

CONFORMED COPY

27 September 1999

H.M. SECRETARY OF STATE FOR JUSTICE

MORETON PRISON SERVICES LIMITED

**CONDITIONS OF CONTRACT
for the design, construction, management
and financing of a custodial and therapy
service at Moreton Lane**

PRICED

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AGREEMENT is made on 27th September 1999

BETWEEN

H.M. SECRETARY OF STATE FOR JUSTICE (the **Authority**); and

MORETON PRISON SERVICES LIMITED whose registered office is at 8th Floor,
20 St. James's Street, London SW1A 1ES (Company No. 3471077) (the
Contractor).

NOW IT IS AGREED as follows:

PART I - GENERAL

1. DEFINITIONS

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

Acceptance Criteria means the criteria set out in Paragraph 3.2 of Part 1C of Schedule D (**Operational Requirements**);

Actual Houseblock Opening Date means the date on which the Contractor first provides thirty five (35) Available Prisoner Places at the Houseblock;

Actual Increased Capacity Date means the date on which the Contractor first provides eight hundred and sixty (860) Available Prisoner Places at the Prison;

Actual Main Full Operation Date means the date upon which the Contractor first provides six hundred (600) Available Prisoner Places;

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

Actual TC Full Operation Date means the date upon which the Contractor first provides two hundred (200) Available TC Places;

Actual TC Opening Date or **ATOD** means the date upon which the Contractor first provides no less than thirty two (32) Available TC Places;

Additional Local Prisoner Place means any Local Prisoner Place in excess of one hundred and thirty (130) Local Prisoner Places, which shall be subject to a maximum of sixty (60) such places;

Additional Prisoner Place means

- (a) until the Actual Increased Capacity Date, an Available Prisoner Place additional to the six hundred (600) Available Prisoner Places and two hundred (200) Available TC 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 Timetable); and
- (b) from the Actual Increased Capacity Date an Available Prisoner Place additional to the eight hundred and sixty (860) Available Prisoner Places and two hundred (200) Available TC Places,

but shall not include any Additional Local Prisoner Places;

Adjudicator has the meaning assigned to it in Clause 72.1 (***Dispute Resolution***);

Agent has meaning assigned to it in the Direct Agreement;

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 ~~14~~ 15 January 2008;

Amendment Notice has the meaning assigned to it in Clause 40.1(b) (***Additional Prisoner Places***);

Application for Referral means an application made by a Prisoner for a place in the TC submitted to the Director of Therapy by a Governor's Representative and consisting of an application form in the form referred to in Part 2.1 of Part 1C of Schedule D (***Operational Requirements***) and the documentation listed in that Paragraph of Schedule D (***Operational Requirements***);

Arbitrator has the meaning assigned to it in Clause 72.3 (***Dispute Resolution***);

Assets shall have the meaning assigned to it in Clause 5.1 (***Insurance***);

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

Available TC Place shall have the meaning assigned to it in Clause 29.2 (**Available TC Places**);

Banks means 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 nor beneficial holders (directly or indirectly) of more than five per cent. 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;

Baseline Total means, in respect of any Performance Year or Performance Quarter, the relevant number of Performance Points listed in Schedule F (**Performance Measures**), and referred to as such;

Board of Visitors means the persons from time to time appointed by the Authority under Section 6(2) of the Prison Act 1952 in relation to the Prison;

Business Day has the meaning assigned to it in the Direct Agreement;

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 or over a limited period of time (but not on an annual or periodic basis);

Cash means cash in hand and deposits with any bank or other financial institution and includes cash in hand, deposits in foreign currencies and marketable securities;

Category "A" Prisoner means a Prisoner who in accordance with the classifications as they exist as at the date of this Contract is classified by the Authority as such or, in the event that the categorisation of Prisoners changes, would be so classified;

Cell Certificates means certificates issued in accordance with the terms of Clause 27 (**Cell Certification**);

CMOD+7 means the seventh (7th) day after the Contractual Main Opening Date;

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

Confidential Information means:

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

Committee means a group of five persons constituted pursuant to Clauses 34.3 (**The Controller and the Committee**) and 34.4 (**The Controller and the Committee**) whose role is, inter alia, to supervise the provision of Therapy Services in the TC;

Confidential Matters means any information which:

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

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

Construction Sub-contractor means Wackenhut Corrections (UK) Limited and Kvaerner Construction Limited trading together as a joint venture known as Premier Custodial Development or, with the prior written approval of the Authority, such other Construction Sub-contractor appointed by the Contractor, subject to the provisions of Clause 7 (**Sub-Contracting**), from time to time to execute the Works;

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

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

Contractual Houseblock Opening Date shall be 7 September 2009 as the same may be altered pursuant to **clause 24A (Extension of Time - Increased Capacity)**;

Contractual Increased Capacity Date shall be 26 October 2009 as the same may be altered pursuant to **clause 24A (Extension of Time - Increased Capacity)**;

Contractual Main Opening Date or **CMOD** means 9 July 2001 as the same may be altered pursuant to Clause 24 (**Extension of Time**);

Contractual TC Opening Date or **CTOD** means 12 November 2001 being a date falling at least eighteen (18) weeks after the Actual Main Opening Date, as the same may be altered pursuant to Clause 24 (**Extension of Time**);

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

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

Credit Agreement has the meaning assigned to it in the Direct Agreement;

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 the Contract (other than the Therapy Service and the Houseblock Works) after the Actual Main 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 hour of Prisoners' lock-up with details (inter alia) as to the number of Available Prisoner Places, Additional Prisoner Places and Additional Local Prisoner 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 35.4 (**Monitoring and Inspection**) substantially in the form of Schedule I (**Daily Report**), Part 1;

Database System has the meaning assigned to it in Clause 15.1 (**Issue of Information Technology Equipment**);

day means any period of twenty four (24) hours and **days** means calendar days, unless otherwise specified;

Debt Service Cover Ratio has the meaning assigned to it in the Credit Agreement;

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

Delay Notice has the meaning assigned to it in Clause 24.1 (**Extension of time**);

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

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

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

Director means the person or persons appointed and employed by the Contractor in respect of the Prison, and approved by the Authority under Clause 31 (**The Director and The Director of Therapy**) and Section 85(1)(a) of the Criminal Justice Act 1991;

Director of Therapy means the person or persons appointed and employed by the Contractor to direct the provision of the Therapy Service at the TC and approved by the Authority under to Clause 31 (**The Director and The Director of Therapy**);

Director of Therapy Decision has the meaning assigned to it in Clause 29.13.1 (**Available TC Places**);

document includes any written or printed work, or photograph, or any work produced by electronic means including any tapes, disks, CD-ROMs or other recorded matter;

Double Prison Cell means a Prison Cell with a floor area in excess of 8.5 square metres;

DPA means the Data Protection Act 1998;

Engineer's Declaration means the declaration to be given under Clause 26 (**Engineer's Declaration**);

Engineer's Houseblock Declaration means the declaration to be given under **Clause 26A (Engineer's Houseblock 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;

Escort Escape has the meaning given to it in **Clause 41.7 (Plans and Performance Measures)**;

Estimated Main Opening Date or **EMOD** means the Contractual Main Opening Date or such other date as the parties from time to time agree in writing after consultation in good faith will be the Actual Main Opening Date;

Estimated TC Opening Date or **ETOD** means the Contractual TC Opening Date or such other date as the parties from time to time agree in writing after consultation in good faith will be the Actual TC Opening Date;

Excusing Cause means any of the events listed in the second column of Schedule Q (**Excusing Causes**) headed "Excusing Causes" to the extent that the same arise as a result of the carrying out of the Houseblock Works by the Houseblock Construction Sub-Contractor (or by the Authority where **Clause 45B.2 (Houseblock Works Consequential arrangements on Termination)** applies) in accordance with the terms of this Contract;

Existing Prison means the Prison but shall, during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Increased Capacity Date and the date of termination of the Houseblock Works, exclude the Houseblock Works Area;

Event of Default means any of the events listed in Clause 44 (**Default by Contractor**);

Expiry Date means the date on which the Contract expires, or would expire, assuming no early termination occurs in accordance with the provisions of the Contract;

Extended Termination Date means the Termination Date or such later date on which the Contract terminates in accordance with Clause 6 of the Direct Agreement;

Facilities has the meaning assigned to it in Clause 35.1 (**Monitoring and Inspection**);

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

Final Notice has the meaning assigned to it in Clause 44(a) (**Default by Contractor**);

Final Recommendation has the meaning assigned to it in Clause 39.5 (**Variation of Price**);

Finance Plan means the Contractor's finance plan, attached hereto at Schedule K (**Financial Model**) as amended from time to time pursuant to the provisions hereof;

Financing Agreements means:

- (a) Original Financing Agreements; and
- (b) Subsequent Financing Agreements;

First Notice has the meaning assigned to it in Clause 44(a) (**Default by Contractor**);

Fixed Fee means the fee referred to as such in Schedule E (**Payment Mechanism**);

Fixed Charge means the agreement dated on or about the date hereof between the Contractor and the Authority relating to the equipment referred to in Clause 14 (**Supply of Equipment**);

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;

Force Majeure Events means those events listed in Clause 48 (**Force Majeure**);

Full Main Operation Date means 15 October 2001, as the same may be altered pursuant to Clause 24 (**Extension of Time**);

Full TC Operation Date means 7 January 2002, as the same may be altered pursuant to Clause 24 (**Extension of Time**);

Further Prisoner Place has the meaning assigned to it in Clause 22.1 (**Phase-in Period**);

Further TC Place has the meaning assigned to it in Clause 22.2 (**Phase-in Period**);

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

Governor's Representative means the person nominated by the Governor of a prison (or, if a prison is not a directly managed prison, the person nominated by the Director of that prison) as being the person responsible for performing all functions attributed to him under this Contract including the co-ordination and submission of all the information and documentation required to accompany an Application for Referral and for the dissemination and distribution, amongst staff and Prisoners, as appropriate and in accordance with any published protocols, of all information provided by the Contractor to that prison in relation to the TC;

Hedging Agreement means all agreements and documents entered into by or on behalf of the Contractor and all or any of the Banks for the purposes of:

- (a) hedging the exposure of the Contractor to interest rate variations under any of the Original Financing Agreements; or
- (b) refinancing the Contractor's obligations under any of the Original Financing Agreements (including any material amendment to such agreements and documents), provided that, where required under Clause 3.2, the Authority has approved the terms of such amendments, agreements or documents;

High Intensity Programme has the meaning assigned to it in Part 1C of Schedule D (**Operational Requirements**);

Highway Land has the meaning assigned to it in Clause 12.4 (**Planning Approval**);

HMP Grendon means the prison located at Grendon Underwood, Aylesbury, Buckinghamshire which has been declared by the Authority to be a prison under Section 33 of the Prison Act 1952;

Houseblock means the new two hundred and sixty (260) place houseblock building at the Prison and its associated facilities and infrastructure, of which one hundred and thirty (130) places shall be Local Prisoner Places;

Houseblock Construction Sub-contract means the contract to be entered into between the Operating Sub-contractor and the Houseblock Construction Sub-contractor in respect of the design, execution and completion of the Houseblock Works;

Houseblock Construction Sub-contractor Event of Default means a default of the Houseblock Construction Sub-contractor under the terms of the Houseblock Construction Sub-contract;

Houseblock Construction Sub-contract Default Notice has the meaning given to it in **Clause 44B.1 (Termination of Houseblock Construction Sub-contract)**;

Houseblock Construction Sub-contractor means Skanska J.V. Projects Limited or, with the prior written approval of the Authority, such other Houseblock Construction Sub-contractor appointed by the Contractor, subject to the provisions of **Clause 7 (Sub-Contracting)**, from time to time to execute the Houseblock Works;

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

Houseblock Event of Default means any of the events listed in **Clause 44A.1 (*Houseblock Default*)**;

Houseblock Relevant Event means any of the following events:

- (a) a change of service is required by the Authority under **Clause 9 (*Change to Services Required*)** or Prison Legislation is enacted as contemplated in **Clause 39 (*Variation of Price*)** and that change or Prison Legislation requires the Contractor to perform or procure building works upon the Site or to change the nature or extent of, or to reprogramme, the Houseblock Works or to redesign or amend the nature or extent of the Custodial Service;
- (b) any Planning Approval Challenge, any instruction or deemed instruction to suspend the Houseblock Works made pursuant to Clause 12B.2 (***Planning Approval Challenge***) or any actions requested of the Contractor pursuant to clauses 12B.5 (***Planning Approval Challenge***) or 12B.6 (***Planning Approval Challenge***);
- (c) any failure or delay by the Authority to comply with any of its obligations under the Contract, or any delay by the Authority or any representative of the Authority in allowing the Contractor and/or the Houseblock Construction Sub-contractor to have access to the Site or any obstruction by the Authority or any representative of the Authority of such access insofar as such failure or delay is relevant to the Houseblock Works and / or the provision of the Increased Capacity;
- (d) strikes by any parties other than any of the employees of the Contractor or any of the Sub-contractors or suppliers to the Contractor or the Sub-contractors;
- (e) civil commotion (other than any civil commotion the primary intention of which is to disrupt the Houseblock Works or the opening of the Houseblock) 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 Houseblock Construction Sub-contract, being (except where caused by the wilful or reckless default or breach of a relevant obligation under the Houseblock Construction Sub-contract by the Operating Sub-contractor or the Houseblock

Construction Sub-contractor) 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;

- (h) the discovery of fossils, antiquities or other objects of interest and value which may be found on the Land or in excavating the same during the progress of the Houseblock Works; or
- (i) the making of any award by an arbitrator pursuant to **Clause 72 (Dispute Resolution)** which includes (as part of the award) a determination that the Contractual Houseblock Opening Date should be deferred;

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

Houseblock Works 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, that area of land shown edged blue on the plan attached at Schedule V (**Houseblock Works Area Plan**);

Houseblock Works Fee means [REDACTED] exclusive of VAT;

Houseblock Works Monitoring Contract means the contract dated 11 January 2008 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;

Increased Capacity means an increase in the capacity of the Prison by two hundred and sixty (260) Available Prisoner Places;

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 2C of Schedule E (**Payment Mechanism**) as the same may be adjusted from time to time in accordance with **Clause 26A.2 (Engineer's Houseblock Declaration)**;

Independent Engineer means the person or firm appointed by the Authority to act as an independent engineer for the purposes of the

Contract, being at the date hereof Allott & Lomax Consulting Engineers, and in respect of the Houseblock Works, Mouchel or any named representative thereof, or such other qualified, experienced and independent person or firm so appointed from time to time by the Authority on the terms of the Monitoring Contract or Houseblock Works Monitoring contract (as the case may be) following consultation with the Contractor;

Indexed Costs Fee means the fee referred to as such in Schedule E (***Payment Mechanism***);

Indexed Fee means the fee referred to as such in Schedule E (***Payment Mechanism***);

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

Insurance Claim has the meaning assigned to it in the Schedule 1 to the Direct Agreement;

Insurance Proceeds has the meaning assigned to it in the Schedule 1 to the Direct Agreement;

Insurance Threshold Amount has the meaning assigned to it in the Schedule 1 to the Direct Agreement;

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

Land means the land and premises more particularly defined as the Premises in the Lease;

Landlord has the meaning assigned to it in the Lease;

Lease means the Lease of even date herewith entered into by the Authority, the Contractor and the Operating Sub-contractor;

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, determined in accordance with Clause 14 of the Direct Agreement, of:

- (a) save where paragraph (b) applies, all (i) principal outstanding as at the Termination Date (subject as stated below), (ii) interest (excluding default interest) which has accrued but not yet fallen due and not been paid as at the Termination Date, in accordance with the provisions of the Financing Agreements (other than the Hedging Agreements) and (iii) other amounts (except for principal, interest and default interest or amounts representing principal, interest and/or default interest) outstanding as at the Termination Date, including banking fees due to the Banks under the terms of the Financing Agreements (other than the Hedging Agreements);
- (b) where a Rectification Notice or Termination Notice has been served pursuant to Clause 45 (***Rectification and Termination for Default***), (i) all principal outstanding as at the Extended Termination Date (subject as stated below), (ii) interest (excluding default interest) which (A) has accrued but not yet fallen due and not been paid as at the date of the relevant Rectification Notice or Termination Notice, and (B) accrues (and has not been paid) until the earlier of (x) the Extended Termination Date and (y) the date falling one hundred and eighty (180) days after the date of such Rectification Notice or Termination Notice, or such later date as the Authority may agree, in each case in accordance with the provisions of the Financing Agreements (other than the Hedging Agreements) and (iii) other amounts (except for principal, interest and default interest or amounts representing principal, interest and/or default interest) outstanding as at the Extended Termination Date, including banking fees due to the Banks under the terms of the Financing Agreements (other than the Hedging Agreements); and
- (c) all amounts (if any) payable to the Banks by the Contractor as at the Termination Date or the Extended Termination Date, as the case may be, under the terms of the agreements referred to in the definition of Hedging Agreements (except to the extent that such amounts are payable under Paragraph (a) or (b) above, as the case may be);

less the aggregate of:

