseblock may lawfully be used under the Planning Acts (as defined in the Lease) for the purpose authorised in the Contract or the Lease (or any purpose subsequently authorised).

13A.5 If the Highway Authority or relevant Planning Authority requires the Contractor or the owner of the Land to enter into either a Section 278 Agreement or an agreement under Section 106 of the Town and Country Planning Act 1990, in connection with the Houseblock Works, and the Authority is requested to either join in such agreement or enter into either a separate Section 278 Agreement or an agreement under Section 299A of the Town and Country Planning Act 1990 then:

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

13A.6 The Authority acknowledges that the Contractor shall, pursuant to the Section 106 Agreement, pay the sum of [REDACTED] (the "**Section 106 Payment**") to the Council on commencement of the Houseblock Works. Upon payment of such Section 106 Payment (and receipt by the Authority and the Contractor of written notice from the Council confirming receipt of such Section 106 Payment), the Contractor shall be deemed to have satisfied:

- (a) the Section 106 Payment in full; and
- (b) its obligations under **Clause 13.3 (Planning Approval)**.

13B **Planning Approval – Phase 2 Increased Capacity**

13B.1 The Contractor will note the decision of the Council dated 2 January 2013 whereby the Contractor was granted full planning permission in respect of the Phase 2 Works under planning permission number P/10/789/FUL granted on 2 January 2013 (the "**Phase 2 Increased Capacity Permission**").

- 13B.2 To the extent necessary for the purposes of Planning Approval, the Contractor shall comply with the conditions and recommendations contained in the Phase 2 Increased Capacity Permission and, without prejudice to the generality of the foregoing, in the course of providing the Phase 2 Increased Capacity the Contractor shall be responsible for applying for all planning permissions and/or clearances for the reserved matters not covered by **Clause 13B.1 (*Planning Approval – Phase 2 Increased Capacity*)**.
- 13B.3 Subject to **Clause 25C (*Extension of Time – Phase 2 Increased Capacity*)**, the Contractor shall use its reasonable endeavours to obtain all necessary planning permissions and/or clearances for the development of the New Houseblock upon the Land and shall bear its own costs consequent upon and caused by such application, including its costs in respect of any delay to the Phase 2 Works caused by such application.
- 13B.4 Nothing in the Contract nor in any consent granted by the Authority under the Contract shall be deemed to imply or warrant that the New Houseblock may lawfully be used under the Planning Acts (as defined in the Lease) for the purpose authorised in the Contract or the Lease (or any purpose subsequently authorised).
- 13B.5 If the Highway Authority or relevant Planning Authority requires the Contractor or the owner of the Land to enter into either a Section 278 Agreement or an agreement under Section 106 of the Town and Country Planning Act 1990, in connection with the Phase 2 Works, and the Authority is requested to either join in such agreement or enter into either a separate Section 278 Agreement or an agreement under Section 299A of the Town and Country Planning Act 1990 then:
- (a) subject to the approval of H.M. Treasury being given under the provisions of section 327 of the Highways Act 1980, and insofar as it is necessary, for the purpose of the Phase 2 Works, for the Authority to enter into a Section 278 Agreement or an agreement under Section 299A of the Town and Country Planning Act 1990, the Authority shall, if reasonably required to do so by the Contractor, and if it is necessary for it to do so to enable the Contractor to fulfil its obligations pursuant to that agreement, enter into the agreement at the Contractor's cost; and
 - (b) the Contractor shall indemnify the Authority for all of its liability and any reasonable expenses incurred by it in connection with the entering into and performance of the relevant agreement during the subsistence of the Contract

13C **Planning Approval Challenge**

If there is a Planning Approval Challenge, the following provisions of this **Clause 13C** (***Planning Approval Challenge***) shall apply:

- 13C.1 the parties shall notify each other in writing that such proceedings have commenced within two (2) Business Days of becoming aware of the same;
- 13C.2 the Authority shall, within five (5) Business Days of receipt of, or the issuing of, the notice referred to in **Clause 13C.1** (***Planning Approval Challenge***), notify the Contractor whether or not to suspend the performance of the Houseblock Works or Phase 2 Works to which the Planning Approval Challenge relates, provided that if the Authority fails to issue such an instruction the Authority shall be deemed to have issued an instruction that the Contractor should suspend the performance of the Houseblock Works or Phase 2 Works to which the Planning Approval Challenge relates;
- 13C.3 where the Contractor suspends the performance of the Houseblock Works or the Phase 2 Works pursuant to an instruction or a deemed instruction pursuant to **Clause 13C.2** (***Planning Approval Challenge***), on receipt of a written instruction from the Authority to recommence the performance of such Houseblock Works or Phase 2 Works, the Contractor shall recommence the performance of such Houseblock Works or Phase 2 Works (as applicable) as soon as reasonably practicable;
- 13C.4 the Contractor shall take all reasonable steps to mitigate its losses, costs and any time lost in connection with this **Clause 13C** (***Planning Approval Challenge***);
- 13C.5 within five (5) Business Days of a notification pursuant to **Clause 13C.1** (***Planning Approval Challenge***), the parties shall meet to discuss whether the Authority requires the Contractor to provide reasonable assistance in the defence of the Planning Approval Challenge and, if so, what actions it may (subject to **Clause 13C.6** (***Planning Approval Challenge***)) require from the Contractor;
- 13C.6 the Contractor shall, subject to reimbursement by the Authority of its reasonable and properly incurred costs and losses, comply with all reasonable instructions of the Authority in relation to any Planning Approval Challenge or re-submitting any planning application which is the subject of a Planning Approval Challenge;
- 13C.7 if any Planning Approval Challenge is successful or remains in existence at the date falling three (3) months after the issue of proceedings relating to the Planning Approval Challenge, the parties shall as soon as reasonably practicable

meet and in good faith seek to agree arrangements that will apply as a result of the Planning Approval Challenge (which arrangements may include the removal from the Project of the Houseblock (and associated Houseblock Works), or the New Houseblock (and associated Phase 2 Works) as applicable, or the submission of a new planning application), provided that, if the parties are unable to agree the actions to be taken and the issue of proceedings relating to Planning Approval Challenge has not been defeated by the date occurring nine (9) months after the date of the Planning Approval Challenge (or such later date as the parties in their absolute discretion may agree), the Authority shall be deemed to have served a Notice of Change pursuant to **Clause 10 (*Change to Services Required*)**. Such Notice of Change shall not be capable of being withdrawn requiring the removal from the Project of the Houseblock or the New Houseblock (including the associated Houseblock Works or Phase 2 Works as applicable and the removal of any works and/or the reinstatement of the Site to its original condition) and any amendments to the terms of this Contract. Any such determination shall be treated as a termination of the Houseblock Works or the Phase 2 Works (as applicable) for the purposes of **Clause 53 (*Payment for Termination*)** and the Authority shall pay to the Contractor the amount set out in paragraph (i) of **Part 2 of Schedule G (*Payments on Termination of Default*)**.