- (i) all amounts (if any) payable by the Banks to the Contractor as at the Termination Date or the Extended Termination Date, as the case may be, 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 Banks 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; provided that (i) if by reason of any refinancing of or amendment to any of the Original Financing Agreements, the amount of the Lender Liabilities calculated as at the date of the refinancing or amendment may at any time be increased, the amount of such increase shall not constitute Lender Liabilities unless the Authority otherwise agrees in writing following a request pursuant to Clause 3.2; and (ii) if the Authority extends the period for rectification specified in Clause 45.3 hereof or if the Authority defers the Notified Termination Date (as defined in the Direct Agreement) pursuant to Clause 6.3(f) of the Direct Agreement, then the 180 day period referred to in Paragraph (b) above shall be extended accordingly;

Lender Liabilities shall not include (a) any principal which has been advanced after a Rectification Notice or Termination Notice has been served to the extent that advance finances the payment of interest and to the extent such payment of interest, when added to any interest otherwise included within this definition, would represent more than 180 days' accrued interest after the date of the Rectification Notice or Termination Notice as the case may be (b) any principal advanced to finance the payment of default interest or (c) any interest on any principal as referred to in (a) or (b) in this paragraph;

Level of Return means the amount determined by reference to the notes in Schedule K (***Financial Model***) and projected in the Finance Plan as being payable by the Authority under the Contract in respect of services rendered less the amount projected in the Finance Plan as being the costs incurred by the Contractor under the Contract in order to comply with its obligations under the Contract and calculated assuming that all changes to the costs of the Operating Sub-contractor are passed on to the Contractor, 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;

LIBOR means the rate notified to the Authority by the Agent from time to time pursuant to Clause 24.5 of the Direct Agreement whilst the Credit Agreement is in effect, and thereafter, in respect of any month, the three month London Interbank offer rate on the first business day of such month, as shown in the Financial Times;

LIDS System has the meaning assigned to it in Clause 15.1 (*Issue of information technology equipment*);

Loan Life Cover Ratio has the meaning assigned to it in the Credit Agreement;

Local Prisoner means any person who is in custody at the Prison and has been:

- (a) remanded in custody by a court pending a further court appearance; or
- (b) found guilty by the court, but has been remanded in custody pending sentencing; or
- (c) sentenced and is awaiting allocation; or
- (d) sentenced to a short term custodial sentence;

Local Prisoner Place means a unit of accommodation for occupation by a Local Prisoner in a Prison Cell at Moreton (Main);

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

Losses has the meaning assigned to it in Clause 4.1 (*Indemnities*);

Main Phase-in Period means the period starting on the Contractual Main Opening Date and ending on the date falling seven days after the Full Main Operation Date;

Main Phase-in 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 24 (*Extension of Time*);

Main Prisoner Escort Service shall have the same meaning as "prisoner escort arrangements" in Section 80 of the Criminal Justice Act 1991 and shall be in respect of Moreton (Main);

Monitoring Contract means the contract dated 17 October 1997 between the Authority and the Independent Engineer setting out the terms of the Independent Engineer's appointment as amended from time to time;

Moreton (Main) or **Main** means the Prison (other than the TC) and, from the Actual Houseblock Opening Date, shall include the Houseblock;

Named Representatives of the Authority means those persons whose names appear at Schedule J (**Named Representatives**) Part 1 as varied pursuant to Clause 62 (**Authority to Commit and Variation**);

Named Representatives of the Contractor means those representatives of the Contractor whose names appear in Schedule J (**Named Representatives**) Part 2 or such other person(s) notified to the Authority by the Contractor in writing attaching a resolution of the Board of Directors of the Contractor appointing such person(s);

New Lease has the meaning assigned to it in Clause 11.6 (**The Land**);

Non-Compliance Notice has the meaning assigned to it in Clause 27.3 (**Cell certification**);

Notice of Change has the meaning assigned to it in Clause 9.1 (**Change to services required**);

Notified Termination Date has the meaning assigned to it in the Direct Agreement;

Observational Assessment means, in the case of a Prisoner transferred to the TC under Clause 29.8 (**Prisoner Places**), an assessment of that Prisoner in accordance with Paragraph 4 of Part 1 of Schedule D (**Operational Requirements**);

Operational Proposals has the meaning assigned to it in Clause 20.1 (**Preparation for Operation of the Prison**);

Operating Sub-contract means the agreement dated on or about the date hereof between the Contractor and the Operating Sub-contractor in respect of the provision of certain operation and maintenance services to be provided by the Contractor hereunder unless and until such agreement shall be replaced by the Amended Operating Sub-contract;

Operating Sub-contractor means Serco Limited or, with the prior written consent of the Authority and subject to the provisions of Clause 7

(**Sub-Contracting**), such other Sub-contractor(s) appointed by the Contractor from time to time to perform any of the Custodial Service and the Therapy Service (other than those undertaken by the Construction Sub-Contractor and/or the Houseblock Construction Sub-contractor in their capacity as such);

Original Financing Agreements means all agreements and documents including any Hedging Agreements entered into, on or prior to the date of this Contract by the Contractor and any banks in connection with the financing of the Contractor;

Original Notice has the meaning assigned to it in Clause 33.8 (**The Staff**);

Original Value means the aggregate of the Contractor's outstanding third party financing and such amount as will enable the Shareholders to achieve their real internal rate of return of 12.84% per annum on all amounts projected in the Finance Plan to be invested by them, which aggregate shall be an amount equal to the greater of Lender Liabilities and the result of the aggregate of the following:

(A) the Lender Liabilities;

PLUS

(B) the aggregate of all the amounts which are projected in the Finance Plan as at the date hereof and which are subsequently invested by the Shareholders (including by way of subordinated debt) prior to the Termination Date pursuant to Clause 39.5 (**Variation of Price**), being multiplied by $(1.1284)^n$ multiplied by X and all amounts not so projected in the Finance Plan but agreed by the Authority and subsequently invested by the Shareholders (including by way of subordinated debt) prior to the Termination Date pursuant to Clause 39.5 (**Variation of Price**), being multiplied by such amount as is agreed by the Authority and the Contractor in respect of each single investment;

LESS

(C) the aggregate of all the amounts ever actually received, or which could be received if the Contractor were to pay out all its available cash reserves at the Termination Date (other than cash reserves that are included in the calculation of Lender Liabilities in Paragraph (A) above), by the Shareholders or holders of debt (excluding, for the avoidance of doubt, the Banks) 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 $(1.1284)^n$ multiplied by X;

For the purposes of this definition:

n = the number of days which on the Termination Date pursuant to Clause 39.5 (***Variation of Price***) have passed since the date of the relevant investment or receipt as appropriate, divided by 365; and

X = RPI on the Termination Date pursuant to Clause 39.5 divided by RPI on the date of the relevant investment or receipt;

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

TC Performance Bonus has the meaning assigned to it in Schedule E (***Payment Mechanism***), Paragraph 12;

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 41.6 (***Plans and 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 each of the four successive periods of three calendar months during the Performance Year;

Performance Year the period commencing on 1st April and ending on 31st March.

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

Permitted Level means on any date the aggregate of:

- (a) five per cent. (5%) of the aggregate number of Available Prisoner Places occupied on that date (excluding Additional Prisoner Places and Additional Local Prisoner Places occupied); and

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

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

Personal Data means personal data as defined in DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Service and shall have the same meaning as Section 1(3) of the Data Protection Act 1984 amended (1998);

PI Insurance has the meaning assigned to it in Clause 5.2 (*Insurance*);

Phase-in Timetable means the Main Phase-in Timetable or the TC Phase-in Timetable and **Phase-in Timetables** shall mean both of them;

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

Planning Approval means such planning clearance or permission whether under DoE Circular 18/84 or the Town and Country Planning Act 1990 as is necessary for the Contractor to discharge lawfully its obligations under the Contract;

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 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);

Prison means the buildings and structures and land enclosed within the boundary of the Land, 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 or the Therapy Service, including, from the Actual Houseblock Opening Date, the Houseblock;

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);

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, for the avoidance of doubt, shall include Local Prisoners;

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;

Prison Escape has the meaning assigned to it in Clause 41.7 (**Plans and Performance Measures**);

Prison Legislation means any Legislation or any amendment or modification of any Legislation (whether on re-enactment or otherwise) first having legal effect after the date hereof which expressly refers to the provision (including building), holding shares in and/or running of the Prison, prisons generally, contracted out prisons or therapeutic communities (provided that such Legislation affects the provision of therapeutic communities within prisons) or which otherwise discriminates solely against those in the business of the provision (including building), holding shares in and/or running of prisons generally, contracted out prisons or therapeutic communities (provided that such Legislation affects the provision of therapeutic communities within prisons) or the provision of prisoner escort services of the type to be provided under Clause 36 (**Escort Arrangements**) of this Contract (other than any such Legislation which, on the date hereof, has been published in substantially the same form as such Legislation takes when it has legal effect, as a draft Bill in a Governmental Departmental Consultation Paper, a Bill, or a draft statutory instrument or published as a proposal, in the Official Journal of the European Communities);

Prisoner Place means a unit of accommodation for occupation by a Prisoner or a Local Prisoner in a Prison Cell (other than in a Prison Cell which is a segregation unit) at Moreton (Main);

Project means the provision of the Services;

Proposals has the meaning assigned to it in Clause 5.13 (**Insurance**);

Pumping Station Notice has the meaning assigned to it in Clause 54(b) (**Consequential arrangements on termination**);

Rectification Notice has the meaning assigned to it in Clause 45.1 (**Rectification and Termination for default**);

Referral Criteria means the criteria set out in Paragraph 3.1 of Part 1C of Schedule D (**Operational Requirements**);

Regulations has the meaning assigned to it in Clause 13.2 (**Provision of the Prison**);

Relevant Event means any of the following events:

- (a) a change of service is required by the Authority under Clause 9 (**Change to Services Required**) or Prison Legislation is enacted as contemplated in Clause 39 (**Variation of Price**) and that change or Prison Legislation requires the Contractor to perform or procure building works upon the Site or to change the nature or extent of, or to reprogramme, the Works or to redesign or amend the nature or extent of the Custodial Service or amend the nature or extent of the Therapy Service;
- (b) NOT USED
- (c) any failure or delay by the Authority to comply with any of its obligations under the Contract, or any delay by the Authority or any representative of the Authority in allowing the Contractor or Construction Sub-contractor to have access to the Site or any obstruction by the Authority or any representative of the Authority of such access;
- (d) strikes by any parties other than any of the employees of the Contractor or any of the Sub-contractors or suppliers to the Contractor or the Sub-contractors;
- (e) civil commotion (other than any civil commotion the primary intention of which is to disrupt the Works or the opening of the Prison) or terrorism;
- (f) exceptionally adverse weather conditions (at least significantly exceeding the worst conditions that have occurred in the area of the Site at the same time of year over the previous ten

years) other than those which are specified perils under the Construction Sub-contract; or

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

Re-offending TC Prisoner means any person who has been a TC Prisoner and who subsequent to his release from the TC has committed any act or offence which results in a successful prosecution, claim or action;

Representative of the Authority means the person duly authorised by the Authority to act for the purposes of the relevant provision of the Contract pursuant to Clause 62 (***Authority to Commit and Variation***);

Request for Information shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

Research Contract has the meaning assigned to it in Clause 59C.1 (***Intellectual Property Rights***);

Research Fee has the meaning assigned to it in Paragraph 11A of Schedule E (***Payment Mechanism***);

Retail Prices Index or **RPI** means the Retail Prices Index as published from time to time (in respect of all items other than mortgage interest payments (RPIX) in Labour Market Trends (ISSN 1361-4819) published by the Office of National Statistics or such index in such other journal as shall replace such table;

Retention means the amount which the Authority is entitled to retain pursuant to Schedule R (**Houseblock Works Fee**);

Retention Percentage means three per cent. (3%) of the Houseblock Works Fee;

Review Date means each of the Actual Main Opening Date and each anniversary of the Actual Main Opening Date;

Section 106 Agreement has the meaning assigned to it in Clause 12.6 (**Planning Approval**);

Section 278 Agreement has the meaning assigned to it in Clause 12.4 (**Planning Approval**);

Second Notice has the meaning assigned to it in Clause 33.8 (**The Staff**);

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 or otherwise materially reduces or will materially reduce the costs of the Contractor (or the Operating Sub-contractor) in performing its obligations under the Contract (or the Operating Sub-contract);

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

Shareholders means that person or those 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:

- (i) a change in the costs of the Contractor or a Sub-contractor of operating and/or maintaining the Prison (excluding for the avoidance of doubt taxes and financing costs) which has arisen as a result of events beyond the control of the Contractor or any of the Sub-contractors occurring after the date hereof; or

- (ii) a change in factors affecting the costs of operating and/or maintaining prisons generally and/or a custodial therapeutic community associated with a prison generally which have not been accurately reflected in the indexation provisions contained in Schedule E (***Payment Mechanism***) or otherwise in Clause 39 (***Variation of Price***) (other than Clause 39.5 (***Variation of Price***)), occurring since the date hereof,

in each case without taking into account any changes effected voluntarily by the Contractor or a Sub-contractor or 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 9 (***Change to Service Required***) or Clause 39 (***Variation of Price***) (other than Clause 39.5 (***Variation of Price***));

Single Prison Cell means a Prison Cell that is not a Double Prison Cell;

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 items of outstanding work which do not prevent the Engineer's Houseblock Declaration being issued and which would not prevent a Prisoner Place from being designated as an Available Prisoner Place pursuant to **Clause 29 (*Available Places*)**;

Staff means employees of the Contractor or any Sub-contractor, except in Clauses 32 (***Prisoner Custody Officers***) and 33 (***The Staff***) where ***staff*** shall have the meaning described at Clause 32.1 (***Prisoner Custody Officers***);

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

Statutory Obligations has the meaning assigned to it in Clause 16.1 (***Statutory Obligations, notices, fees and charges***);

Statutory Undertaker means any person entitled to exercise statutory powers in relation to the Land;

Sub-contract means the contract between the Contractor and the relevant Sub-contractor providing for the performance by the Sub-

contractor of some or all of the obligations of the Contractor hereunder and approved by the Authority in accordance with Clause 7 (***Sub-contracting***);

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

Sub-contractor's Collateral Warranty means the collateral warranty between the Authority, the Houseblock Construction Sub-contractor carrying out the Houseblock Works (or any part thereof), the Operating Sub-contractor and the Contractor delivered to the Authority pursuant to **Clause 2A (*Houseblock Documents*)**;

Subsequent Financing Agreements means all agreements and documents, including any Hedging Agreements, entered into by the Contractor in connection with the refinancing of the Contractor's obligations under the Original Financing Agreements, and including any amendment to any Original Financing Agreements or any subsequent Financing Agreements, provided that, where required under Clause 3.2, the Authority has approved the terms of such amendments, agreements and documents;

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

TC means the buildings and structures and land enclosed within the boundary of the Land at which the Therapy Service is from time to time carried out;

TC 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 hour of Prisoners' lock-up with details (*inter alia*) as to the number of Available TC 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 35.4 (***Monitoring and Inspection***) substantially in the form of Schedule I (***Daily Report***), Part 2;

TC Phase-in Period means the period starting on the Contractual TC Opening Date and ending on the Full TC Operation Date;

TC Phase-in 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 24 (**Extension of Time**);

TC Place means a unit of accommodation for occupation by a single Prisoner in a Prison Cell at the TC;

TC Prisoner means a Prisoner admitted to the TC (and, for the avoidance of doubt, includes a Prisoner subject to Observational Assessment);

TC Prisoner Escort Service shall have the same meaning as "prisoner escort arrangements" in Section 80 of the Criminal Justice Act 1991, and shall be in respect of the TC;

TC Requirements means the requirements set out in Part 3 of Schedule D (**Operational Requirements**) as the same may be amended from time to time;

TC Waiting List means the list referred to in Clause 29.8 (**Available Places**), created and maintained by the Contractor to record the names and details of Prisoners awaiting transfer to the TC for Observational Assessment;

Tenant has the meaning assigned to it in the Lease;

Termination Date means the date on which the Contract terminates in accordance with the relevant terms hereof (but disregarding for these purposes the provisions of the Direct Agreement);

Termination Notice means a notice issued in accordance with Clause 45 (**Rectification and Termination for Default**);

Therapy means a core programme of psychodynamic group psychotherapy supported by adjunctive therapies conforming to the professionally acknowledged principles of the therapeutic community model of treatment;

Therapy Service means all of the services to be provided to the Authority after the Actual TC Opening Date as set out in the Operational Proposals referred to in Clause 20.1(b)(v) and Clause 20.1(c) (**Preparation for Operation of the Prison**);

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

TUPE Transfer Date has the meaning assigned to it in Clause 33A (**TUPE Transfers**); **Value Added Tax** means value added tax as referred to in Section 1 Value Added Tax Act 1994 or any similar tax replacing or substituting the same;

Variable Payment means the fee referred to as such in Clause 40 (**Additional Prisoner Places**), 40A (**Additional Local Prisoner Places**) and Schedule E (**Payment Mechanism**);

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.

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

- 1.3 This Contract is entered into under the private finance initiative, the consideration due under this Contract is determined in part by reference to the standards attained in the performance of a service and one party to this Contract is a Minister of the Crown. Accordingly, this Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of Clause 4 of the Construction Contracts Exclusion Order 1998. The Contractor acknowledges, that the operation of the Act upon any Sub-contract shall not affect the parties' rights or obligations under this Contract.

2. DURATION OF CONTRACT

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

2A. HOUSEBLOCK DOCUMENTS

- 2A.1 On or before the date of the Amending Agreement, the Contractor shall provide to the Authority the following:
- 2A.1.1 Amended Operating Sub-contract;
 - 2A.1.2 Houseblock Construction Sub-contract;
 - 2A.1.3 Minutes of the Contractor;
 - 2A.1.4 Memorandum and Articles of Association of the Contractor;
 - 2A.1.5 Minutes of the Operating Sub-contractor;
 - 2A.1.6 Minutes of the Houseblock Construction Sub-contractor;
 - 2A.1.7 Memorandum and Articles of Association of the Operating Sub-contractor;

2A.1.8 Memorandum and Articles of Association of the Houseblock Construction Sub-contractor;

2A.1.9 Collateral Warranty from the Houseblock Construction Sub-contractor; and

~~2A.1.10 Official Copy Entries or Title Information Documentation showing the registration of the Operating Sub-Contractor as the registered proprietors of the Lease.~~

3. PRELIMINARY INFORMATION

3.1 The Contractor shall provide to the Authority the following documents, in form and substance satisfactory to the Authority prior to or on the date hereof:

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

The Authority shall signify its approval of the documents referred to in (a) and (b) above by initialling each of them for identification.

The Contractor shall as soon as practicable provide the Authority with full details of any Subsequent Financing Agreements. Approval by the Authority of any Subsequent Financing Agreements shall only be required where the entering into of such Subsequent Financing Agreements by the Contractor could reasonably be expected to render the Contractor incapable of performing any of its obligations hereunder or to prejudice in a material respect the rights of the Authority hereunder, except that no approval by the Authority shall be required where the entering into of such Subsequent Financing Agreements (including any amendments to any Financing Agreements) is solely for the purposes of a refinancing or rescheduling on arm's length terms. In the case of any such refinancing or rescheduling, the Agent may request the Authority to consider whether the Authority might consent to the amount of the Lender Liabilities being increased by reason of such refinancing or rescheduling. The Authority shall consider any such request in good faith and without

unreasonable delay, but shall be under no obligation to give such consent.

3.2 The Contractor warrants and represents to the Authority that on the date hereof (and in the case of any Houseblock Document, on the date of the Amending Agreement):

3.2.1 it has the corporate power to enter into and to exercise its rights and perform its obligations under this Contract;

3.2.2 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under this Contract has been taken;

3.2.3 the obligations expressed to be assumed by the Contractor under this Contract are, legal, valid, binding and enforceable to the extent permitted by law;

3.2.4 the execution, delivery and performance by it of this Contract does not contravene any provision of:

3.2.4.1 any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;

3.2.4.2 the Memorandum and Articles of Association of the Contractor;

3.2.4.3 any order or decree of any court or arbitrator which is binding on the Contractor; or

3.2.4.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;

3.2.5 the Contractor's Memorandum and Articles of Association have not been amended since 7 November 1996;

3.2.6 the Contractor has not effected a change of name since 7 November 1996;

and the Authority relies upon such warranties and representations.

4. INDEMNITIES

4.1 Subject to Clauses 4.2 (***Indemnities***), 4.6 (***Indemnities***) and 4.7 (***Indemnities***), the Contractor shall fully and effectively indemnify the Authority or any servant, agent or representative of the Authority in

respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses (**Losses**) suffered or incurred by the Authority, its servants, agents or representatives which arise in connection with the Contract or its breach, the Project, the Site or the Prison including, without limitation to the generality of the foregoing:

- (a) any Losses which may be incurred or suffered by the Authority or any servant, agent or representative of the Authority, in respect of personal injury (including injury resulting in death);
- (b) any Losses in respect of any redundancy costs except (i) those arising as a result of the Authority exercising its right under Clause 46 (**Voluntary Termination**) to terminate the Contract and (ii) any other employment costs for which the Authority is liable as provided in Clauses 9.7 (**Changes to Services Required**) and 33.7 (**The Staff**);
- (c) subject to Clause 4.8 (**Indemnities**) below, any Losses suffered or incurred by the Authority in connection with its housing Prisoners outside the Prison due to any failure by the Contractor to fulfil its obligation hereunder to provide Available Prisoner Places, Additional Prisoner Places, Additional Local Prisoner Places or, as the case may be, Available TC Places;
- (d) any Losses suffered or incurred by the Authority in any way connected with or arising from or relating to the provision of information under Clause 33.17 (**The Staff**); and
- (e) any Losses suffered or incurred by the Authority as a result of payments to third parties (which for the avoidance of doubt shall not include a Re-offending TC Prisoner) in connection with any Re-offending TC Prisoner and which are:
 - (i) covered by a policy of insurance of the Contractor and/or any Sub-contractor pursuant to the terms of this Contract or any Sub-contract (to the extent of such cover); and
 - (ii) directly attributable to the effects of the Therapy Service on that Re-offending TC Prisoner.

4.2 Clause 4.1 (**Indemnities**) shall not apply to:

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

or representative of the Authority or any failure of the Authority to comply with its obligations under this Contract, statute or common law;

- (b) other than in respect of any action taken by the Authority pursuant to Section 88 of the Criminal Justice Act 1991, Losses to the extent arising directly from the performance by the Authority, its servants, agents or representatives of its obligations under or in respect of the Contract (including, but not limited to, the payment of any part of the Contract Price, any payments due to the Independent Engineer or any other servants, agents or representatives appointed by the Authority in connection with the Contract and any internal costs or expenses incurred by the Authority in monitoring the Contract) or Losses to the extent that the Authority is reasonably able to mitigate them;
- (c) any business rates in respect of the Prison or the Site (or any contributions made by or requested from a Minister of the Crown in lieu thereof) or any tax or charge imposed in substitution therefore;
- (d) any Losses attributable to any act, event, matter or omission after the expiry of the Contract Term, excluding, for the avoidance of doubt, those attributable to any matters for which the Contractor has accepted responsibility under Clause 10 (***Provision and Interpretation of Information***);
- (e) any Losses incurred by the Authority or any servant, agent or representative of the Authority in connection with a breach by the Authority of any public procurement rules; and
- (f) (except as expressly provided in Clause 4.1(c) (***Indemnities***) above) any indirect or consequential Losses except to the extent that such Losses are (or would have been, had the Contractor not been in default of its obligations under Clause 5 (***Insurance***)) covered by a policy of insurance which is maintained by the Contractor and/or any Sub-contractor or which the Contractor is obliged to maintain pursuant to Clause 5 (***Insurance***) and has failed to maintain.

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

giving rise to the Losses, the Authority shall forthwith repay to the Contractor:

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

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

4.4(a)(i) for the first year from 27th September 1999 up to but not including the Actual Increased Capacity Date, be [REDACTED] for any one incident or series of related incidents and [REDACTED] in aggregate and in subsequent years the maximum of [REDACTED] and [REDACTED] shall be increased on each anniversary of the 27th September 1999 cumulatively by the annual increase in RPI; and

4.4(a)(ii) ~~on and for~~ for the first year from the Actual Increased Capacity Date, be [REDACTED] [REDACTED] for any one incident or series of incidents and [REDACTED] in aggregate and in subsequent years the maximum of [REDACTED] and [REDACTED] shall be increased on each anniversary of the Actual Increased Capacity Date cumulatively by the annual increase in RPI.

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

(c) The liability of the Contractor pursuant to this Clause 4 (**Indemnities**) shall arise at the time the relevant Losses are incurred by the Authority; provided, however, that to the extent the amount referred to in Clause 4.4(b)(ii) (**Indemnities**) exceeds the amount referred to in Clause 4.4(b)(i) (**Indemnities**) in respect of any Losses, the Contractor

shall not be required to remit the amount of the excess to the Authority except insofar as the relevant claim has been paid by the Contractor's insurer. The Contractor will use its best endeavours to ensure the prompt settlement of any such claim. Nothing in this Clause 4.4.(c) (**Indemnities**) shall in any way affect the Contractor's obligation to make payment up to the amount specified in Clause 4.4(b)(i) (**Indemnities**) in respect of any Losses.

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

4.6 The Contractor agrees (and undertakes to procure that its Sub-contractors agree) that the Authority has the sole right to control the conduct of any proceedings in relation to any claim from third parties, including employees of the parties hereto, to which the Authority is a party as a defendant, regardless of whether the Contractor (or any Sub-contractor) is also a party thereto. The Authority agrees that it shall not settle or compromise any claim giving rise to losses exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) for which the Contractor is liable to indemnify the Authority under Clause 4.1 (**Indemnities**) above without prior consultation with the Contractor. The Authority shall keep the Contractor reasonably informed as to the progress and status of any such claim until such claim is settled or withdrawn. If, in contesting any claim, the Authority takes or fails to take any action which prejudices any entitlement of the Contractor to recover any proportion of the claim from any insurer under any insurance policy maintained by the Contractor in accordance with the Contract, the liability of the Contractor to indemnify the Authority in respect of such claim shall be reduced by such proportion (except where the Authority could not reasonably have been expected to have known that the Contractor's entitlement could be so prejudiced). The

Contractor undertakes that: (i) it will notify the Authority of any claim against the Contractor if the claim relates to the provision of the Services or to the Prison (such notification will not be required in respect of any claim of less than [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) in respect of (a) the theft or loss of or damage to either a Prisoner Custody Officer's (or other employee of the Contractor or Operating Sub-Contractor) and/or a Prisoner's property, or (b) motor vehicles); (ii) it will not settle or compromise any claim notified under (i) (whether insured or uninsured) to which the Authority is, or is likely to become, a party as a defendant without the Authority's consent (such decision as to whether or not to consent not to be unreasonably delayed by the Authority); (iii) where a claim is made against the Contractor and the Authority has confirmed to the Contractor in writing that it is not, and is not likely to become, a party to such claim as a defendant, the Contractor will not settle or compromise any claim exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) without the Authority's prior written consent; (iv) without prejudice to (ii) or (iii) above, the Authority shall have the right on giving written notice to such effect to the Contractor at any time, to have sole conduct of any claim which is required to be notified to the Authority pursuant to this Clause, provided that if conduct is so assumed by the Authority it shall hold the Contractor and its insurers harmless against all or any Losses which either of them may incur by reason of any settlement of the relevant claim if the settlement is made without their prior written approval (not to be unreasonably withheld or delayed); and (v) it will ensure that its Sub-contractors give undertakings identical to those given by the Contractor to the Authority under this Clause 4.6 (**Indemnities**).

4.7 This Clause 4.7 (**Indemnities**) relates solely to the provision of mutual aid within the terms of Paragraph 2.5 of Part 1A of Schedule D (**Operational Requirements**).

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

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

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

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

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

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

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

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

(c) For the avoidance of doubt, Clause 4.4 (**Indemnities**) shall not apply to any liability arising pursuant to this Clause 4.7(**Indemnities**).

4.8(a) The provisions of this Clause 4.8 (***Indemnities***) shall apply to a claim made by the Authority under Clause 4.1(c) (***Indemnities***).

(b) Losses shall not be recoverable under Clause 4.1(c) (***Indemnities***):

(i) in respect of a failure by the Contractor to provide Available Prisoner Places, during the period up to and ending on the Actual Main Full Operation Date; and

(ii) in respect of a failure by the Contractor to provide Available TC Places, during the period up to and ending on the Actual TC Full Operation Date,

in each case to the extent the Contractor has fully complied with its obligations under Clause 25 (***Liquidated Damages***).

(c) In respect of a failure by the Contractor to fulfil its obligations under either Clause 40.1(b) (***Additional Prisoner Places***) to provide Additional Prisoner Places or Clause 40A.1(b) (***Additional Local Prisoner Places***) to provide Additional Local Prisoner Places, in each case following written notice, Losses shall not be recoverable under Clause 4.1(c) to the extent that:

(i) such failure to provide such Additional Prisoner Places and/or Additional Local Prisoner Places occurs prior to the date falling thirteen (13) weeks after the date on which the Authority served the written notice on the Contractor pursuant to Clause 40.1(b) (***Additional Prisoner Places***) in respect of such Additional Prisoner Places;

(ii) where an Amendment Notice requires a greater number of Additional Prisoner Places and/or Additional Local Prisoner Places than the notice which it amends, such failure to provide such greater number of Additional Prisoner Places and/or Additional Local Prisoner Places occurs prior to the date falling thirteen (13) weeks after the date of such Amendment Notice; or

(iii) where an Amendment Notice requires Additional Prisoner Places and/or Additional Local Prisoner Places to be provided for a longer period than the notice which it amends, such failure to provide such

Additional Prisoner Places and/or Additional Local Prisoner Places for such longer period occurs prior to the date falling thirteen (13) weeks after the date of such Amendment Notice.

- (d) If the Authority has to house Prisoners outside the Prison as a result of a failure by the Contractor to fulfil its obligations under the Contract to provide Available Prisoner Places, Additional Prisoner Places, Additional Local Prisoner Places and/or Available TC Places, the Authority shall:
- (i) except in the case of a failure by the Contractor to provide Available TC Places, on the Contractor's written request, increase the Permitted Level (either on a temporary or a permanent basis) if and to the extent that such increase, in the Authority's opinion, will not prejudice the level of security and safety in the Prison and the control of Prisoners as required under the operating procedures referred to in the Operational Proposals;
 - (ii) be under a general duty to act reasonably so as to mitigate the relevant Losses, such duty to include taking reasonable steps to ensure that Prisoners are housed in alternative accommodation that is not more costly than other suitable accommodation reasonably available to the Authority at the relevant time (having regard to the circumstances from time to time, and, where the Authority has to house TC Prisoners outside the Prison, having regard to the suitability of alternative accommodation to house such TC Prisoners); and
 - (iii) to the extent practicable (having regard to the then existing circumstances) consult with the Contractor as to where the relevant Prisoners should be accommodated.
- (e) In the case of Prisoners housed in alternative accommodation not managed by the Authority, the Authority shall not be entitled to recover Losses under Clause 4.1(c) (**Additional Prisoner Places**) to the extent that the payment by the Authority for such accommodation exceeds that which the Authority ordinarily makes to the relevant provider of that accommodation for such services.

- (f) The amount of Losses recoverable under Clause 4.1(c) (**Indemnities**) shall be calculated by deducting (to the extent not already taken into account) from the total of the relevant Losses the aggregate of the following:
- (i) any damages for breach of contract received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places and/or Additional Prisoner Places and/or Additional Local Prisoner Places and/or Available TC Places (whether pursuant to Clause 22 (**Phase-in Period**), Clause 23 (**Full Main Operation Date/Full TC Operation Date**) or Clause 40 (**Additional Prisoner Places**) or otherwise);
 - (ii) any insurance proceeds received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places and/or Additional Local Prisoner Places and/or Additional Prisoner Places and/or Available TC Places; and
 - (iii) the amount of the Contract Price the Authority would have paid the Contractor if the Contractor had provided the required number of Available Prisoner Places and/or Additional Prisoner Places and/or Additional Local Prisoner Places and/or Available TC Places.
- (g) If the Authority recovers any amount (the **relevant amount**) pursuant to Clause 4.1(c) (**Indemnities**) and subsequently receives amounts of the type described in (f)(i) or (ii) above or Clause 25 (**Liquidated Damages**) in circumstances which amount to double recovery, the Authority shall (subject to the other provisions hereof and any rights of set-off) to the extent of such double recovery reimburse the party from whom the relevant amount was received within thirty (30) days of written demand for reimbursement.
- (h) No amount shall be due under Clause 4.1(c) (**Indemnities**) in respect of an Available Prisoner Place, an Additional Prisoner Place, an Additional Local Prisoner Place or an Available TC Place if the Agent and/or the Banks are required to make a payment in respect of the relevant place pursuant to Clause 6.2(b) of the Direct Agreement.

- 4.9 For the avoidance of doubt, this Clause 4 (**Indemnities**) shall take effect without prejudice to the Contractor's obligations under Clause 6 (**Liability for Loss and Damage**), Clause 25 (**Liquidated Damages**) and 25A (**Liquidated Damages - Increased Capacity**).