14. **Provision of the Prison**

- 14.1 The Contractor shall design and construct the Prison subject to and in accordance with the terms of **Part 1 of Schedule A (*Design and Construction Specification*)**.
- 14.2 The Independent Engineer shall monitor the progress of the Works upon the Site, and be entitled to exercise rights, in accordance with the provisions of **Schedule M (*Compliance Monitoring*)**. The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in **Clause 27 (*Engineer's Declaration*)**. The Authority shall procure that the Independent Engineer shall inform the Contractor promptly upon becoming aware of any matter which may adversely affect the issue of the Engineer's Declaration in accordance with **Clause 27 (*Engineer's Declaration*)**. Nothing done by the Authority or the Independent Engineer in accordance with this **Clause 14.2** or **Schedule M (*Compliance Monitoring*)** shall in any respect relieve or absolve the Contractor from its responsibility for the design of the Works under or in connection with the Contract.
- 14.3 The Authority hereby appoints the Contractor as the only client for the purposes of the Construction (Design & Management) Regulations 1994 (the "***Regulations***") and for the design and construction of the Existing Prison. The Contractor agrees to accept this appointment and undertakes to deliver a duly

14A Provision of Increased Capacity

- 14A.1 The Contractor shall design and construct the Houseblock subject to and in accordance with the terms of **Part 2 of Schedule A (*Design and Construction Specification - Houseblock Works*)**.
- 14A.2 The Independent Engineer shall monitor the progress of the Houseblock Works, and be entitled to exercise rights, in accordance with the provisions of **Schedule M (*Compliance Monitoring*)**. The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in **Clause 27A (*Engineer's HBJ and Car Park Declaration*)**. The Authority shall procure that the Independent Engineer shall inform the Contractor promptly upon becoming aware of any matter which may adversely affect the issue of the Engineer's HBJ and Car Park Declaration in accordance with **Clause 27A (*Engineer's HBJ and Car Park Declaration*)**. Nothing done by the Authority or the Independent Engineer in accordance with this **Clause 14A.2 (*Provision of the Increased Capacity*)** or **Schedule M (*Compliance Monitoring*)** shall in any respect relieve or absolve the Contractor from its responsibility for the design of the Houseblock Works under or in connection with the Contract.
- 14A.3 As between the Contractor and the Authority, the Contractor shall be entirely responsible for the safety of any design which forms part of the Houseblock Works and for the adequacy, stability and safety of all site operations and methods of construction.
- 14A.4 In accordance with the CDM Regulations, the Authority and the Contractor have elected that the Contractor shall be, and shall be treated as the only client in respect of the Houseblock Works pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Houseblock Works, seek in any way to withdraw, terminate or derogate from such election.
- 14A.5 The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations, requirements and duties arising under the CDM Regulations in connection with the Houseblock Works (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the Contractual Houseblock Opening

Date, provide a certified copy of the final Health and Safety File (as defined in the CDM Regulations) to the Authority and within thirty (30) Business Days of issue of the Engineer's HBJ and Car Park Declaration, a certified copy of the full and complete Health and Safety File.

14B Provision of Phase 2 Increased Capacity

- 14B.1 The Contractor shall design and construct the New Houseblock subject to and in accordance with the terms of **Part 3 of Schedule A (*Design and Construction Specification – Phase 2 Works*)**.
- 14B.2 The Independent Engineer shall monitor the progress of the Phase 2 Works, and be entitled to exercise rights, in accordance with the provisions of **Schedule M (*Compliance Monitoring*)**. The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in **Clause 27C (*Engineer's Phase 2 Declaration*)**. The Authority shall procure that the Independent Engineer shall inform the Contractor promptly upon becoming aware of any matter which may adversely affect the issue of the Engineer's Phase 2 Declaration in accordance with **Clause 27C (*Engineer's Phase 2 Declaration*)**. Nothing done by the Authority or the Independent Engineer in accordance with this **Clause 14B.2 (*Provision of the Phase 2 Increased Capacity*)** or **Schedule M (*Compliance Monitoring*)** shall in any respect relieve or absolve the Contractor from its responsibility for the design of the Phase 2 Works under or in connection with the Contract.
- 14B.3 As between the Contractor and the Authority, the Contractor shall be entirely responsible for the safety of any design which forms part of the Phase 2 Works and for the adequacy, stability and safety of all site operations and methods of construction.
- 14B.4 In accordance with the CDM Regulations, the Authority and the Contractor have elected that the Contractor shall be, and shall be treated as the only client in respect of the Phase 2 Works pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Phase 2 Works, seek in any way to withdraw, terminate or derogate from such election.
- 14B.5 The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations, requirements and duties arising under the CDM Regulations in connection with the Phase 2 Works (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the Contractual New Houseblock Opening Date, provide a certified copy of the final Health and Safety File (as defined in the CDM Regulations) to the Authority and within thirty (30) Business Days of issue of the Engineer's Phase 2 Declaration, a certified copy of the full and complete Health and Safety File.