5. **INSURANCE**

- 5.1 Subject to Clauses 5.13 (**Insurance**) and 5.14 (**Insurance**), but without prejudice to any of its obligations hereunder, including, without limitation, Clauses 4 (**Indemnities**) and 6 (**Liability for Loss and Damage**), the Contractor shall effect and maintain in full force and effect insurances (in the joint names *inter alia* of the Contractor and of the Authority except for the insurance required in Part 1B of Schedule O (**Minimum Insurance Requirements - Insurance during Operation Period**), Paragraph 7 (Directors' and Officers' Liability)) as detailed in Part 1A of Schedule O (**Minimum Insurance Requirements - Insurance During Construction Phase**) and Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Phase) in respect of the Prison and the Site together with the plant, fixtures, fittings, materials, chattels, machinery or other equipment therein or thereupon (the **Assets**).
- 5.2 Such insurances except the insurance required in Schedule O Part 1A, Paragraph 4 (**Professional Indemnity**) (**PI Insurance**) shall include:
- (a) a waiver of subrogation against the Crown, its agents, servants, officers, employees and contractors and a waiver of subrogation against the Construction Sub-contractor and the Operating Sub-contractor (as applicable), their agents, servants, officers, employees and contractors (except that this requirement shall not apply to the insurance required in Schedule O Part 1B, Paragraph 7 (**Directors' and Officers' Liability**));
 - (b) a provision whereby such insurances shall apply to each of the insured parties as if a separate policy had been issued to each of them other than in the event of exhaustion of the sum insured or limit of indemnity (except that this requirement shall not apply to the insurance required in Schedule O Part 1B, Paragraph 7 (**Directors' and Officers' Liability**));
 - (c) a breach of condition or warranty/severability/non vitiation provision acceptable to the Authority or if such provision is not generally available in equivalent policies written in the worldwide insurance market, each of the Contractor and the Sub-contractors

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

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

In relation to Paragraph 5 (Comprehensive Crime) of Part 1B of Schedule O (***Minimum Insurance Requirements - Insurance During Operational Phase***), the Contractor will be deemed to have satisfied its obligations under Clauses 5.2(a), (b) and (c) if it uses its best endeavours to include the provisions referred to in those Clauses in the insurance detailed in that Section 5.

- 5.3 Such insurances shall be taken out with an insurer approved by the Authority in writing (such approval shall not be unreasonably withheld or delayed).
- 5.4 The insurances to be effected under Schedule O Part 1A (**Construction Phase**) shall be effected from the date of the Contract and continue in force in accordance with Schedule O (**Minimum Insurance Requirements**).
- 5.5 The insurances to be effected under Schedule O Part 1B (**Operational Phase**) shall be effected from the date of commencement of operations or the date when the Construction Period insurances lapse, whichever is the earlier, and remain in force until the end of the Contract Term.
- 5.6(a) Unless otherwise agreed by the Authority, on each and every occasion when any part of the whole of the Prison, the Site or the Assets is destroyed or damaged, where the amount of the Insurance Proceeds (excluding proceeds from the insurances detailed in Schedule O Part 1A, Paragraph 2 (**Advance Loss of Profits for CAR (Delay in Start-Up)**) and Schedule O (**Minimum Insurance Requirements**), Part 1B, Paragraph 2 (**Loss of revenue (Business Interruption)**) and required to be maintained under this Clause 5 (**Insurance**)) in respect of any one event is less than or equal to the Insurance Threshold Amount:
- (i) the Contractor shall (and shall procure that the Construction Sub-contractor and the Operating Sub-contractor shall) pay all Insurance Proceeds received under any insurance policy taken out in accordance with this Clause 5 (**Insurance**) into an account in the joint names of the Authority and the Contractor at a bank to be nominated by the Authority (and advised to the insurers accordingly), such Insurance Proceeds 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
 - (ii) the Contractor shall certify to the Agent (within a reasonable time of the relevant damage or destruction being sustained and in any event not later than six months thereafter) that it wishes to reinstate or repair the asset which is the subject of the Insurance Claim and forthwith lay out all Insurance Proceeds and at its own expense all such

other money as shall be necessary (including the fees of the Independent Engineer acting in connection with the claims and the reinstatement, replacement or rebuilding of the Prison as the case may be) (x) fully 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 26 (**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 or (y) to make good any loss sustained or settle any claim made. The Independent Engineer will, in such case of reinstatement, rebuilding or replacement have the same rights and obligations as those contained in Clause 13 (**Provision of the Prison**).

- (b) Where the amount of the Insurance Proceeds in respect of any one event received in respect of damage to the Prison, the Site or the Assets under any insurance policy taken out in accordance with Clause 5.1 (**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 in accordance with Paragraph 3(a) of the schedule to the Direct Agreement and shall, in the circumstances set out in Paragraph 3(b) of the schedule to the Direct Agreement, apply such proceeds as provided in Clause 5.6(a)(ii)(x) or (y).
- (c) Any certification, submission or report required under (a) or (b) above to be provided to the Agent shall no longer be required once all sums due to the Banks under the Financing Agreements have been irrevocably paid in full and the Credit Agreement has been cancelled, in which case all Insurance Proceeds shall be applied as provided in Clause 5.6(a)(ii)(x) or (y) (**Insurance**) above.
- (d) The Authority shall pay all Insurance Proceeds it receives under any insurance policy taken out in accordance with this Clause 5

(**Insurance**) into the account referred to in Clause 5.6(a)(i) (**Insurance**), except to the extent such Insurance Proceeds are in respect of a liability of the Authority under a third party liability policy or a loss suffered by the Authority.

- 5.7 The Contractor shall within thirty (30) days from the date of this Contract, and thereafter before any renewal or replacement of any insurance policy maintained pursuant to this Clause, and further whenever required by the Authority, provide evidence, including copies of all insurance policies, to satisfy the Authority that insurance has been taken out and is being maintained by the Contractor as required by this Clause.
- 5.8 The Contractor shall inform the Authority in writing as soon as reasonably practicable after it becomes aware of the occurrence of any event that may give rise to a claim under a policy of insurance required by this Clause and will ensure that the Authority is kept fully informed of subsequent action and developments concerning the claim; such written information shall not be required in relation to any claim of less than [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) in respect of: (a) the theft or loss of or damage to either a Prison Custody Officer's (or other employee of the Contractor or Operating Sub-contractor) and/or a Prisoner's property; or (b) motor vehicles. The Contractor will take such steps as are necessary or appropriate to ensure that each Sub-contractor, in respect of any event or claim of a like nature arising out of or relating to the operation or responsibility of the Sub-contractor, takes in relation to the Contractor like action to that which the Contractor is required to take under this Clause 5.8 (**Insurance**) in relation to the Authority, and shall inform the Authority promptly of information thus received from any Sub-contractor. Notwithstanding, and without prejudice to, any other provision hereof, the Contractor undertakes that it will not (and that its Sub-contractors will not) settle any insurance claim (except in accordance with the provisions in respect of settling claims set out in Clause 4.6) without the prior written agreement of the Authority.
- 5.9 The Contractor shall procure (at or before the effective date of the relevant policy and the date of appointment of any replacement broker) the issue of a broker's letter of undertaking in the form of Schedule O Part 2A (**Minimum Insurance Requirements**) or Schedule O Part 2B (**Minimum Insurance Requirements**) (as appropriate) in relation to each policy of insurance maintained in accordance with this Clause 5 (**Insurance**).

- 5.10 Without prejudice to Clause 5.13 (**Insurance**) and Clause 5.14 (**Insurance**), where the Contractor has failed to take out or procure insurance pursuant to its obligations hereunder, the Contractor shall notify the Authority of such failure immediately and the insurance broker shall notify the Authority pursuant to the broker's letter of undertaking in the form set out in Part 2 of Schedule O (**Minimum Insurance Requirements**) and the Authority shall have the right to take out such insurance in the Contractor's name and to be indemnified by the Contractor in respect of any costs or expenses incurred in so doing.
- 5.11 Without prejudice to the obligations of the Contractor under this Clause 5 (**Insurance**), the Contractor shall effect and maintain in full force those insurances which it is required to have by any applicable law.
- 5.12 The Contractor undertakes with the Authority in relation to the insurances referred to in this Clause (and undertakes to procure that the Construction Sub-contractor and Operating Sub-contractor shall give the same undertakings to the Authority):
- (a) to comply with all requirements and recommendations of the insurers to the extent reasonable or necessary to preserve the benefit of the relevant cover;
 - (b) not to do or omit to do anything which could cause any policy of insurance to become void or avoidable wholly or in part;
 - (c) to comply with all requirements and recommendations of the fire authority as to fire precautions relating to the Prison, the Site and the Assets; and
 - (d) to give notice to the Authority immediately upon the happening of any event which might adversely affect any policy of insurance effected in accordance with this Clause.

In the event that the Contractor considers that the requirements of Clauses 5.12(a), (b) or (c) (**Insurance**) may conflict with any other Clause herein, the Contractor shall immediately notify the Authority.

- 5.13 As soon as the Contractor considers that, on expiry or termination of any policy of insurance maintained by it in compliance with its obligations under this Clause 5 (**Insurance**), it will be unable to obtain a replacement policy of insurance at what is considered to be a commercial price (taking into account its obligations under this Contract, the Sub-contract and the Financing Agreements and the price and terms at which such insurance has previously been available) in the worldwide insurance

market which complies with this Clause 5 (***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 or proposals for guarantees or undertakings from any person which would make available to the Contractor sufficient funds to meet any liabilities which the Contractor may have in relation to its involvement in the Works or the Services or any of them.

5.14 The Authority shall, if it reasonably considers that such insurances are not available at a commercial price in the worldwide insurance market (and such unavailability is not caused by an action or omission of the Contractor), promptly consult with the Contractor in good faith for a period of sixty (60) days from the Authority receiving a notice from the Contractor pursuant to Clause 5.13 (***Insurance***) . (For the avoidance of doubt, if the Authority does not so consider, the Contractor shall be required to effect or procure such insurance in accordance with the foregoing provisions of this Clause 5.) If, at the end of such sixty (60) day period, the parties cannot agree the Proposals (or any amendments to them) then either party may terminate the Contract on thirty (30) days' written notice. If the Contract is terminated under this Clause 5.14 (***Insurance***), the Authority will pay to the Contractor the Lender Liabilities plus the aggregate of:

- (a) the nominal value of any share premium account attributable to any equity in the Contractor; and
- (b) any outstanding loans or loan stock (whether subordinated or otherwise) which at the Termination Date under this Clause 5.14 (***Insurance***) have been advanced by any of the Shareholders in good faith for the purposes of the Contractor's business, to the extent they have not been redeemed or repaid.

5.15 Without prejudice to the Authority's rights under Clause 9 (***Change to Services Required***), the Authority retains the right to require the Contractor to amend the insurance programme detailed in Schedule O (***Minimum Insurance Requirements***) throughout the Contract Term as it may reasonably require to reflect changes in the circumstances surrounding the Contract. Any such amendment shall be deemed an amendment to an obligation of the Contractor under the Contract for the

purposes of Clause 9.1 (***Change to Services Required***), and shall be effected in accordance with Clause 9.1(***Change to Services Required***).

5.16 Except for Clauses 5.1 (***Insurance***), 5.3 (***Insurance***), 5.4 (***Insurance***), 5.9(***Insurance***), 5.12 (***Insurance***), 5.13 (***Insurance***), 5.14 (***Insurance***) and 5.15 (***Insurance***), the provisions of Clause 5 (***Insurance***) shall not apply to the PI Insurance. The Contractor undertakes in respect of the PI Insurance, and to procure that the Construction Sub-contractor undertakes to the Authority, to:

- (a) provide evidence satisfactory to the Authority (as and when reasonably required by the Authority) of the PI Insurance being in full force and effect (such evidence to include details of the cover (including confirmation of vicarious liability and retro cover as specified in Schedule O (***Minimum Insurance Requirements***)), territorial limits, indemnity limit, levels of excess, insurance and policy number);
- (b) provide the Authority with copies of all notices under the PI Insurance relative to the Project;
- (c) provide the Authority with notice of:
 - (i) any cancellation of the PI Insurance not less than twenty eight (28) days prior to the relevant cancellation date;
 - (ii) any material changes to or suspension of cover relevant to the Project;
 - (iii) any event of which it becomes aware, or could reasonably be expected to become aware which may vitiate the PI Insurance; and
 - (iv) any act, omission or event which may adversely affect the terms and scope of the PI Insurance relevant to the Project or invalidate or render it unenforceable;
- (d) provide information to the Authority regarding any claim or circumstance notified under the PI Insurance in respect of the Project to the Authority as may be reasonably required and of any potential breach of the aggregate limit of the policy;
- (e) disclose to the relevant insurers any matters which could reasonably be expected to be material in the context of the Project

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

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

6. LIABILITY FOR LOSS AND DAMAGE

- 6.1 The Contractor shall be liable for all loss and damage to the Prison and the Site, except to the extent that such loss or damage was caused or contributed to by an act or omission by, or directly as a result of, an express written request or instruction of the Authority, its servants or agents or the breach by the Authority of any of its obligations under this Contract; provided that the Contractor shall remain liable for any such loss and damage occurring by reason of the exercise by the Authority of its powers under Section 88 of the Criminal Justice Act 1991 except to the extent such loss or damage is caused by the negligence of an employee of the Authority in exercising such powers.
- 6.2 The Contractor shall at its own cost re-instate, replace or make good to the reasonable satisfaction of the Authority, or if the Authority agrees compensate the Authority for, any loss or damage for which the Contractor is responsible under this Clause 6 (***Liability for Loss and Damage***).

7. SUB-CONTRACTING

- 7.1 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 Authority's prior written consent to both the identity of such other person and the terms of such performance or undertaking, provided that the Authority in executing this Contract hereby provides such prior written consent to the sub-contracting to the Construction Sub-contractor and the Operating Sub-contractor of such of the Contractor's obligations hereunder as are contained in, respectively, the Construction Sub-contract and the Operating Sub-contract (but, for the avoidance of doubt, not to any replacements or changes to either Sub-contract or Sub-Contractor) and in executing the Amending Agreement the Authority provides its prior written consent to the sub-contracting of the Houseblock Works to the Operating Sub-contractor and by the Operating

Sub-contractor to the Houseblock Construction Sub-contractor, provided that the Contractor agrees not to and shall procure that the Operating Sub-contractor shall not make any amendment to, nor grant any extension of time, nor waive any right to liquidated damages under, any of the Sub-contracts without the prior written consent of the Authority unless the Authority has agreed to a like amendment, extension or waiver under this Contract. The Authority shall be deemed to have approved any amendment to any Sub-contract which is required as a result of any change made to this Contract (provided that any changes made correspond exactly in each of the Sub-contracts and this Contract). If the Contractor wishes to replace any Sub-contractor, the procedure set out in Clause 8 of the Direct Agreement shall apply and the Contractor shall provide the Authority with the information set out in Clause 8.1(b) of the Direct Agreement in relation to any replacement Sub-contractor together with any other information which the Authority requests for the purpose of deciding whether or not it should consent to any Sub-contractor or Sub-contract. For the avoidance of doubt neither the giving of consent by the Authority to the identity of any Sub-contractor nor the knowledge, review or approval of the terms of any Sub-contract shall relieve the Contractor of any of its obligations under this Contract nor render the Authority in any way liable to any Sub-contractor or in any way bound by the terms of any Sub-contract.

- 7.2 In the event that the Authority does consent to any Sub-contract pursuant to Clause 7.1 (***Sub-contracting***), the Contractor shall, unless the Authority otherwise agrees, ensure that such Sub-contractor (whether self employed or otherwise) and its employees assume obligations direct to the Authority corresponding to those imposed in Clauses 33.6 and 33.9 (***The Staff***), 57 (***Public relations and Publicity***) and 58 (***Information and confidentiality***).
- 7.3 The Contractor shall procure that the Construction Sub-contractor and the Operating Sub-contractor each provide an undertaking to the Authority in respect of the amounts equal to those payable under Clause 25 (***Liquidated Damages***) and that the Construction Sub-contractor provides a collateral warranty to the Authority in respect of the construction of the Prison in accordance with Schedule A (***Design and Construction Specification***) in each case substantially in the form agreed between the Authority and the Contractor and that any limitation of the liability of the Construction Sub-contractor and the Operating Sub-contractor is at a level agreed to in writing by the Authority. The Contractor shall further take all reasonable steps to secure the due observance by the Construction Sub-contractor and the Operating Sub-

contractor of all obligations under such undertakings and collateral warranty and the relevant Sub-contract and, at the Authority's request, will provide any assistance required by the Authority in its pursuit of any claim against the Construction Sub-contractor and/or the Operating Sub-contractor pursuant to such collateral warranty and/or undertaking.