15. **Supply of Equipment**

- 15.1 Prior to the Estimated Opening Date the Contractor shall supply and install at the Prison all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the Prison prior to the Estimated Opening Date in **Part 1 of Schedule B (Equipment)**. All equipment referred to in **Part 1 of Schedule B (Equipment)** shall be the property of the Contractor (subject to Clause 15.2) and all the equipment referred to in **Part 1 of Schedule B (Equipment)** shall be in good and serviceable condition for the period it is in the Prison or on the Site (or, if it is not capable of being kept in good and serviceable condition, shall be replaced as required with like equipment which is the property of the Contractor (subject to **Clause 15.2 (Supply of Equipment)**) and in good and serviceable condition) in order to allow the Contractor to comply with the standards set out in **Schedule C (Maintenance Requirements)**, and shall not be removed by the Contractor from the Prison except with the consent of the Authority.
- 15.1A Prior to the Contractual Houseblock Opening Date the Contractor shall supply and install at the Houseblock all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the Houseblock prior to the Contractual Houseblock Opening Date in **Part 3 of Schedule B (Equipment)**. All equipment referred to in **Part 3 of Schedule B (Equipment)** shall be the property of the Contractor (subject to **Clause 15.2 (Supply of Equipment)**) and all the equipment referred to in **Part 3 of Schedule B (Equipment)** shall be in good and serviceable condition for the period it is in the Prison or on the Site (or, if it is not capable of being kept in good and serviceable condition, shall be replaced as required with like equipment which is the property of the Contractor (subject to **Clause 15.2 (Supply of Equipment)**) and in good and serviceable condition) in order to allow the Contractor to comply with the standards set out in **Schedule C (Maintenance Requirements)**, and shall not be removed by the Contractor from the Prison except with the consent of the Authority.
- 15.1B Prior to the Contractual New Houseblock Opening Date the Contractor shall supply and install at the New Houseblock all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the New Houseblock prior to the Contractual New Houseblock Opening Date in **Part 4 of Schedule B (Equipment)**. All equipment referred to in **Part 4 of Schedule B (Equipment)** shall be the property of the Contractor (subject to **Clause 15.2 (Supply of Equipment)**) and all the equipment referred to in **Part 4 of Schedule B (Equipment)** shall be in good and serviceable condition for the period it is in the Prison or on the Site (or, if it is not capable of being kept in good and serviceable condition, shall be replaced as required with like equipment which is the property of the Contractor (subject to **Clause 15.2 (Supply of Equipment)**) and in good and serviceable condition) in order to allow the

Contractor to comply with the standards set out in **Schedule C (Maintenance Requirements)**, and shall not be removed by the Contractor from the Prison except with the consent of the Authority.

- 15.2 At the end of the Contract Term or upon earlier termination, any property in such fixtures, fittings, furnishings, chattels, and other equipment referred to in **Clause 15.1 (Supply of Equipment)**, **15.1A (Supply of Equipment)** and **15.1B (Supply of Equipment)** (including any replacement property or equipment) or which is otherwise used or present in the Prison or on the Site shall pass to the Authority and the Contractor shall use all reasonable endeavours to procure that the benefit of all guarantees, warranties, documentation and service agreements relating to the said fixtures, furniture, furnishings, chattels, and other equipment, and relating to any part of the Prison which is referred to in **Schedule A (Design and Construction Specification)** is assigned to the Authority or, to the extent not assignable, is transferred in a manner agreed between the Contractor and Authority at the time.

16. Issue of Information Technology Equipment

- 16.1 The Contractor will supply install, operate and maintain an information technology system that supports the operational and management functions at the Prison and which meets the criteria set out in Section 17 of **Part 1 of Schedule D (Operational Requirements)**.
- 16.1A The Contractor will supply, install, operate and maintain an information technology system that supports the operational and management functions at the Houseblock and which meets the criteria set out in Section 17 of **Part 1 of Schedule D (Operational Requirements)**.
- 16.1B The Contractor will supply, install, operate and maintain an information technology system that supports the operational and management functions at the New Houseblock and which meets the criteria set out in **Schedule D (Operational Requirements)**
- 16.1C The Contractor shall:
- (a) at its own expense provide, install and maintain all necessary ducts, wireways and category 5e network cabling in the New Houseblock and such cabling and ancillary fixtures and fittings and power supplies shall be in accordance with the Authority's Cabling Specification Requirements;
 - (b) at the Authority's request, make available appropriately qualified personnel to consult with the Authority, its nominated agents or their authorised engineers about the installation, configuration, testing, commissioning, maintenance, operation, upgrading, modification or replacement of any Quantum System to the New Houseblock;

- (c) ensure that the Authority has the opportunity, for a reasonable time prior to any Quantum System to the New Houseblock going on line, to test such Quantum System's ability to send and receive data;
- (d) use the Quantum System to the New Houseblock provided by the Authority or as otherwise provided pursuant to Clause 16.2B;
- (e) provide free access to the Authority, its nominated agents or their authorised service engineers at any reasonable time on reasonable notice for the purpose of (i) routine maintenance and fault resolution of the Quantum System to the New Houseblock and (ii) upgrading or replacing any Quantum System to the New Houseblock.

16.2 The Authority will supply and install the equipment having the specification referred to in **Part 2 of Schedule B (Equipment)** (the "**Government Data Network Access Point**") in the Prison upon receiving a written request for the same from the Contractor provided that the following provisions are met:

- (a) the Contractor's written request to the Authority to supply and install the Government Data Network Access Point shall be delivered to the Authority at least one hundred and forty one (141) Days in advance of the proposed date for its installation (the "**Installation Date**");
- (b) the Installation Date for the Government Data Network Access Point shall be at least ten (10) weeks prior to the Actual Opening Date; and
- (c) The prisoner information management system ("**PIMS**") shall have been fully installed and configured at least ten (10) weeks prior to the Actual Opening Date in order to provide a sufficient period of time for a full testing and proving exercise of the import and export files referred to below (to enable the data to be transported and to enable it to be posted to other data bases (including PIMS)) and not PIMS generally.

16.2A The Authority will supply and install the Government Data Network Access Point in the Houseblock upon receiving a written request for the same from the Contractor provided that the following provisions are met:

- (a) the Contractor's written request to the Authority to supply and install the Government Data Network Access Point shall be delivered to the Authority at least one hundred and forty one (141) Days in advance of the proposed date for its installation (the "**Houseblock Installation Date**");
- (b) the Houseblock Installation Date for the Government Data Network Access Point shall be at least ten (10) weeks prior to the Actual Houseblock Opening Date; and

- (c) The prisoner information management system in the Houseblock ("**Houseblock PIMS**") shall have been fully installed and configured at least four (4) weeks prior to the Actual Houseblock Opening Date in order to provide a sufficient period of time for a full testing and proving exercise of the import and export files referred to below (to enable the data to be transported and to enable it to be posted to other data bases (including Houseblock PIMS)) and not Houseblock PIMS generally.
- 16.2B The Authority will supply and install 12 Quantum terminals and associated equipment in the New Houseblock upon receiving a written request for the same from the Contractor provided that the following provisions are met:
- (a) the Contractor's written request to the Authority to supply and install the Quantum terminals and equipment shall be delivered to the Authority at least 10 weeks in advance of the proposed date for its installation (the "**New Houseblock Installation Date**");
 - (b) all relevant cabling and patching certification has been provided to the Authority in accordance with Authority's Cabling Specification Requirements;
 - (c) the New Houseblock Installation Date for the Quantum terminals and associated equipment shall be at least ten (10) weeks prior to the Actual New Houseblock Opening Date; and
 - (d) the Contractor's prisoner information management system shall have been fully installed and configured at least four (4) weeks prior to the Actual New Houseblock Opening Date in order to provide a sufficient period of time for a full testing and proving exercise of the import and export files referred to below (to enable the data to be transported and to enable it to be posted to other data bases).
- 16.3 The Authority shall be responsible for the provision, installation, maintenance and operation of the Government Data Network Access Point. The Contractor shall communicate with the Authority's service personnel by telephone on either party becoming aware of any perceived faults in the operation of the Government Data Network Access Point and shall take such action in connection with such perceived fault as the Authority's service personnel reasonably instruct (including, without limitation, the taking of readings), provided that the Contractor shall not be liable to the Authority for any losses whatsoever arising from such action as is carried out on the instructions of the Authority's service personnel. The Contractor will provide free access to the Authority or their authorised service engineers at any reasonable time on reasonable notice for the purpose of routine maintenance and fault resolution of the Government Data Network Access Point.

16.3A The Authority shall be responsible for the provision, installation, maintenance and operation of the Quantum System for the New Houseblock. The Contractor shall communicate with the Authority's service personnel by telephone on either party becoming aware of any perceived faults in the operation of the Quantum System and shall take such action in connection with such perceived fault as the Authority's service personnel reasonably instruct (including, without limitation, the taking of readings), provided that the Contractor shall not be liable to the Authority for any losses whatsoever arising from such action as is carried out on the instructions of the Authority's service personnel. The Contractor will provide free access to the Authority or their authorised service engineers at any reasonable time on reasonable notice for the purpose of routine maintenance and fault resolution of the Quantum System.

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

17.1 The Contractor shall comply with and give all notices required by or under any Legislation, or required by any Statutory Undertaker with rights over the Site, or with whose systems the Prison is or will be connected, which may be required in relation to the Works and/or the Houseblock Works and/or the Phase 2 Works, the operation of the Prison or otherwise affecting the Contractor (the "**Statutory Obligations**").

17.2 Where the terms of the Contract conflict with the Statutory Obligations, the Contractor shall as soon as reasonably possible inform the Authority of this fact, and where the said conflict necessitates a variation of the terms of the Contract in the reasonable opinion of the Authority, the Contractor shall first use all reasonable endeavours to obtain the approval of the Authority to effect the variation in accordance with **Clause 66 (Authority to Commit and Variation)**, save where the Contractor is obliged to effect emergency compliance with a Statutory Obligation, in which case the Authority shall be informed as soon as practicable. The Contractor shall not otherwise be liable to the Authority for complying with the Statutory Obligations where they are in conflict with the terms of this Contract.

17.3 Without prejudice to the provisions of **Clause 42 (Variation of Price)** the Contractor shall pay any fees or charges required to be paid under any Legislation and shall pay any licence fees or charges pertaining to the provision of utilities in respect of the Prison and/or the Houseblock Works and/or the Phase 2 Works, save that the Contractor shall not be liable for any business rates payable (or any sum payable in lieu of such rates) in respect of the Prison and/or the Houseblock Works and/or the Phase 2 Works.

PART III - MAINTENANCE

18. Maintenance of Prison

18.1 Subject to **Clause 19.1 (*Maintenance of Authority's Equipment*)**, the Contractor shall maintain at its own expense the Prison, the Site and all plant, fixtures, fittings, chattels, and other equipment in accordance with the terms of **Schedule C (*Maintenance Requirements*)**.

18.2 **Schedule C (*Maintenance Requirements*)** contains the obligations of the Contractor with regard to the maintenance of the Prison, the land and all plant, fixtures, fittings, chattels and other equipment therein or thereupon. Contained therein, inter alia, are the particular standards of maintenance to be adhered to by the Contractor throughout the duration of the Contract, and the timetable to which the Contractor is to adhere to in carrying out the following:

- (a) the replacement of plant, fixtures, fittings, chattels and other equipment;
- (b) the refurbishment and re-decoration of the internal fabric of the Prison;
- (c) the conservation and/or repair of the structure and external fabric of the Prison, including but not limited to the roof, walls and windows;
- (d) the upkeep of the Land; and
- (e) all other works.

18.3 In addition to the obligations set out in **Clause 18.2 (*Maintenance of Prison*)** and **Schedule C (*Maintenance Requirements*)**, the Contractor shall ensure that the Prison is kept in good structural and decorative order during the Contract Term, so as to allow the Contractor to comply with the standards set out in **Schedules C (*Maintenance Requirements*)** and **D (*Operational Requirements*)** and shall ensure that all plant, fixtures and fittings are kept in good and serviceable condition so as to allow the Contractor to comply with the standards set out in **Schedule C (*Maintenance Requirements*)** or, if not capable of being kept in good and serviceable condition, shall be replaced as required with like equipment which is in good and serviceable condition.

18.4 **Schedule C (*Maintenance Requirements*)** contains the standards by which the Prison, the Site and all plant, fixtures, fittings and furniture, chattels and other equipment are to be judged upon expiry or termination of the Contract Term. The Contractor shall ensure that such standards are met, and the Authority may exercise its rights under **Clause 20 (*Dilapidation Survey*)** and

18.5 For the avoidance of doubt, and in addition to the requirements specifically set out in **Schedule C (Maintenance Requirements)**, the Contractor is obliged to maintain, replace and renew everything, subject to reasonable wear and tear, (and whether specified in Schedules A or B or otherwise) as is necessary to ensure that following the date of the Engineer's Declaration the Prison is and remains in such condition as to enable the Contractor to comply with its obligations under the Contract in all respects.

18.6 Where any term of the Contract requires the Contractor to replace or re-new any plant, fixture, fitting, furnishing, chattel or other equipment, the Contractor may retain the proceeds derived from any sale or disposal of the replaced item.

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

19.1 Except where the Authority indicates in writing otherwise, the Contractor shall maintain all fixtures, fittings, furniture or other equipment supplied by the Authority for the purposes of the Contract (whether listed in **Part 2 of Schedule B (Equipment)** or otherwise supplied by the Authority), to the standard such items possessed when they passed into the responsibility of the Contractor subject to reasonable wear and tear for a prison.

19.2 The Contractor shall not sell, lease, assign, part with possession or otherwise dispose of the Authority's equipment or any interest in the same, without the express consent in writing of the Authority.