7.3A The Contractor shall procure that the Houseblock Construction Sub-contractor provides pursuant to Clause 2A (***Houseblock Documents***) the Sub-contractor Collateral Warranty to the Authority in respect of the performance of the Houseblock Works in accordance with Part 2 of Schedule A (***Design and Construction Specification***) and that any limitation of the liability of the Houseblock Construction Sub-contractor is at a level agreed to in writing by the Authority. The Contractor shall further take all reasonable steps to secure the due observance by Houseblock Construction Sub-contractor of all obligations under the Sub-contractor Collateral Warranty and the Houseblock Construction Sub-contract and, at the Authority's request, will provide any assistance required by the Authority in its pursuit of any claim against the Houseblock Construction Sub-contractor pursuant to the Sub-contractor Collateral Warranty, including without limitation giving evidence before an expert or arbitrator and providing the Authority with all information concerning the cause of, and responsibility for, any delay in achieving the Contractual Houseblock Opening Date.

7.4 The Contractor shall be directly responsible for the management and supervision of approved Sub-contractors unless otherwise requested by the Authority. Notwithstanding any other provisions of this Contract but subject to Clause 8.1(c) of the Direct Agreement, there shall be only one Operating Sub-contractor at any one time in respect of both Moreton (Main) and the TC, and both the Therapy Service and the Custodial Service shall be the responsibility of that Operating Sub-contractor.

7.5 Where the Contractor enters into an approved Sub-contract with a Sub-contractor for the purpose of performing any of the obligations of the Contract, it shall cause a term to be included in such Sub-contract which requires payment by the Contractor to the Sub-contractor within a specified period not exceeding forty five (45) days from receipt of a valid invoice as required by the terms of the Sub-contract.

8. ASSIGNMENT

8.1 Subject to Clause 7 (***Sub-contracting***) and any security, charge or assignment by way of security or other encumbrance in favour of the Banks pursuant to the Financing Agreements, the Contractor shall not

(and shall not purport to) give, bargain, sell, assign, sub-let, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, or grant, declare, create or dispose of any right or interest in it or any part of it save that nothing in this Clause shall prevent the assignment and/or transfer of the Contract with the consent of the Authority in accordance with the provisions of the Direct Agreement.

9. CHANGE TO SERVICES REQUIRED

- 9.1 Subject to Clauses 9.2 (***Change to Services Required***), the Authority may delete, amend or alter the extent of any obligation to be met by the Contractor under the Contract in respect of the Works, the Houseblock Works, the Custodial Service or the Therapy Service, or add to such obligations of the Contractor under the Contract, by giving written notice (the ***Notice of Change***) to the Contractor of the required change. In the case of emergency, the requirements set out in the Notice of Change shall come into immediate effect, and the Contract Price and/or Houseblock Works Fee shall be varied as set out below. Otherwise than in the case of emergency, following service of any Notice of Change, the Authority will consult with the Contractor with respect to the deletion, alteration, extension of or addition to the obligations hereunder, and the Contractor shall provide the Authority on or before the date falling ten (10) Business Days after the date of the Notice of Change with a reasonable estimate of the increase or reduction in the Contract Price and/or Houseblock Works Fee (if any), or proposal of other changes to the terms set out herein (including any extension of time for completion), which it believes should occur as a result of the changes set out in the Notice of Change. Any such estimate shall be accompanied by a reasonably detailed breakdown of the manner in which that estimate is calculated and shall include details of any redundancy costs which are reasonably expected to be incurred by reason of the proposed change. The Authority may accept or reject such estimate or proposal. In the event that the Authority accepts such estimate or proposal, the changes referred to in the Notice of Change shall come into immediate effect, the Contract Price and/or Houseblock Works Fee (or other relevant terms hereof) shall change as set out in the Contractor's estimate or proposal, and the terms of the Contract shall be deemed changed as set out in the Notice of Change (except where the changes referred to in the Notice of Change require the Contractor to procure building works upon the Site or the changes cannot be reasonably effected immediately, in which case the Authority shall allow the Contractor such further period to effect such

changes as is reasonably necessary). If the Authority rejects such estimate or proposal, it may either:

- (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 shall be varied or not varied in accordance with Clause 72 (***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 the Houseblock Works Fee and extension of time as it considers fair which will be effective until such time as the Contract Price and/or the Houseblock Works Fee is varied (or not varied) and/or a time extension granted as agreed by the Authority and the Contractor or determined in accordance with Clause 72 (***Dispute Resolution***) and the Contract Price and/or the Houseblock Works Fee shall be deemed to be so changed on a provisional basis. In the event that the provisional Contract Price and/or the Houseblock Works Fee set by the Authority is less than the Contract Price and/or the Houseblock Works Fee as so agreed or determined pursuant to Clause 72 (***Dispute Resolution***), an adjusting payment shall be made by the Authority to the Contractor on or before the date falling thirty (30) days after the date of such agreement or determination 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 the Houseblock Works Fee as so agreed or determined pursuant to Clause 72 (***Dispute Resolution***) and vice versa by the Contractor to the Authority if the provisional Contract Price and/or Houseblock Works Fee set by the Authority is more than the Contract Price and/or Houseblock Works Fee as so agreed or determined pursuant to Clause 72 (***Dispute Resolution***). For the avoidance of doubt, no Notice of Change may require the Contractor to provide Additional Prisoner Places (as to which the provisions of Clause 40 (***Additional Prisoner Places***) shall apply) and/or Additional Local Prisoner Places (as to which the provisions of Clause 40A (***Additional Local Prisoner Places***) shall apply).

- 9.2 In the event that the Notice of Change would result in an obligation on the Contractor to incur any Capital Expenditure following the date hereof, the Contractor shall use all reasonable endeavours to obtain finance at a

reasonable cost from the Banks or other commercial sources for such Capital Expenditure. If the Contractor does obtain an offer of such reasonable finance within two weeks (or, in respect of any Notice of Change served after the date of the Engineer's Declaration, within four (4) weeks) of the date of the Notice of Change, the Contractor shall (within fourteen (14) days of receiving such offer of finance) provide two estimates of the increase or decrease in the Contract Price and/or the Houseblock 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 39 (***Variation of Price***) the Contractor fails to obtain finance for such Capital Expenditure, the Contractor shall within two (2) weeks of the date of the Notice of Change provide the Authority with a written estimate of the amount of such Capital Expenditure together with its estimate of any increase or decrease in the Contract Price and/or the Houseblock Works Fee which it believes should occur as a result of the changes set out in the Notice of Change. Any such estimate or estimates shall be accompanied by a reasonably detailed breakdown of the manner in which that estimate is calculated. The Authority may accept such estimate or estimates or request that it or they be changed, and following such request the Contractor may submit a different estimate or estimates, 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 9.1 (***Change to Services Required***) (assuming for these purposes that no emergency has occurred) following the Authority's acceptance of the Contractor's estimate;
- (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 excludes the cost of financing the relevant Capital Expenditure, then:
 - (i) the Authority shall be liable to reimburse, or pay on behalf of, the Contractor the amount of such Capital Expenditure as is set out in such estimate in accordance with Clause 9.3 (***Change to Services***

Required) or, if the Authority does not accept such estimate, for such amount of Capital Expenditure as is agreed or determined in accordance with Clause 9.3 (**Change to Services Required**);

(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 9.3 (**Change to Services Required**); and

(iii) the Contract Price and/or the Houseblock 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 9.3 (**Change to Services Required**) and any change to the Contract Price and/or the Houseblock Works Fee be determined in accordance with Clause 72 (**Dispute Resolution**).

9.3 Where either (i) the Contractor fails to obtain finance at a reasonable cost for the relevant Capital Expenditure from the Banks or other commercial sources and the Authority rejects the Contractor's estimate of the amount of the relevant Capital Expenditure, or (ii) the Authority rejects any estimate from the Contractor which includes the cost of such financing, the amount of such Capital Expenditure and the manner of its payment shall be determined in accordance with this Clause 9.3 (**Change to Services Required**) . The parties shall attempt to agree an estimate of such Capital Expenditure but if no agreement is reached within seven days of the Authority's rejection of the original estimates, the amount of the Capital Expenditure shall be determined in accordance with Clause 72 (**Dispute Resolution**). Once the estimate has been agreed or determined, the Contractor shall procure that all that is necessary is done in order to comply with the Notice of Change (unless the Authority notifies the Contractor within seven days of the date of determination of the estimate that the Notice of Change should lapse). During execution by the Contractor of all necessary works to comply with the Notice of Change, the Authority shall either (a) promptly reimburse the Contractor, or, (b) at the option of the Contractor, pay on behalf of the Contractor against invoices in respect of those parts of such works which have been completed, subject to an aggregate maximum payment of the agreed estimate or, as the case may be, the amount determined in

accordance with Clause 72 (***Dispute Resolution***), in either case within thirty (30) days of presentation of the relevant invoice(s) by the Contractor.

- 9.4 At the same time that the Contractor provides any estimate or estimates to the Authority under either Clause 9.1 (***Change to Services Required***) or 9.2 (***Change to Services Required***), it shall also provide the Authority with a proposal as to whether the Finance Plan should change, and if so, in what manner. Subject to 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 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 days of the Authority's rejection, the matter shall be decided in accordance with Clause 72 (***Dispute Resolution***). Provided that if any matter referred to in Clauses 9.1 (***Change to Services Required***), 9.2 (***Change to Services Required***) or 9.3 (***Change to Services Required***) is determined pursuant to Clause 72 (***Dispute Resolution***), the manner in which the Finance Plan is to be changed shall be determined at the same time and in the same way.
- 9.5(a) The Contractor may (and shall, if necessary to ensure that the Works comply with applicable Legislation) propose changes to the Custodial Service, the Therapy Service or to the Works or the Houseblock Works pursuant to this Clause 9.5 (***Change to Services Required***) which may be accompanied by proposed changes to the Contract Price and/or the Houseblock Works Fee or the other terms hereof. Any such changes shall require the prior written consent of the Authority. A change to the Works or the Houseblock Works may only be requested by the Contractor in the manner set out in Schedule M (***Compliance Monitoring***), Part 3 (Change Control Procedure) or Part 3A (Change Control Procedure - Houseblock Works) (as relevant) or Part 4 (Change Control Procedure Post Engineer's Declaration) or Part 4A (Change Control Procedure Post Engineer's Declaration - Houseblock Works) (as relevant), as appropriate.
- (b) In the event of any increase in the costs of the Contractor, the Operating Sub-contractor, the Construction Sub-contractor or the Houseblock Construction Sub-contractor resulting from any changes to the Custodial Service, the Therapy Service, the Works or the Houseblock Works or to their design requested by the Contractor pursuant to this Clause 9.5 (***Change to Services Required***), there shall be no variation in the

Contract Price and/or the Houseblock Works Fee unless such changes in cost arise from Prison Legislation, in which case Clause 39.2 (***Variation of Price***) shall apply or unless the Authority otherwise agrees.

- (c) If any change proposed by the Contractor arises from a Security Technology Change, the provisions of Clause 39.3 (***Variation of Price***) shall take precedence over this Clause.

- 9.6 If at any time the costs incurred by the Contractor, the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor have decreased as a result of any changes to the Custodial Service, the Therapy Service, the Works or the Houseblock Works or any change to their design proposed in each case by the Contractor pursuant to Clause 9.5 (***Change to Services Required***) (but not as a result of any Design Development as defined in Schedule M (***Compliance Monitoring***)), then the Authority may request a variation in the Contract Price and/or the Houseblock Works Fee pursuant to this Clause 9 (***Change to Services Required***) which shall take into account such cost savings to the Contractor, the Construction Sub-contractor, the Operating Sub-contractor and/or the Houseblock Construction Sub-contractor to reduce the amount of the Contract Price and/or the Houseblock Works Fee as though the request of the Authority under this Clause 9.6 (***Change to Services Required***) were a Notice of Change.
- 9.7 If a Notice of Change served by the Authority under Clause 9.1 (***Change to Services Required***) is implemented, then the Authority shall reimburse to the Contractor, when incurred, any redundancy costs reasonably suffered by the Contractor and/or the Sub-contractors as a result of the implementation of the Notice of Change.
- 9.8 Any change to the Contract Price and/or the Houseblock Works Fee which is determined under this Clause 9 (***Change to Services Required***) shall be determined in accordance with the principles set out in Clause 39.4 (***Variation of Price***), shall include any costs arising as a result of any delay in completion caused by a Notice of Change becoming effective and shall take into account the reimbursement by the Authority of any redundancy costs, as provided in Clause 9.7 (***Change to Services Required***) .
- 9.9 For the avoidance of doubt, it shall not be deemed a change to any obligation hereunder and there shall not be any variation of the Contract Price if:

- (a) the Authority requires any Additional Prisoner Places and/or Additional Local Prisoner Places in accordance with the terms of this Contract;
- (b) the operation of the Prison changes in any way within the parameters set out in Part 1 of Schedule D (***Operational Requirements***);
- (c) the Authority requires any amendments to be made pursuant to Clause 20.2 (***Preparation for operation of the Prison***).

9.10 The Authority will be entitled to serve a notice under Clause 9.1 (***Change to Services Required***) which deletes, amends or alters the extent of any obligation hereunder (including by requiring the Prison to change from an adult prison to a young offenders' institution) provided that such deletion, amendment or alteration would not result in the Prison being used as a women's prison, an open prison or a dispersal (maximum security) prison.

9A CONTRACTOR CHANGES IN SERVICES

- (a) If the Contractor wishes to introduce a change in the Custodial Services, it must serve a Contractor Notice of Change on the Authority.
- (b) The Contractor Notice of Change must:
 - (i) set out the proposed change in the Custodial Services in sufficient detail to enable the Authority to evaluate it in full;
 - (ii) specify the Contractor's reasons for proposing the change in the Custodial Services;
 - (iii) request the Authority to consult with the Contractor with a view to deciding whether to agree to the change in the Custodial Services and, if so, what consequential changes the Authority requires as a result;
 - (iv) indicate any implications of the change in the Custodial Services;

- (v) indicate, in particular, whether a variation to the Contract Price is proposed (and if so, give a detailed cost estimate of such proposed change); and
 - (vi) indicate if there are any dates by which a decision by the Authority is critical.
- (c) The Authority shall evaluate the Contractor's proposed change in the Custodial Services in good faith, taking into account all relevant issues, including whether;
 - (i) a change in the Contract Price will occur;
 - (ii) the change affects the quality of the Custodial Services or the likelihood of successful delivery of the Custodial Services;
 - (iii) the change will interfere with the relationship of the Authority with third parties
 - (iv) the financial strength of the Contractor is sufficient to perform the changed Custodial Services; or
 - (v) the change materially affects the risks or costs to which the Authority is exposed.
- (d) As soon as practicable after receiving the Contractor Notice of Change, the parties shall meet and discuss the matter referred to in it. During their discussions the Authority may propose modifications or accept or reject the Contractor Notice of Change.
- (e) If the Authority accepts the Contractor Notice of Change (with or without modification), the relevant change in Services shall be implemented within (X) days of the Authority's acceptance. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract or any relevant document which is necessary to give effect to the change in the Custodial Services.
- (f) If the Authority rejects the Contractor Notice of Change, it shall not be obliged to give its reasons for such a rejection.
- (g) Unless the Authority's acceptance specifically agrees to an increase in the Contract Price, there shall be no increase in the Contract

Price as a result of a change in the Custodial Services proposed by the Contractor.

- (h) If the change in the Custodial Services proposed by the Contractor causes or will cause the Contractor's costs or those of the Operating Sub-contractor to decrease, there shall be a decrease in the Contract Price, the Authority may request a variation in the Contract Price. Such variation shall take into account such cost savings to the Contractor and/or the Operating Sub-contractor.
- (i) The Authority cannot reject a change in the Custodial Services which is required in order to conform to a change in Law.

10. PROVISION AND INTERPRETATION OF INFORMATION

10.1 The Contractor shall be deemed to have inspected the Site and its surroundings and to be in possession of information connected therewith and to accept responsibility for and have satisfied himself before signing the Contract as to all matters relating to the Land, including without limitation:

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

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

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

10A Provision and Interpretation of Information - Houseblock Works

- 10A.1 The Contractor shall be deemed to have inspected the Houseblock Works Area and its surroundings and to be in possession of information connected therewith and to accept responsibility for and have satisfied himself before signing the Amending Agreement as to all matters relating to the Land, including without limitation:
- (a) the form, nature and condition of the Houseblock Works Area and its surroundings, including the ground and sub-soil (for the avoidance of doubt, including the incidence of any contaminated land or toxic or hazardous waste);
 - (b) the extent of the work and materials necessary for constructing, completing and maintaining the Houseblock Works;
 - (c) the means of communication with and access to the Houseblock Works Area; and
 - (d) the provision and location of utilities.
- 10A.2 The Contractor is responsible for obtaining all surveys and information necessary for carrying out its obligations in relation to the Houseblock Works under the Contract. The Contractor shall not rely on any information provided by the Authority with regard to these matters.
- 10A.3 The Authority shall not be liable for any costs arising from the Contractor's failure to perform its obligations under this Clause 10A (***Provision and Interpretation of Information - Houseblock Works***) or from any lack of knowledge which the Contractor is deemed to have under **Clause 10A.1 (*Provision and Interpretation of Information - Houseblock Works*)**.