20. **Dilapidation Survey**

20.1 The Authority may conduct a dilapidation survey for the purpose of determining the physical condition and state of maintenance of the Prison five (5) Years after the Date of Contract and thereafter every two (2) Years. The dates of every such survey shall be notified to the Contractor not less than seven (7) Days in advance of the survey taking place. The costs of such surveys shall be borne by the Authority. The Authority shall endeavour to ensure that such dilapidation survey shall not unreasonably affect the operation of the Prison nor the availability of Prisoner Places.

20.2 Where following a survey referred to in **Clause 20.1 (Dilapidation Survey)** the condition of the Prison is found in the reasonable opinion of the Authority to have fallen below the standards of repair and maintenance set out in **Clause 18 (Maintenance of Prison)** and **Schedule C (Maintenance Requirement)**, the Authority shall notify the Contractor of the work it reasonably believes is required to be done to bring the Prison to the requisite contractual standard. Within seven (7) Days of such notification (or such longer period as is reasonable

- 20.3 Where, following any survey, the Contractor fails to effect any and all repairs and/or maintenance required pursuant to **Clause 20.2 (*Dilapidation Survey*)** to the reasonable satisfaction of the Authority, within the time reasonably specified or, as the case may be, within the time set by the Expert, the Authority shall be entitled to carry out such unremedied repairs and/or maintenance itself, or to procure the same, at the Contractor's cost and shall be entitled to set off its costs against any amounts payable to the Contractor hereunder.

PART IV - PRE-OPERATION PERIOD

21. Preparation for Operation of the Prison

- 21.1 The Contractor shall provide to the Authority the following matters in relation to the Contractor's proposed performance (which matters shall provide for adequate testing procedures) (the "***Operation Proposals***"):

- (a) at least three (3) months prior to the Actual Opening Date:
 - (i) the operating procedures, including the inspection procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the staff handbook;
 - (iv) the public relations procedures; and
 - (v) any other information the Contractor believes the Authority requires in order fully to review the Contractor's proposed performance of the Custodial Services;
- (b) a reasonable period in advance of the Actual Opening Date such other information as the Authority reasonably requests.

- 21.2 The Contractor shall make any amendments as the Authority may reasonably require for the purpose of ensuring that the Operation Proposals are in accordance with the terms of the Contract. The Authority shall be entitled to

- 21.3 When the Contractor considers that it has prepared the Operation Proposals it shall give written notice to the Authority. Within thirty (30) Days of receipt of the written notice, the Authority shall either approve the Operation Proposals or shall provide the Contractor with a written record of the reasons why it is not satisfied with the Operation Proposals.
- 21.4 If the Contractor is refused approval and a written record of the reasons has been provided by the Authority in accordance with **Clause 21.3 (*Preparation for Operation of the Prison*)**, the Contractor shall amend the Operation Proposals in accordance with the Authority's reasons as set out in the written record and shall then comply with the requirements of **Clause 21.3 (*Preparation for Operation of the Prison*)** when seeking any new approval of the Operation Proposals save that the notice period shall be fourteen (14) Days instead of the thirty (30) Days specified in **Clause 21.3 (*Preparation for Operation of the Prison*)**.
- 21.5 When the Authority approves the Operation Proposals, the Authority shall promptly issue to the Contractor a certificate certifying that the Operation Proposals are approved, subject to satisfactory completion of the tests in accordance with **Clause 21.6 (*Preparation for Operation of the Prison*)**.
- 21.6 Once the Authority has issued a certificate under **Clause 21.5 (*Preparation for Operation of the Prison*)**, the Operation Proposals shall be tested in accordance with the proposals for testing in the Operation Proposals. The Contractor shall give the Authority fourteen (14) Days' notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within seven (7) Days of such tests, the Authority shall either finally approve the Operation Proposals or shall provide the Contractor with a written record of the reasons why the Operation Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re-run the tests in accordance with the above provisions except that the notice period to the Authority shall be two (2) Days instead of the fourteen (14) Days specified above.
- 21.7 Once approved by the Authority under **Clauses 21.3 (*Preparation for Operation of the Prison*)** and **21.6 (*Preparation for Operation of the Prison*)**, the Operation Proposals shall remain under review in accordance with **Clause 37.3 (*Monitoring and Inspection*)**.
- 21.8 The Contractor is required to submit the following information to the Authority three months prior to the Actual Opening Date:

- (a) the names of, and such other information as the Authority may require about, the proposed Director and the members of the senior management of the Prison;
- (b) the names, and such other information as the Authority may require about all persons requiring certification or approval, as specified in **Clauses 34 (*Prisoner Custody Officers*)** and **35 (*The Staff*)**.

The Authority shall use the said information to carry out the requirements of **Clauses 33 (*Director*)**, **34 (*Prisoner Custody Officers*)** and **35 (*The Staff*)**.

21A Preparation for Operation of the Increased Capacity

21A.1 The Contractor shall provide to the Authority, by way of amendment to the Operation Proposals referred to in **Clause 21 (*Preparation for Operation of the Prison*)**, the following matters in relation to the Contractor's proposed performance (which matters shall provide for adequate testing procedures) (the "***Increased Capacity Operation Proposals***"):

- (a) at least three (3) months prior to the Contractual Houseblock Opening Date:
 - (i) the operating procedures, including the inspection procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the Houseblock staff handbook;
 - (iv) the public relations procedures; and
 - (v) any other information the Contractor believes the Authority requires in order fully to review the Contractor's proposed performance of the Custodial Services;
- (b) a reasonable period in advance of the Contractual Houseblock Opening Date such other information as the Authority reasonably requests.

21A.2 The Contractor shall make any amendments as the Authority may reasonably require for the purpose of ensuring that the Increased Capacity Operation Proposals are in accordance with the terms of the Contract. The Authority shall be entitled to refuse to approve all or any part of the Increased Capacity Operation Proposals until the Contractor has made such amendments.