PART II - PROVISION

11. THE LAND

- 11.1 The Land upon which the Contractor shall provide the Prison shall be all that piece of land edged in red upon the plan attached to the Lease.
- 11.2 The Lease for the demise of the Land to the Contractor and the Operating Sub-contractor is for a term of twenty eight (28) years. The Lease shall be completed on the day on which the Contractor enters into the Contract and the Contractor hereby agrees that it will enter into and procure that the Operating Sub-contractor enters into the Lease.
- 11.3 It is hereby acknowledged that in accordance with the terms of the Lease any and all interests in the Land and in the Prison shall vest in the Landlord thereunder upon the termination of the leasehold interest of the Contractor and/or the Operating Sub-contractor whether through forfeiture, surrender, effluxion of time or some other cause and the Contractor agrees that it will comply with all the provisions of the Lease and will procure that the Operating Sub-contractor will comply with all the provisions of the Lease.
- 11.4 The land made available to the Contractor for the purpose of providing the Prison under the Contract shall not be used for any purpose other than the purposes of the Contract save with the prior written approval of the Authority.
- 11.5 The Contractor shall not, without prior written approval from the Authority (such approval not (except in the case of sub-Paragraph (iii)

below) to be unreasonably withheld or delayed), except in the performance of the obligations of the Contract:

- (i) execute any structural or other material work to the Prison;
- (ii) carry out any business or trading activity within the confines of the Prison except activities in the ordinary course of delivering custodial services and/or therapy services associated with a prison which are permitted by Legislation nor display any advertisement, sign or notice of any description outside the Prison, unless such sign or notice is required to be displayed by Legislation;
- (iii) permit the Prison to be used for any purpose other than the performance of the Contract.

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

11.7 The New Lease shall contain all those covenants, conditions and provisions as are set out in the Lease except that the term of years granted by the New Lease shall be equal to the unexpired residue at the date the New Lease is granted of the term of years granted by the Lease that was completed on the day the Contract was executed.

11.8 It shall be the responsibility of the Contractor at its own expense to obtain all easements, rights, licences and privileges that the Contractor and the Operating Sub-contractor require to enable them to carry out

their obligations under the Contract where such easements, rights, licences and privileges are not specified or referred to in the Lease and are under, over and upon the property and land that does not form part of the Land. The Contractor shall inform the Authority in writing of any such easements, rights, licences and privileges which have been obtained or are being sought by the Contractor and/or the Operating Sub-contractor and where requested in writing by the Authority the Contractor shall (and shall procure that the Operating Sub-contractor shall) at its (or their) own expense take all appropriate and necessary steps to ensure that the freehold owner of the property and land over, under and upon which easements, rights, licences and privileges have been or are to be granted also grants such easements, rights, licences and privileges to the Authority in fee simple as owner of the freehold interest in the Land for the benefit of the Land and each and every part thereof and the Contractor shall (and shall procure that the Operating Sub-contractor shall) indemnify the Authority against all liabilities and obligations that the Authority enters into with such freehold owner in respect of the easements, rights, licences and privileges that are granted to the Authority pursuant to this Clause 11 (***The Land***) for so long as the Lease subsists. For the avoidance of doubt, the maximum amount payable under this indemnity shall be limited as specified in Clause 4.4 (***Indemnities***).

12. PLANNING APPROVAL

- 12.1 The Contractor will note the decision of East Staffordshire District Council dated 20 July 1990 whereby the Authority was granted outline clearance under the Department of the Environment Circular 18/84 to proceed with the development of a prison in accordance with its notice of proposed development (the ***Outline Clearance***). The Contractor will further note the decision of East Staffordshire Borough Council (the ***Council***) dated 11 June 1999 whereby Premier Prison Services Ltd was granted permission under Section 299 of the Town and Country Planning Act 1990 to proceed with the development of a prison in accordance with its planning application (the ***Permission***) and, without prejudice to the generality of the foregoing, in the course of providing the Prison the Contractor shall be responsible for making application for all necessary planning clearances and permissions for the development of the Prison not covered by the Outline Clearance and the Permission. The Contractor shall bear any costs consequent upon and caused by such application including any costs in respect of any delay to the Works caused by such application.

- 12.2 During the subsistence of the Contract the Contractor shall comply with any conditions and recommendations contained in the Permission and any other clearance or planning permission implemented by the Contractor to the extent necessary for the purposes of achieving Planning Approval and as the conditions and recommendations may be subsequently amended or superseded and the Contractor shall observe and perform all of the agreements and obligations on the part of the Authority contained in an Agreement made under Section 299A of the Town and Country Planning Act 1990 dated 11 June 1999 and made between the Council and the Authority (the **Planning Agreement**).
- 12.3 If it is necessary to obtain planning permission in respect of Notices of Change (Clause 9) the Contractor shall use its reasonable endeavours to obtain such planning permission. The Contractor's obligation to comply with the Notice of Change shall be conditional upon the grant of such planning permission at first instance free from conditions whether in the Permission or an associated legal agreement which prevent or unduly interfere with compliance with the Notice of Change. The Contractor shall keep the Authority fully informed of the progress of any such application for planning permission.
- 12.4 Pursuant to Paragraph 9 of the schedule to the Planning Agreement, the Authority shall, when requested by the Contractor so to do and in any event within a period of one (1) month of the Contractor signing an Agreement made under Section 278 of the Highways Act 1980 (the **Section 278 Agreement**) pursuant to the Planning Agreement, transfer to the Staffordshire County Council or other appropriate Highway Authority the land shown coloured yellow on plans numbered 3H0716/L1 and 3H0716/L2 (the **Highway Land**) as annexed to the form of Section 278 Agreement forming part of the Planning Agreement for an estate in fee simple in possession.
- 12.5 The transfer of the Highway Land by the Authority to the Staffordshire County Council shall be made in accordance with Clauses 3.1 to 3.4 of the Section 278 Agreement.
- 12.6 The Contractor shall during the subsistence of the Contract observe and perform all of the agreements and obligations on the part of Kvaerner Construction Limited contained in an Agreement dated 11 June 1999 and made between the Council and Kvaerner Construction Limited under Section 106 of the Town and Country Planning Act 1990 (the **Section 106 Agreement**).

- 12.7 The Contractor shall either procure the completion of the contract for the acquisition of or take from Kvaerner Construction Limited a transfer of the land (being the Land as referred to and defined in the Section 106 Agreement) pursuant to the Section 106 Agreement on or before 31 December 2000 unless the pumping station referred to in paragraph 3(i) of the schedule to the Planning Agreement has been adopted by the Environment Agency (or any successor to the relevant functions of that Agency).
- 12.8 Nothing in the Contract nor in any consent granted by the Authority under the Contract shall be deemed to imply or warrant that the Prison or the Land may lawfully be used under the Planning Acts (as defined in the Lease) for the purpose authorised in the Contract or the Lease (or any purpose subsequently authorised).
- 12.9 If the Highway Authority or relevant Planning Authority requires the Contractor or the owner of the Land to enter into any agreement under either Section 278 of the Highways Act 1980 or Section 106 of the Town and Country Planning Act 1990 in connection with the Project and the Authority is requested either to join in such agreement or enter into a separate agreement under either Section 278 of the Highways Act 1980 or Section 299A of the Town and Country Planning Act 1990 then:
- (i) insofar as it is necessary for the Authority to enter into an agreement for the purposes of the Project and subject to the approval of H.M. Treasury being given under the provisions of Section 327 of the Highways Act 1980, the Authority shall at the cost of the Contractor also enter into the agreement if reasonably required to do so by the Contractor and it is necessary for it to do so to enable the Contractor to fulfil its obligations pursuant to that agreement; and
 - (ii) the Contractor shall indemnify the Authority in respect of all the Authority's liability and any reasonable expenses incurred by the Authority in connection with the entering into and performance of the relevant agreement during the subsistence of the Contract, or if shorter, whilst the relevant agreement is capable of being enforced against the Authority.

For the avoidance of doubt the Contractor shall not be obliged to indemnify the Authority for any liability incurred by the Authority for any agreement entered into by the Authority with the Highway Authority or relevant Planning Authority otherwise as set out above and is subject to the Authority not acting unreasonably or negligently and the indemnity referred to in this Clause 12.9

(**Planning Approval**) shall be limited as specified in Clause 4.4 **PROVIDED ALWAYS** that this Clause 12.9 (**Planning Approval**) shall not apply to the Planning Agreement or the Section 106 Agreement.

12A Planning Approval - Increased Capacity

- 12A.1 The Contractor will note the decision of East Staffordshire Council (**the Council**) dated 19 December 2007 whereby the Contractor was granted full planning permission in respect of the Houseblock Works under application number PA/07470/059/RS/PO (the "Increased Capacity Permission").
- 12A.2 To the extent necessary for the purposes of Planning Approval, the Contractor shall comply with the conditions and recommendations contained in the Increased Capacity Permission and, without prejudice to the generality of the foregoing, in the course of providing the Increased Capacity the Contractor shall be responsible for applying for all planning permissions and/or clearances for the reserved matters not covered by Clause 12A.1 (**Planning Approval - Increased Capacity**).
- 12A.3 Subject to Clauses 12B (**Planning Approval Challenge**) and 24A (**Extension of Time - Increased Capacity**), the Contractor shall use its reasonable endeavours to obtain all necessary planning permissions and/or clearances for the development of the Houseblock (including, in particular, permission to accommodate Local Prisoners) upon the Land and shall bear its own costs consequent upon and caused by such application, including its costs in respect of any delay to the Houseblock Works caused by such application.
- 12A.4 Nothing in the Contract nor in any consent granted by the Authority under the Contract shall be deemed to imply or warrant that the Houseblock may lawfully be used under the Planning Acts (as defined in the Lease) for the purpose authorised in the Contract or the Lease (or any purpose subsequently authorised).
- 12A.5 If the Highway Authority or relevant Planning Authority requires the Contractor or the owner of the Land to enter into any agreement under either section 278 of the Highways Act 1980 or section 106 of the Town and Country Planning Act 1990 in connection with the Houseblock Works and the Authority is requested to either join in such agreement or enter into a separate agreement under either section 278 of the Highways Act 1980 or section 299A of the Town and Country Planning Act 1990 then:
- (i) insofar as it is necessary for the Authority to enter into an agreement with either the Highway Authority under section 278 of

the Highways Act 1980 or section 299A of the Town and Country Planning Act 1990 for the purposes of the Houseblock Works and subject to the approval of H.M. Treasury being given under the provisions of section 327 of the Highways Act 1980, the Authority shall at the cost of the Contractor also enter into the agreement if reasonably required to do so by the Contractor and it is necessary for it to do so to enable the Contractor to fulfil its obligations pursuant to that agreement; and

- (ii) subject to Clause 12B.6 (***Planning Approval Challenge***), 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.

For the avoidance of doubt the Contractor shall not be obliged to indemnify the Authority for any liability incurred by the Authority for any agreement entered into by the Authority with the Highway Authority or relevant Planning Authority otherwise as set out above and the indemnity referred to in this Clause 12A.5 (***Planning Approval - Increased Capacity***) shall be limited as specified in Clause 4 (***Indemnities***).

12B **Planning Approval Challenge**

If there is a Planning Approval Challenge, the following provisions of this Clause 12B (***Planning Approval Challenge***) shall apply:

- 12B.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;
- 12B.2 the Authority shall notify the Contractor whether or not to suspend the performance of the Houseblock Works to which the Planning Approval Challenge relates within five (5) Business Days of receipt of, or the issuing of, the notice referred to in Clause 12B.1 (***Planning Approval Challenge***), 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 to which the Planning Approval Challenge relates;
- 12B.3 where the Contractor suspends the performance of the Houseblock Works pursuant to an instruction or a deemed instruction pursuant to Clause 12B.2 (***Planning Approval Challenge***), the Contractor shall not

be obliged to recommence the performance of such Houseblock Works until the expiry of ten (10) Business Days after a written instruction from the Authority to recommence the performance of such Houseblock Works;

- 12B.4 the Contractor shall take all reasonable steps to mitigate its losses and costs and any time lost in connection with this Clause 12B (**Planning Approval Challenge**);
- 12B.5 within five (5) Business Days of a notification pursuant to Clause 12B.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 12B.5 (**Planning Approval Challenge**)) require from the Contractor;
- 12B.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;
- 12B.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 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 9 (**Change to Services Required**) which such Notice of Change shall not be capable of being withdrawn requiring the removal from the Project of the Houseblock (including the associated Houseblock Works 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 for the purposes of Clause 49 (**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 for Default***).

13. PROVISION OF THE PRISON

13.1 The Contractor shall design and construct the Existing Prison subject to and in accordance with the terms of Part 1 of Schedule A (***Design and Construction Specification***) (as varied from time to time (pursuant to Clause 9)) and in accordance with the applicable Legislation.

13.2 The Authority hereby appoints the Contractor as the only client for the purposes of the Construction (Design & Management) Regulations 1994 (the ***Regulations***) and for the design and construction of the Existing Prison (including any changes and/or additions to such design and construction). The Contractor agrees to accept this appointment and undertakes to deliver a duly completed declaration in the form contained in Schedule L (***Letter to Health and Safety Executive***) to The Health and Safety Executive within seven (7) Business Days from the date hereof. Failure by the Contractor to deliver such a declaration to The Health and Safety Executive shall constitute a material failure for the purposes of Clause 44(a)(i) (***Default by Contractor***). The Contractor warrants to the Authority that it is competent to perform each and every duty imposed by the Regulations on the client (as such term is defined in the Regulations).

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

13A PROVISION OF INCREASED CAPACITY

13A.1 The Contractor shall design and construct the Houseblock subject to and in accordance with the terms of Part 2 of Schedule A (***Design and Construction Specification***) and in accordance with the applicable Legislation.

13A.2 The Authority hereby appoints the Contractor as the only client for the purposes of the Construction (Design & Management) Regulations 2007

(the **Regulations**) and for the design and construction of the Houseblock and acknowledges that the Operating Sub-contractor shall act as the Contractor's agent for the purposes of the Regulations. The Contractor agrees to accept this appointment and undertakes to deliver a duly completed declaration in the form contained in Part 2 of Schedule L (**Letter to Health and Safety Executive**) to The Health and Safety Executive within seven (7) Business Days from the date hereof in respect of the Operating Sub-contractor. Failure by the Contractor to deliver such a declaration to The Health and Safety Executive shall constitute a material failure and shall constitute a Houseblock Event of Default. The Contractor warrants to the Authority that it and the Operating Sub-contractor are competent to perform each and every duty imposed by the Regulations on the client (as such term is defined in the Regulations).

- 13A.3 The Contractor shall (at its own cost) provide site accommodation and all reasonable attendant services on the Site reasonably necessary for the Independent Engineer and its team in the carrying out of its obligations for the duration of the Contract until such time as the Engineer's Houseblock Declaration has been given in accordance with Clause 26A (**Engineer's Houseblock Declaration**), including the provision of a dedicated combined telephone/fax machine for the sole use of the Independent Engineer (in respect of which all bills, costs and expenses of whatever nature shall be borne by the Contractor or as otherwise agreed with the Independent Engineer).

14. SUPPLY OF EQUIPMENT

- 14.1 Prior to the Actual Main Opening Date and the Actual TC Opening Date, the Contractor shall supply and install at the Prison all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the Prison on the Actual Main Opening Date or the Actual TC Opening Date (as the case may be) in the lists, FF&E Schedule B (**Equipment**) room and/or room data sheets agreed between the Contractor and the Authority and as referred to in Part 1 of Schedule B (**Equipment**). Subject to Clauses 14.2 (**Supply of Equipment**) and 14.3 (**Supply of Equipment**), all equipment referred to in Part 1 of Schedule B (**Equipment**) shall be the property of the Contractor and 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 by the Contractor at its own cost with like equipment which is the property of the Contractor (subject to Clause 14.2 (**Supply of Equipment**)) and in good and serviceable condition) in order to allow the Contractor to comply with the standards

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

- 14.1A Prior to the Actual Houseblock Opening Date, the Contractor shall supply and install at the Houseblock all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the Houseblock on the Contractual Houseblock Opening Date in the lists, FF&E, room and/or room data sheets agreed between the Contractor and the Authority and as referred to in Part 4 of Schedule B (***Equipment***). Subject to Clauses 14.2 (***Supply of Equipment***) and 14.3 (***Supply of Equipment***), all equipment referred to in Part 4 of Schedule B (***Equipment***) shall be the property of the Contractor 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 Houseblock or on the Site (or, if it is not capable of being kept in good and serviceable condition, shall be replaced as required by the Contractor at its own cost with like equipment which is the property of the Contractor (subject to Clause 14.2 (***Supply of Equipment***)) and in good and serviceable condition) in order to allow the Contractor to comply with the standards set out in Schedule C (***Maintenance Management***), and shall not be removed by the Contractor from the Prison except with the written consent of the Authority.
- 14.2 Subject to Clause 14.3 (***Supply of Equipment***) and except as provided in Clause 59A (***Procurement of IP and IT***) at the end of the Contract Term, any property in such fixtures, fittings, furnishings, chattels, and other equipment referred to in Clause 14.1 and 14.1A (***Supply of Equipment***) (including any replacement property or equipment) or which is otherwise used or present in the Prison or on the Site (other than personal possessions of Staff or Prisoners) shall pass to the Authority by delivery and the Contractor shall use all reasonable endeavours to procure that the benefit of all guarantees, warranties, documentation and service agreements then in force relating to the said fixtures, furniture, furnishings, chattels, and other equipment, and relating to any part of the Prison which is referred to in Schedule A (***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.
- 14.3 Notwithstanding Clause 14.1 (***Supply of Equipment***), the Contractor may lease any equipment referred to in Part 3 of Schedule B (***Equipment***), provided that the Contractor shall ensure that any lease entered into in respect of any such equipment shall be on such terms as

to allow the Authority to use such equipment as if it were the Contractor on any occasion where it exercises its powers under Section 88 of the Criminal Justice Act 1991 or the Contract terminates before the Expiry Date. If the Contractor wishes to lease any equipment in Part 1 of Schedule B (**Equipment**) which is not referred to in Part 3 of Schedule B (**Equipment**), it must obtain the Authority's prior written consent.

- 14.4 The Contractor shall at the reasonable request of the Authority from time to time provide the Authority with details of all equipment referred to in Part 3 of Schedule B (**Equipment**) that is for the time being leased, together with copies of the relevant leases and other relevant documentation to enable the Authority to satisfy itself that the provisions of this Clause 14 (**Supply of Equipment**) are being complied with.
- 14.5 The Contractor agrees that it shall at all times comply with its obligations under the Fixed Charge.

15. ISSUE OF INFORMATION TECHNOLOGY EQUIPMENT

- 15.1 The Authority shall supply, install, configure, test and commission (i) the equipment (the **LIDS System**) listed in Part 2 of Schedule B (**Equipment**) to the Prison on or prior to the date falling no later than ten (10) weeks prior to the Estimated Main Opening Date; and (ii) such equipment as may from time to time replace, upgrade or modify the LIDS System (together with the LIDS System, each a **Database System**); notwithstanding any other provision of the Contract, all such equipment shall remain the property of the Authority. Such equipment shall be used only in respect of the Services, and for no other purpose whatsoever.
- 15.1A The Authority shall supply, install, configure, test and commission (i) the equipment (the **LIDS System** or any replacement thereof) listed in Part 2 of Schedule B (**Equipment**) at the Houseblock on or prior to the date falling no later than ten (10) weeks prior to the Contractual Houseblock Opening Date; and (ii) such equipment as may from time to time replace, upgrade or modify the LIDS System (together with the LIDS System, each a **Database System**); notwithstanding any other provision of the Contract, all such equipment shall remain the property of the Authority. Such equipment shall be used only in respect of the Services, and for no other purpose whatsoever.
- 15.2 The Contractor shall:
- (a) at its own expense provide, install and maintain all necessary ducts, wireways and Category 5 network cabling and such cabling

and ancillary fixtures and fittings and power supplies as the Authority may require for the purpose of supplying, installing, maintaining, configuring, testing, commissioning and operating the Database System; and

- (b) at the Authority's request, make available appropriately qualified personnel to consult with the Authority or its authorised service engineers regarding the installation, configuring, testing, commissioning, maintenance, operation, upgrading, modification or replacement of any Database System; and
- (c) ensure that the Authority has the opportunity, for a reasonable time prior to any Database System going on line, to test such Database System's ability to send and receive data via the Government Data Network Access Point; and
- (d) procure and provide free access to the Authority or its authorised service engineers at any reasonable time on reasonable notice for the purpose of (i) routine maintenance and fault resolution of the Database System and the Government Data Network Access Point and (ii) upgrading or replacing any Database System and/or the Government Data Network Access Point.

15.3 The Authority will supply and install the equipment for the Government Data Network Access Point in the Prison following receipt of a written request therefore 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 sixteen (16) weeks in advance of the proposed date for its installation;
- (b) the installation date for the Government Data Network Access Point shall be at least twelve (12) weeks prior to the Estimated Main Opening Date; and
- (c) in respect of the Houseblock, the installation date for the Government Data Network Access Point shall be at least twelve (12) weeks prior to the Contractual Houseblock Opening Date.

15.4 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 it becoming aware of any perceived faults in

the operation of any Database System or 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.

- 15.5 Without prejudice to any of its other rights hereunder, if the Authority decides to replace the LIDS System then installed it shall give written notice thereof to the Contractor which notice shall be deemed to be a Notice of Change for the purposes of Clause 9 (***Change to the Services Required***).
- 15.6 The information to be provided to the Authority by the Contractor in accordance with this Clause 15 (***Issue of Information Technology Equipment***) and Paragraphs 4.4 and 4.8 of Part 1B of Schedule D (***Operational Requirements***) shall be transmitted at all times via the Database System and the Government Data Network Access Point.
- 15.7 The Authority shall provide, at its own expense, training on the LIDS System for the following numbers of the Contractor's staff in the following circumstances:
- (a) twenty (20) staff in the operation of the LIDS System prior to the system going live;
 - (b) twelve (12) staff in system administration duties for the LIDS System prior to the system going live; and
 - (c) twelve (12) staff in respect of and at the time of an administration upgrade or change to the LIDS System, and twenty (20) staff in respect of and at the time of an operational upgrade or change to the LIDS system.

It shall be the responsibility of the Contractor to arrange for the training, at its own expense, of any additional Staff not referred to in (a), (b) and (c) of this Clause 15.7(***Issue of Information Technology Equipment***).

16. STATUTORY OBLIGATIONS, NOTICES, FEES AND CHARGES

- 16.1 The Contractor shall comply with and give all notices required by or under any Legislation, or required by any Statutory Undertaker with rights over the Site, or with whose systems the Prison is or will be connected, which may be required in relation to the Works and/or the

Houseblock Works, the operation of the Prison or otherwise affecting the Contractor (the **Statutory Obligations**).

- 16.2 Where the terms of the Contract conflict with the Statutory Obligations, the Contractor shall as soon as reasonably possible inform the Authority of this fact, and where in the reasonable opinion of the Authority such conflict necessitates a variation of the terms of the Contract, the Contractor shall first use all reasonable endeavours to obtain the approval of the Authority to effect the variation in accordance with Clause 62 (**Authority to Commit and Variation**), 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 hereof.
- 16.3 Without prejudice to the provisions of Clause 39 (**Variation of Price**) but subject to Clause 16.4 (**Statutory Obligations, Notices, Fees and Charges**), the Contractor shall pay any fees or charges required to be paid under any Legislation and shall pay any licence fees or charges pertaining to the provision of utilities in respect of the Prison or the Houseblock Works.
- 16.4 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 the Authority hereby acknowledges its liability for such rates or sum.

PART III - MAINTENANCE

17. MAINTENANCE OF PRISON

- 17.1 Subject to Clause 18.1 (**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 and software specified in Schedule B (**Equipment**) in accordance with the terms of Schedule C (**Maintenance Management**).
- 17.2 In addition to the obligations set out in Schedule C (**Maintenance Management**), the Contractor shall ensure that the Prison is kept in good structural and decorative order during the Contract Term, so as to allow the Contractor to comply with the standards set out in Schedules C and D and shall ensure that all plant, fixtures, fittings and other equipment and software are kept in good and serviceable condition so as to allow the Contractor to comply with the standards set out in Schedule C (**Maintenance Management**) or, if not capable of being kept in good

and serviceable condition, shall at its own cost be replaced as required with like plant, fixtures, fittings, equipment or software which is in good and serviceable condition.

17.3 For the avoidance of doubt, and in addition to the requirements specifically set out in Schedule C (***Maintenance Management***), the Contractor is obliged to maintain, replace and renew the Assets, subject to reasonable wear and tear for a prison, (and whether specified in Schedules A or B or otherwise) and will 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.

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

18. MAINTENANCE OF AUTHORITY'S EQUIPMENT

18.1 Except where the Authority indicates in writing otherwise, the Contractor shall maintain all fixtures, fittings, furniture, other equipment or software supplied by the Authority for the purposes of the Contract to the standard such items possessed when they passed into the responsibility of the Contractor, subject to reasonable wear and tear for a prison.

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

19. DILAPIDATION SURVEY

19.1 The Authority may conduct a dilapidation survey for the purpose of determining the physical condition and state of maintenance of the Prison five (5) years after the date hereof and thereafter every two (2) years. The dates of every such survey shall be notified to the Contractor not less than seven (7) days in advance of the survey taking place. The costs of such surveys shall be borne by the Authority.

19.1A The surveys referred to in Clause 19.1 (***Dilapidation Survey***) above shall, from the first survey to be undertaken following the Actual Increased Capacity Date, include the Houseblock.

19.2 Where, following a survey referred to in Clause 19.1 (***Dilapidation Survey***) or Clause 52.1 (***Termination Survey***), the condition of the

Prison as shown by such survey is found in the reasonable opinion of the Authority to have fallen below the standards of repair and maintenance set out in Clause 17 (***Maintenance of Prison***) and Schedule C (***Maintenance Management***), the Authority shall notify the Contractor of the work it reasonably believes is required to be done to bring the Prison to the requisite contractual standard. Within seven (7) days of such notification (or such longer period as is reasonable in the circumstances) the Contractor shall commence such works, or procure such works to be commenced, at the Contractor's cost. The works shall be completed within such period as is reasonably set by the Authority in the notice to the Contractor (or, in the case of a final dilapidation survey carried out in accordance with Clause 52.1 (***Termination Survey***), on or before the Termination Date or Expiry Date, as applicable).

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

PART IV - PRE-OPERATION PERIOD

20. PREPARATION FOR OPERATION OF THE PRISON

- 20.1 The Contractor shall provide to the Authority the following matters in relation to the Contractor's proposed performance (which matters shall where the Authority considers appropriate provide for adequate testing procedures) (the ***Operational Proposals***):
- (a) each matter listed in the table in Paragraph 10 of Part 1B of Schedule D (***Operational Requirements***), by no later than the date specified in that table in relation to that matter;
 - (b) at least three months prior to the Estimated Main Opening Date in relation both to Moreton (Main) and the TC and to the extent not previously provided to the Authority under Clause 20.1(a) (***Preparation for Operation of the Prison***):

- (i) the operating procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the Moreton (Main) staff handbook;
 - (iv) the public relations procedures; and
 - (v) all procedures, plans, programmes and other information relating to the provision of Therapy save for those to be provided pursuant to Clause 20.1(c) (***Preparation for Operation of the Prison***);
- (c) each matter listed in the table in Paragraph 19 of Part 1C of Schedule D (***Operational Requirements***), by no later than the date specified in that table in relation to that matter; and
- (d) a reasonable period in advance of the Estimated Main Opening Date, such other information as the Authority reasonably requests including, but not limited to, all the documents listed in Schedule D (***Operational Requirements***) as requiring submission before the Actual Main Full Operation Date or the Actual TC Full Operation Date.
- 20.2 The Contractor shall make any amendments as the Authority may reasonably require for the purpose of ensuring that the Operational Proposals are in accordance with the terms of the Contract. The Authority shall be entitled to refuse to approve all or any part of the Operational Proposals until the Contractor has made such amendments.
- 20.3 When the Contractor considers that it has prepared the Operational Proposals it shall give written notice to the Authority. Within thirty (30) days (in respect of the Operational Proposals provided under Clause 20.1(b) (***Preparation for Operation of the Prison***) and 20.1 (d) (***Preparation for Operation of the Prison***)) and within sixty (60) days (in respect of the Operational Proposals provided under Clause 20.1(a) (***Preparation for Operation of the Prison***) and 20.1(c) (***Preparation for Operation of the Prison***)), in each case of receipt of the written notice, the Authority shall either approve the Operational Proposals or shall provide the Contractor with a written record of the reasons why it is not satisfied with the Operational Proposals.
- 20.4 If the Contractor is refused approval and a written record of the reasons has been provided by the Authority in accordance with Clause 20.3

(***Preparation for Operation of the Prison***), the Contractor shall amend the Operational Proposals in accordance with the Authority's reasons as set out in the written record and shall then comply with the requirements of Clause 20.3 (***Preparation for Operation of the Prison***) when seeking any new approval of the Operational Proposals save that the notice period shall be fourteen (14) days instead of the thirty (30) days and sixty (60) days respectively specified in Clause 20.3 (***Preparation for Operation of the Prison***) .

- 20.5 When the Authority approves the Operational Proposals, the Authority shall promptly issue to the Contractor a certificate certifying that the Operational Proposals are approved, subject to satisfactory completion of the tests in accordance with Clause 20.6(***Preparation for Operation of the Prison***) .
- 20.6 Once the Authority has issued a certificate under Clause 20.5 (***Preparation for Operation of the Prison***), the Operational Proposals shall be tested in accordance with the proposals for testing in the Operational Proposals. The Contractor shall give the Authority fourteen (14) days' notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within seven days of such tests, the Authority shall either finally approve the Operational Proposals (by giving written notice to that effect) or shall provide the Contractor with a written record of the reasons why the Operational Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re-run the tests in accordance with the above provisions except that the notice period to the Authority shall be two days instead of the fourteen (14) days specified above.
- 20.7 Once approved by the Authority under Clauses 20.3 (***Preparation for Operation of the Prison***) and 20.6 (***Preparation for Operation of the Prison***), the Operational Proposals shall remain under review in accordance with Clause 35.3 (***Monitoring and Inspection***).
- 20.8 The Contractor will submit the following information to the Authority:
- (a) at least three months prior to the Estimated Main Opening Date and in respect of the Custodial Service only, the names of, and such other information as the Authority may require about, the proposed Director, the members of the senior management of the Prison and all other persons requiring certification or approval, as specified in Clauses 32 (***Prisoner Custody Officers***) and 33 (***The***

Staff) save for those referred to in Clause 20.8(c) (**Preparation for Operation of the Prison**) ;

- (b) at least one (1) month prior to the Estimated Main Opening Date, the names of, and such other information as the Authority may require about, the proposed Director of Therapy and the senior therapists, unit directors and other senior providers of the Therapy Service; and
- (c) no later than one (1) month after the Estimated Main Opening Date, the names of, and such other information as the Authority may reasonably require about, all persons requiring certification or approval, as specified in Clauses 32 (**Prisoner Custody Officers**) and 33 (**The Staff**) who do not fall within Clause 20.8(b) (**Preparation for Operation of the Prison**) and whose employment will relate exclusively to the provision of the Therapy Service.

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

20.9 The Authority shall provide to the Contractor a list of Prisoners who it considers might be suitable for admission to the TC (but who have not yet been assessed against the Referral Criteria). Such list shall be provided not later than three (3) months before the Estimated Main Opening Date and if practicable shall be updated monthly thereafter until the Estimated TC Opening Date. The Authority may satisfy its obligations under this Clause 20.9 (**Preparation for Operation of the Prison**) by providing to the Contractor a copy of the list of Prisoners who have applied to HMP Grendon for Therapy treatment but who have not yet been assessed as regards their suitability for Therapy treatment at HMP Grendon.

20A PREPARATION FOR OPERATION OF THE INCREASED CAPACITY

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

- (a) each matter listed in the table in Paragraph 11 of Part 1B of Schedule D (**Operational Requirements**), by no later than the date specified in that table in relation to that matter;

- (b) at least three (3) months prior to the Contractual Houseblock Opening Date :
 - (i) the operating procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the Houseblock staff handbook; and
 - (iv) the public relations procedures; and
- (c) a reasonable period in advance of the Contractual Houseblock Opening Date, such other information as the Authority reasonably requests in relation to the Custodial Service.

20A.2 The Contractor shall make any amendments as the Authority may reasonably require for the purpose of ensuring that the Increased Capacity Operational Proposals are in accordance with the terms of the Contract. The Authority shall be entitled to refuse to approve all or any part of the Increased Capacity Operational Proposals until the Contractor has made such amendments.