- 21A.3 When the Contractor considers that it has prepared the Increased Capacity Operation Proposals it shall give written notice to the Authority. Within thirty (30) Days of receipt of the written notice, the Authority shall either approve the Increased Capacity Operation Proposals or shall provide the Contractor with a written record of the reasons why it is not satisfied with the Increased Capacity Operation Proposals.
- 21A.4 If the Contractor is refused approval and a written record of the reasons has been provided by the Authority in accordance with **Clause 21A.3 (*Preparation for Operation of the Increased Capacity*)**, the Contractor shall amend the Increased Capacity Operation Proposals in accordance with the Authority's reasons as set out in the written record and shall then comply with the requirements of **Clause 21A.3 (*Preparation for Operation of the Increased Capacity*)** when seeking any new approval of the Increased Capacity Operation Proposals save that the notice period shall be fourteen (14) Days instead of the thirty (30) Days specified in **Clause 21A.3 (*Preparation for Operation of the Increased Capacity*)**.
- 21A.5 When the Authority approves the Increased Capacity Operation Proposals, the Authority shall promptly issue to the Contractor a certificate certifying that the Increased Capacity Operation Proposals are approved, subject to satisfactory completion of the tests in accordance with **Clause 21A.6 (*Preparation for Operation of the Increased Capacity*)**.
- 21A.6 Once the Authority has issued a certificate under **Clause 21A.5 (*Preparation for Operation of the Increased Capacity*)**, the Increased Capacity Operation Proposals shall be tested in accordance with the proposals for testing in the Increased Capacity Operation Proposals. The Contractor shall give the Authority fourteen (14) Days' notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within seven (7) Days of such tests, the Authority shall either finally approve the Increased Capacity Operation Proposals or shall provide the Contractor with a written record of the reasons why the Increased Capacity Operation Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re-run the tests in accordance with the above provisions except that the notice period to the Authority shall be two (2) Days instead of the fourteen (14) Days specified above.
- 21A.7 Once approved by the Authority under **Clauses 21A.3 (*Preparation for Operation of the Increased Capacity*)** and **21A.6 (*Preparation for Operation of the Increased Capacity*)**, the Increased Capacity Operation Proposals shall remain under review in accordance with **Clause 37.3 (*Inspection and Monitoring*)**.

21B **Preparation for Operation of the Phase 2 Increased Capacity**

21B.1 The Contractor shall provide to the Authority, by way of amendment to the Operation Proposals referred to in **Clause 21 (*Preparation for Operation of the Prison*)**, the following matters in relation to the Contractor's proposed performance (which matters shall provide for adequate testing procedures) (the "**Phase 2 Increased Capacity Operation Proposals**"):

- (a) at least three (3) months prior to the Contractual New Houseblock Opening Date:
 - (i) the operating procedures, including the inspection procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the New Houseblock staff handbook;
 - (iv) the public relations procedures; and
 - (v) any other information the Contractor believes the Authority requires in order fully to review the Contractor's proposed performance of the Custodial Services;
- (b) a reasonable period in advance of the Contractual New Houseblock Opening Date such other information as the Authority reasonably requests.

21B.2 The Contractor shall make any amendments as the Authority may reasonably require for the purpose of ensuring that the Phase 2 Increased Capacity Operation Proposals are in accordance with the terms of the Contract. The Authority shall be entitled to refuse to approve all or any part of the Phase 2 Increased Capacity Operation Proposals until the Contractor has made such amendments.

21B.3 When the Contractor considers that it has prepared the Phase 2 Increased Capacity Operation Proposals it shall give written notice to the Authority. Within thirty (30) Days of receipt of the written notice, the Authority shall either approve the Phase 2 Increased Capacity Operation Proposals or shall provide the Contractor with a written record of the reasons why it is not satisfied with the Phase 2 Increased Capacity Operation Proposals.

21B.4 If the Contractor is refused approval and a written record of the reasons has been provided by the Authority in accordance with **Clause 21B.3 (*Preparation for Operation of the Phase 2 Increased Capacity*)**, the Contractor shall

amend the Phase 2 Increased Capacity Operation Proposals in accordance with the Authority's reasons as set out in the written record and shall then comply with the requirements of **Clause 21B.3 (*Preparation for Operation of the Phase 2 Increased Capacity*)** when seeking any new approval of the Phase 2 Increased Capacity Operation Proposals save that the notice period shall be fourteen (14) Days instead of the thirty (30) Days specified in **Clause 21B.3 (*Preparation for Operation of the Phase 2 Increased Capacity*)**.

21B.5 When the Authority approves the Phase 2 Increased Capacity Operation Proposals, the Authority shall promptly issue to the Contractor a certificate certifying that the Phase 2 Increased Capacity Operation Proposals are approved, subject to satisfactory completion of the tests in accordance with **Clause 21B.6 (*Preparation for Operation of the Phase 2 Increased Capacity*)**.

21B.6 Once the Authority has issued a certificate under **Clause 21B.5 (*Preparation for Operation of the Phase 2 Increased Capacity*)**, the Phase 2 Increased Capacity Operation Proposals shall be tested in accordance with the proposals for testing in the Phase 2 Increased Capacity Operation Proposals. The Contractor shall give the Authority fourteen (14) Days' notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within seven (7) Days of such tests, the Authority shall either finally approve the Phase 2 Increased Capacity Operation Proposals or shall provide the Contractor with a written record of the reasons why the Phase 2 Increased Capacity Operation Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re-run the tests in accordance with the above provisions except that the notice period to the Authority shall be two (2) Days instead of the fourteen (14) Days specified above.

21B.7 Once approved by the Authority under **Clauses 21B.3 (*Preparation for Operation of the Phase 2 Increased Capacity*)** and **21B.6 (*Preparation for Operation of the Phase 2 Increased Capacity*)**, the Phase 2 Increased Capacity Operation Proposals shall remain under review in accordance with **Clause 37.3 (*Inspection and Monitoring*)**.

22. **Contractual Opening Date**

22.1 Subject to the provisions of **Clause 22.2 (*Contractual Opening Date*)**, upon the Contractual Opening Date the Contractor will provide the Authority with fifty (50) Available Prisoner Places. In the event that the Contractor does not provide fifty (50) Available Prisoner Places to the Authority (and without prejudice to the Authority's rights under **Clause 26 (*Liquidated Damages*)** and **Clause 48 (*Default by the Contractor*)**) the Contractor shall provide fifty (50) places as soon as possible thereafter. The failure to provide Available Prisoner Places to

- (a) the date on which the Authority has exhausted all Liquidated Damages which are payable to the Authority pursuant to **Clause 26 (*Liquidated Damages*)**;
- (b) the date on which the Contractor first breaches its obligation to make or procure payment under **Clause 26 (*Liquidated Damages*)**; and
- (c) three (3) months after the date referred to in **Clause 48.1(b) (*Default by Contractor*)**.

22.2 If the Contractor considers that it will be able to provide fifty (50) Available Prisoner Places before the Contractual Opening Date, it shall give notice of the same (in the form set out in **Schedule Q (*Notice of Early Opening*)**) to the Authority, stating the date on which it anticipates first being able to provide fifty (50) Available Prisoner Places, such notice to be served at least four (4) Days prior to the relevant anticipated date (the "***Revised Opening Date***"). Upon the Revised Opening Date, the Contractor will provide the Authority with fifty (50) Available Prisoner Places and the provisions of this **Clause 22 (*Contractual Opening Date*)** shall apply as if references in this Contract to the "Contractual Opening Date" are to the "Revised Opening Date".

22A **Contractual Houseblock Opening Date**

Upon the Contractual Houseblock Opening Date the Contractor will provide the Authority with twelve (12) Available Prisoner Places. In the event that the Contractor does not provide twelve (12) Available Prisoner Places to the Authority (and without prejudice to the Authority's rights under **Clause 26A (*Liquidated Damages - Increased Capacity*)** and **Clause 48A (*Houseblock Default*)**) the Contractor shall provide twelve (12) places as soon as possible thereafter. The failure to provide Available Prisoner Places to the Authority shall not by itself entitle the Authority to terminate the Houseblock Works pursuant to **Clause 48A (*Houseblock Default*)** until the earliest of:

- (a) the date on which the Authority has exhausted all Liquidated Damages which are payable to the Authority pursuant to **Clause 26A (*Liquidated Damages - Increased Capacity*)**;
- (b) the date on which the Contractor first breaches its obligation to make or procure payment under **Clause 26A (*Liquidated Damages - Increased Capacity*)**; and

- (c) three (3) months after the date referred to in **Clause 48A.1(c) (Houseblock Default)**.

22B **Contractual New Houseblock Opening Date**

Upon the Contractual New Houseblock Opening Date the Contractor will provide the Authority with twelve (12) Available Prisoner Places. In the event that the Contractor does not provide twelve (12) Available Prisoner Places to the Authority (and without prejudice to the Authority's rights under **Clause 26B (Liquidated Damages – Phase 2 Increased Capacity)** and **Clause 48B (Phase 2 Default)**) the Contractor shall provide twelve (12) places as soon as possible thereafter. The failure to provide Available Prisoner Places to the Authority shall not by itself entitle the Authority to terminate the Phase 2 Works pursuant to **Clause 48B (Phase 2 Default)** until the earliest of:

- (a) the date on which the Authority has exhausted all Liquidated Damages which are payable to the Authority pursuant to **Clause 26B (Liquidated Damages – Phase 2 Increased Capacity)**;
- (b) the date on which the Contractor first breaches its obligation to make or procure payment under **Clause 26B (Liquidated Damages – Phase 2 Increased Capacity)**; and
- (c) three (3) months after the date referred to in **Clause 48B.1(c) (Phase 2 Default)**.

23. **Phase-in Period**

- 23.1 Subject to the provisions of **Clause 22.2 (Contractual Opening Date)**, on or after the Contractual Opening Date, the Contractor shall provide the Authority with at least the number of Available Prisoner Places shown for the relevant period in the Phase-in Timetable. The Authority shall not be liable to make any payment in respect of any greater number of Available Prisoner Places which are provided by the Contractor than the number specified in the Phase-in Timetable for the relevant period (unless the Authority elects to use such greater number of Available Prisoner Places).
- 23.2 Where the provisions of **Clause 22.2 (Contractual Opening Date)** apply, the provisions of this **Clause 23 (Phase-in Period)** shall apply as if references to the "Contractual Opening Date" are to the "Revised Opening Date" and references to the "Phase-in Timetable" are to the "Revised Phase-in Timetable" save that the Authority shall be liable to make payments in respect of Available Prisoner Places which are provided by the Contractor in accordance with the provisions of **Clause 25A.5 (Postponement)**.

23A **Increased Capacity Phase-in Period**

On or after the Contractual Houseblock Opening Date, the Contractor shall provide the Authority with at least the number of Available Prisoner Places shown for the relevant period in the Increased Capacity Phase-in Period Timetable. The Authority shall not be liable to make any payment in respect of any number of Available Prisoner Places which is greater than the number specified in the Increased Capacity Phase-in Period Timetable for the relevant period (unless the Authority elects to use such greater number of Available Prisoner Places).

23B **Phase 2 Increased Capacity Phase-in Period**

On or after the Contractual New Houseblock Opening Date, the Contractor shall provide the Authority with at least the number of Available Prisoner Places shown for the relevant period in the Phase 2 Increased Capacity Phase-in Period Timetable. The Authority shall not be liable to make any payment in respect of any number of Available Prisoner Places which is greater than the number specified in the Phase 2 Increased Capacity Phase-in Period Timetable for the relevant period (unless the Authority elects to use such greater number of Available Prisoner Places).

24. **Full Operation Date**

24.1 Subject to the provisions of **Clause 22.2 (Contractual Opening Date)**, on the Full Operation Date the Contractor shall provide to the Authority eight hundred (800) Available Prisoner Places and on the date falling six (6) months after the Full Operation Date the Contractor shall be capable of providing one hundred and twenty (120) Additional Prisoner Places. The Authority shall not be liable to make any payment in respect of more than eight hundred (800) Available Prisoner Places (except to the extent of its obligations hereunder in respect of any Additional Prisoner Places).

24.2 Where the provisions of **Clause 22.2 (Contractual Opening Date)** apply, the provisions of this **Clause 24 (Full Operation Date)** shall apply as if reference to the "Full Operation Date" is to the "Revised Full Operation Date".

24A **Actual Increased Capacity Date**

On and from the Actual Increased Capacity Date the Contractor shall provide to the Authority three hundred and thirty two (332) Available Prisoner Places in addition to the existing eight hundred (800) Available Prisoner Places, three hundred and thirty six (336) Additional Prisoner Places and sixty four (64) Additional Young Person Places. In respect of the Increased Capacity, the Authority shall not be liable to make any payment in respect of more than three hundred and thirty two (332) Available Prisoner Places.

24B **Actual Phase 2 Increased Capacity Date**

On and from the Actual Phase 2 Increased Capacity Date the Contractor shall provide to the Authority three hundred and eighty seven (387) Available Prisoner Places in addition to the existing one thousand one hundred and thirty two (1132) Available Prisoner Places, two hundred and seventy eight (278) Additional Prisoner Places and sixty four (64) Young Person Places. In respect of the Phase 2 Increased Capacity, the Authority shall not be liable to make any payment in respect of more than three hundred and eighty seven (387) Available Prisoner Places.

25. **Extension of Time**

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

25.2 The Delay Notice shall (a) identify the cause or causes of the delay (b) state whether and to what extent the delay is caused by a Relevant Event (c) provide details of the nature of the Relevant Event and its duration (or the Contractor's reasonable estimate of its likely continued duration) and (d) identify clearly which of the Contractual Opening Date, the Full Operation Date and the dates on the Phase-in Timetable are to be affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Relevant Event. If the Contractor serves a Delay Notice while a Relevant Event is continuing, the Contractor shall provide the Authority periodically (and at least on a weekly basis) with details of the Relevant Event and the Contractor's reasonable estimate of its impact on the Project or the provision of the Prison. The Contractor shall afford the Authority such access to the Site and papers of the Contractor as the Authority may reasonably consider necessary and appropriate for the purposes of establishing the accuracy of any Delay Notice.

25.3 If in the reasonable opinion of the Authority or the Contractor upon receipt or service of any Delay Notice and any further weekly notices a Relevant Event is the cause of any delay to the Contractual Opening Date, the Full Operation Date or any date in the Phase-in Timetable, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Opening Date or the relevant date in the Phase-in Timetable and/or the Full Operation Date as it then reasonably estimates to be fair to take into account the effect of the Relevant Event (whereupon such other dates shall become the Contractual Opening Date, the Full Operation Date or the relevant

25.4 When in accordance with **Clause 25.3 (*Extension of Time*)** a Relevant Event is found to have caused a delay and such Relevant Event is one of the events referred to in paragraph (c) of the definition of Relevant Event, the Authority shall promptly reimburse to the Contractor any expenses suffered by the Contractor as a result of the delay caused by such Relevant Event, where such expenses are properly evidenced in writing.

25.5 The parties recognise that the consequences of the occurrence of a Relevant Event are that there may be delays to the construction of every part of the Prison or only some parts. The parties further acknowledge that it is in their interests to achieve Available Prisoner Places in accordance with the Phase-in Timetable prior to any adjustment pursuant to this **Clause 25 (*Extension of Time*)**. Accordingly, if a Relevant Event does arise which is likely to have any delaying consequences, the parties shall consult in good faith to establish whether they might adjust the terms and procedures outlined in this Contract (including, without limitation, as to rate of construction of particular parts of the Prison and timing of the commencement of payments by the Authority hereunder). The parties shall not be under any obligation to make any such adjustment and, to the extent that no agreement is reached between the parties, the other provisions of this Contract shall apply.

25A **Postponement**

25A.1 Where the provisions of **Clause 22.2 (*Contractual Opening Date*)** apply, and it becomes reasonably apparent to the Contractor that it will not be able to meet its obligations under this Contract which are to be met on or before the Revised Opening Date, any date in the Revised Phase-in Timetable or the Revised Full Operation Date, the Contractor shall either:

- (a) give the Authority at least fourteen (14) Days' written notice of the same (a "**Postponement Notice**"); or
- (b) serve a Delay Notice instead of a Postponement Notice if in the reasonable opinion of the Authority or the Contractor a Relevant Event is the cause of such delay, in which case the relevant provisions of Clause 25

25A.2 A Postponement Notice may be served no more than once prior to the Revised Opening Date and no more than once during the Revised Phase-in Period. The Postponement Notice shall:

- (a) identify the causes of the delay;
- (b) specify the number of Days by which the Revised Phase-in Timetable dates (including the Revised full Operation Date) are to be postponed; and
- (c) contain a Revised Phase-in Timetable amended in accordance with **Clause 25A.2(b) (*Postponement*)**

25A.3.1

- (a) Where:
 - (i) any postponement period stated in the Postponement Notice (either by itself or when aggregated with an earlier Postponement Notice in respect of the same date in the Revised Phase-in Timetable); or
 - (ii) any extension of time given by the Authority pursuant to **Clause 25.3 (*Extension of Time*)** where **Clause 25A.1 (*Postponement*)** applies by which any of the Revised Full Operation Date and/or any date in the Revised Phase-in Timetable is postponed; or
 - (iii) the aggregate of (i) and (ii),

is equal to or greater than the Advance Period, the provisions in **Clause 22.2 (*Contractual Opening Date*)** and **Clause 24.2 (*Full Operation Date*)** shall no longer apply and the Contractor shall be deemed to have reverted to the Phase-in Timetable and **Clauses 22**

(**Contractual Opening Date**) to **26 (Liquidated Damages)** shall therefore apply as relevant and applicable. For the avoidance of doubt, where the provisions of this **Clause 25A.3.1(a) (Postponement)** apply as a result of any extension of time granted by the Authority after receipt of a notice from the Contractor under **Clause 25A.1 (Postponement)** applies and except where any Postponement Notice has been served subsequent to the granting of such extension of time , the Contractual Opening Date, Full Operational Date and any date in the Phase-in Timetable, as applicable will be postponed by the number of Days such extension of time (together with any postponement period already in effect) is in excess of the Advance Period.

- (b) For the avoidance of doubt, unless and until **Clause 25A.3.1(a)** applies, (i) the provisions of **Clause 25 (Extension of Time)** shall not apply except pursuant to **Clause 25A.1 (Postponement)**, and (ii) except where **Clause 25A.4 (Postponement)** applies, the provisions of **Clause 26 (Liquidated Damages)** shall not apply.

25A.3.2 Where, following service by the Contractor of a Postponement Notice or a Delay Notice in accordance with **Clause 25A.1 (Postponement)**, the postponement period and/or extension of time referred to in **Clause 25A.3.1(a) (Postponement)** is shorter than the Advance Period, the obligations of the Contractor to provide Available Prisoner Places in accordance with the relevant date in the Revised Phase-in Timetable shall be postponed in accordance with the relevant written extension of time or postponement period and the Revised Phase-in Timetable will be deemed accordingly (subject to the provisions of **Clause 25A.3.1 (Postponement)**).

25A.4 If the Contractor:

- (a) fails to serve a Postponement Notice within the time period specified in **Clause 25A.1 (Postponement)**;
- (b) is not entitled to serve a Postponement Notice pursuant to the provisions of **Clause 25A.2 (Postponement)**; or
- (c) serves a Delay Notice in accordance with **Clause 25A.1 (Postponement)** but in accordance with **Clause 25.3 (Extension of Time)** the Authority does not grant a written extension of time,

and the Contractor fails to provide the number of Available Prisoner Places specified in the Revised Phase-in Timetable on the Revised Full Operation Date or any date in the Revised Phase-in Timetable, the Contractor will be liable to pay