20A.3 When the Contractor considers that it has prepared the Increased Capacity Operational Proposals it shall give written notice to the Authority. Within thirty (30) days (in respect of the Increased Capacity Operational Proposals provided under Clause 20A.1(b) (***Preparation for Operation of the Increased Capacity***) and 20A.1(c) (***Preparation for Operation of the Increased Capacity***) and within sixty (60) days (in respect of the Increased Capacity Operational Proposals provided under Clause 20A.1(a) (***Preparation for Operation of the Increased Capacity***), in each case of receipt of the written notice, the Authority shall either approve the Increased Capacity Operational Proposals or shall provide the Contractor with a written record of the reasons why it is not satisfied with the Increased Capacity Operational Proposals.

20A.4 If the Contractor is refused approval and a written record of the reasons has been provided by the Authority in accordance with Clause 20A.3 (***Preparation for Operation of the Increased Capacity***), the Contractor shall amend the Increased Capacity Operational Proposals in accordance with the Authority's reasons as set out in the written record and shall then comply with the requirements of Clause 20A.3 (***Preparation for Operation of the Increased Capacity***) when seeking any new approval of the In Increased Capacity Operational Proposals save that the notice period shall be fourteen (14) days instead of the thirty (30)

days and sixty (60) days respectively specified in Clause 20A.3 (***Preparation for Operation of the Increased Capacity***).

20A.5 When the Authority approves the Increased Capacity Operational Proposals, the Authority shall promptly issue to the Contractor a certificate certifying that the Increased Capacity Operational Proposals are approved, subject to satisfactory completion of the tests in accordance with Clause 20A.6 (***Preparation for Operation of the Increased Capacity***).

20A.6 Once the Authority has issued a certificate under Clause 20A.5 (***Preparation for Operation of the Increased Capacity***), the Increased Capacity Operational Proposals shall be tested in accordance with the proposals for testing in the Increased Capacity Operational Proposals. The Contractor shall give the Authority fourteen (14) days' notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within seven (7) days of such tests, the Authority shall either finally approve the Increased Capacity Operational Proposals (by giving written notice to that effect) or shall provide the Contractor with a written record of the reasons why the Operational Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re-run the tests in accordance with the above provisions except that the notice period to the Authority shall be two days instead of the fourteen (14) days specified above.

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

21. **NOT USED**

22. **PHASE-IN PERIOD**

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

22.1A On and from each date listed in the first column of the Increased Capacity Phase-in Period Timetable the Contractor will provide to the Authority at

least the number of Available Prisoner Places shown in the **corresponding** row of the second column of that timetable (each Available Prisoner Place provided on and from any such date in excess of the number of Available Prisoner Places shown in that row of the third column being an **Increased Capacity Prisoner Place**).

- 22.2 On and from each date listed in the first column of the TC Phase-in Timetable the Contractor will provide to the Authority at least the number of Available TC Places shown in the **corresponding** row of the second column of that timetable (each Available TC Place provided on and from any such date in excess of such number being a **Further TC Place**).
- 22.2A On and from the Contractual Houseblock Opening Date, the Contractor will 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 in addition to the existing six hundred (600) Available Prisoner Places.
- 22.3 Subject to Clause 38.2 (**Price**), the amount payable by the Authority to the Contractor in respect of any particular day during the Main Phase-in Period shall be calculated by reference to the aggregate of:
- (a) the number of Available Prisoner Places shown in the row of the third column of the Main Phase-in Timetable which corresponds with the **relevant** date; and
 - (b) the number of Further Prisoner Places occupied on such day.
- 22.4 Subject to Clause 38.2 (**Price**), the amount payable by the Authority to the Contractor in respect of any particular day during the TC Phase-in Period shall be calculated by reference to the aggregate of:
- (a) the number of Available Prisoner Places shown in the row of the second column of the TC Phase-in Timetable which corresponds with the **relevant** date; and
 - (b) the number of Further TC Places occupied on such day.
- 22.5 Subject to Clause 38.2 (**Price**), the amount payable by the Authority to the Contractor in respect of any particular day during the Increased Capacity Phase-in Period shall be calculated by reference to the aggregate of:

- (a) the number of Available Prisoner Places shown in the row of the second column of the Increased Capacity Phase-in Period Timetable which corresponds with the **relevant** date; and
- (b) the number of Increased Capacity Prisoner Places occupied on such day.

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

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

23. FULL MAIN OPERATION DATE / FULL TC OPERATION DATE

23.1 At all times on and from the Full Main Operation Date up to (but not including) the Contractual Houseblock Opening Date, the Contractor shall provide to the Authority six hundred (600) Available Prisoner Places and at all times on and from the Full TC Operation Date the Contractor shall provide to the Authority two hundred (200) Available TC Places.

23.2 At no time shall the Authority be liable to make any payment:

- (a) in respect of more than six hundred (600) Available Prisoner Places, except to the extent of its obligations under Clause 40 (**Additional Prisoner Places**) and/or Clause 40A (**Additional Local Prisoner Places**); or
- (b) in respect of more than two hundred (200) Available TC Places.

23.3 Subject to 23.2(b) (**Full Main Operation Date/Full TC Operation Date**) and Clause 22.4 (**Phase-in Period**), the Authority shall be liable to make payment to the Contractor in respect of:

- (a) each Available TC Place recorded in the TC Daily Report, up to a maximum of one hundred and seventy four (174) Available TC Places;

- (b) on any day when the Authority is liable to make payment in respect of one hundred and seventy four (174) Available TC Places under Clause 23.3(a), each Available TC Place recorded in the TC Daily Report (other than those referred to in Clause 23.3(a) or (c)) which is occupied by a TC Prisoner, up to a maximum of twenty (20) such Available TC Places; and
- (c) on any day when the Authority is liable to make a payment in respect of 20 Available TC Places under Clause 23.3(b), each Available TC Place recorded in the TC Daily Report (other than those referred to in Clause 23.3(a) or (b)), up to a maximum of six such Available TC Places.]]]

23A CONTRACTUAL INCREASED CAPACITY DATE

At all times on and from the Contractual Increased Capacity Date, the Contractor shall provide to the Authority eight hundred and sixty (860) Available Prisoner Places and two hundred (200) Available TC Places. The Authority shall not be liable to make any payment in respect of more than eight hundred and sixty (860) Available Prisoner Places (except to the extent of its obligations hereunder in respect of any Additional Prisoner Places, Additional Local Prisoner Places and the TC Places).

24. EXTENSION OF TIME

24.1 If and whenever it becomes reasonably apparent to the Contractor that the fulfilment 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 Main Opening Date, the Contractual TC Opening Date, any date in a Phase-in Timetable, the Full Main Operation Date or the Full TC Operation Date, the Contractor shall forthwith give written notice to the Authority (a **Delay Notice**) of the relevant circumstances.

24.2 The Delay Notice shall:

- (a) identify the cause or causes of the delay;
- (b) state whether and to what extent the delay is caused by a Relevant Event;
- (c) provide details of the nature of the Relevant Event and its duration (or the Contractor's reasonable estimate of its likely continued duration);

- (d) identify clearly which of the Contractual Main Opening Date, the Contractual TC Opening Date, the Full Main Operation Date, the Full TC Operation Date, or the date(s) in a Phase-in Timetable are to be affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Relevant Event;
- (e) in the case of a Relevant Event being claimed under Paragraphs (a) or (c) of the definition of Relevant Event, contain the Contractor's estimate of the costs it is likely to incur directly as a result of such Relevant Event; and
- (f) in the case of a Relevant Event being claimed under Paragraph (k) of the definition of Relevant Event, be received by the Authority on or prior to the date falling nine (9) months before the Contractual Main Opening Date.

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

- 24.3 If the Authority determines (acting reasonably) that a Relevant Event is the cause of any delay to the Contractual Main Opening Date, the Contractual TC Opening Date, the Full Main Operation Date, the Full TC Operation Date or any date in a 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 Main Opening Date or Contractual TC Opening Date or the relevant date in a Phase-in Timetable and/or the Full Main Operation Date or the Full TC Operation Date as the Authority then reasonably estimates to be fair to take into account the effect of the Relevant Event (whereupon such other dates shall become the Contractual Main Opening Date, the Contractual TC Opening Date, the Full Main Operation Date or the Full TC Operation Date or the relevant date in a Phase-in Timetable for the purposes of this Contract). In the case of an event within Paragraph (i) of the definition of Relevant Event, the extension shall be consistent with the relevant arbitral award and/or as determined by the Arbitrator (as appropriate) or the relevant adjudication award and/or as determined by the Adjudicator (as appropriate but in either case only where such award or determination is not referred to arbitration).

- 24.4 Where a Relevant Event has caused or will cause a delay and such Relevant Event is one of the events referred to in Paragraph (a) or (c) of the definition of Relevant Event, the Authority shall on written demand supported by particulars of the loss or expenses claimed (within thirty (30) days of such written demand) reimburse to the Contractor any reasonable loss or expenses incurred by the Contractor as a direct result of the delay caused by such Relevant Event.

24A EXTENSION OF TIME - INCREASED CAPACITY

- 24A.1 If and whenever it becomes reasonably apparent to the Contractor that the fulfilment of 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 Houseblock Opening Date, any date in the Increased Capacity Phase-in Period Timetable, or the Contractual Increased Capacity Date, the Contractor shall forthwith give written notice to the Authority (***an Increased Capacity Delay Notice***) of the relevant circumstances.

- 24A.2 The Increased Capacity Delay Notice shall:

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

If the Contractor serves an Increased Capacity Delay Notice while a Houseblock Relevant Event is continuing, the Contractor shall provide the Authority periodically (and at least on a weekly basis) with details of the

Houseblock Relevant Event and the Contractor's reasonable estimate of its impact on the Project or the provision of the Houseblock. The Contractor shall afford the Authority such access to the Site and papers of the Contractor as the Authority may reasonably consider necessary and appropriate for the purposes of establishing the accuracy of any Increased Capacity Delay Notice.

24A.3 If the Authority determines (acting reasonably) that a Houseblock Relevant Event is the cause of any delay to the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date or any date in the Increased Capacity Phase-in Period Timetable or if paragraph (h) of the definition of Houseblock Relevant Event applies, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Houseblock Opening Date or the relevant date in the Increased Capacity Phase-in Period Timetable and/or the Contractual Increased Capacity Date as the Authority then reasonably estimates to be fair to take into account the effect of the Houseblock Relevant Event (whereupon such other dates shall become the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date, or the relevant date in the Increased Capacity Phase-in Period Timetable for the purposes of this Contract). In the case of an event within Paragraph (i) of the definition of Houseblock Relevant Event, the extension shall be consistent with the relevant arbitral award and/or as determined by the Arbitrator (as appropriate) or the relevant adjudication award and/or as determined by the Adjudicator (as appropriate but in either case only where such award or determination is not referred to arbitration).

24A.4 Where a Houseblock Relevant Event has caused or will cause a delay and such Houseblock Relevant Event is one of the events referred to in Paragraph (a) (b) or (c) of the definition of Houseblock Relevant Event, the Authority shall (subject to the Contractor complying with the provisions of Clause 12B (***Planning Approval Challenge***) in the case of limb (b) promptly on written demand supported by particulars of the loss or expenses claimed (within thirty (30) days of such written demand) reimburse to the Contractor any reasonable loss or expenses incurred by the Contractor as a direct result of the delay caused by such Houseblock Relevant Event.

25. LIQUIDATED DAMAGES

25.1 To the extent that on or before the Actual Main Full Operation Date the Contractor fails on any day to provide the number of Available Prisoner Places specified in the Main Phase-in Timetable (including, for the

avoidance of doubt, six hundred (600) Available Prisoner Places from the Full Main Operation Date), the Contractor shall be liable to pay liquidated damages to the Authority.

- 25.2 To the extent that on or before the Actual TC Full Operation Date the Contractor fails on any day to provide the number of Available TC Places specified in the TC Phase-in Timetable (including, for the avoidance of doubt, two hundred (200) Available TC Places from the Full TC Operation Date), the Contractor shall be liable to pay liquidated damages to the Authority.
- 25.3 Liquidated damages shall be calculated in respect of Available Prisoner Places and Available TC Places, at the daily rate set out in Paragraph 1 of Schedule E (***Payment Mechanism***) per Prisoner per day for the period(s) during which the number of Available Prisoner Places and/or Available TC Places which the Contractor is bound to provide under the terms hereof and set out in Clauses 25.1 (***Liquidated Damages***) and 25.2 (***Liquidated Damages***) respectively has not been provided, and shall, subject to Clause 25.5 (***Liquidated Damages***), be payable monthly in arrears. The Contractor agrees that such rate represents a reasonable pre-estimate of the Authority's loss arising from delay.
- 25.4 The maximum aggregate amount of liquidated damages which may be claimed by the Authority under this Clause 25 (***Liquidated Damages***) shall be [REDACTED].
- 25.5 The Authority may deduct the said sums from any monies due to the Contractor under this Contract or the Authority may recover the same from the Contractor as a debt, except to the extent that such sums have been recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor, the Houseblock Construction Sub-contractor or any other person on the Contractor's behalf. To the extent such sums have finally and conclusively been paid to the Authority or recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor, the Houseblock Construction Sub-contractor, or any other person on the Contractor's behalf, the Contractor's obligation hereunder to pay such sums shall be discharged.

25A LIQUIDATED DAMAGES - INCREASED CAPACITY

- 25A.1 To the extent that on or before the Actual Increased Capacity Date the Contractor fails on any day to provide the number of Available Prisoner Places specified in the Increased Capacity Phase-in Period Timetable (including thirty five (35) Available Prisoner Places from the Contractual Houseblock Opening Date), the Contractor shall be liable to pay liquidated damages to the Authority.
- 25A.2 Liquidated damages shall be calculated in respect of Available Prisoner Places, at the daily rate set out in Paragraph 1A of Schedule E (***Payment Mechanism***) per Prisoner per day for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms hereof and set out in Clause 25A.1 (***Liquidated Damages - Increased Capacity***) has not been provided, and shall, subject to Clause 25A.4 (***Liquidated Damages - Increased Capacity***), be payable monthly in arrears. The Contractor agrees that such rate represents a reasonable pre-estimate of the Authority's loss arising from delay.
- 25A.3 The Contractor shall not be liable to pay liquidated damages to the Authority for period(s) after the Long Stop Date during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms of this Contract and set out in Clause 25A.1 (***Liquidated Damages - Increased Capacity***) have not been provided.
- 25A.4 The Authority may deduct the said sums from any monies due to the Contractor under this Contract or the Authority may recover the same from the Contractor as a debt, except to the extent that such sums have been recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor, the Houseblock Construction Sub-contractor or any other person on the Contractor's behalf. To the extent such sums have finally and conclusively been paid to the Authority or recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor, the Houseblock Construction Sub-contractor or any other person on the Contractor's behalf, the Contractor's obligation hereunder to pay such sums shall be discharged.
- 25A.5 The maximum aggregate amount of liquidated damages which may be claimed by the Authority under this Clause 25A (***Liquidated Damages - Increased Capacity***) shall be [REDACTED].

26. ENGINEER'S DECLARATION

- 26.1 The Independent Engineer shall monitor the progress of the Works upon the Site, and be entitled to exercise rights, in accordance with the provisions of Schedule M (***Compliance Monitoring***). The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in this Clause 26 (***Engineer's Declaration***).
- 26.2 When the Contractor considers that the whole of the Works will be, or has been, completed in accordance with Schedule A (***Design and Construction Specification***) and will be, or has been, satisfactorily commissioned by passing all the tests referred to in Schedule A (***Design and Construction Specification***), the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer. In the event that at the time such notice is given, the Contractor considers that the Works will be completed at a later date, the Contractor must specify such date, which shall be not less than fourteen (14) days and not more than thirty (30) days from the date of the notice.
- 26.3 The Authority shall procure that the Independent Engineer shall within twenty one (21) days of the date of the delivery of the notice referred to in Clause 26.2 (***Engineer's Declaration***) (or, if the Works will be completed at a later date, within seven days of the date of completion specified in the notice) either issue a certificate to the Authority (signed by a director in the firm appointed as Independent Engineer) declaring that in his reasonable opinion the Works have been completed in accordance with Schedule A (***Design and Construction Specification***) (the ***Engineer's Declaration***) or give notice to the Contractor in writing specifying all the matters which must in his reasonable opinion be satisfied before the Engineer's Declaration can be issued. If such notice is given by the Independent Engineer, the Contractor shall carry out such works as may be required to obtain the Engineer's Declaration and the requirements of Clause 26.2 (***Engineer's Declaration***) and 26.3 (***Engineer's Declaration***) shall apply except that the Independent Engineer will respond as soon as reasonably practicable.
- 26.4 The Authority shall use its best endeavours to procure that the Monitoring Contract contains obligations on the Independent Engineer to carry out the acts attributed to him in this Clause 26 (***Engineer's Declaration***). The Authority agrees that it will not amend or waive any of its rights under the Monitoring Contract in a manner that could reasonably be expected to be adverse to the interests of the Contractor

or the Construction Sub-contractor. The Authority agrees that at the request and cost of the Contractor from time to time, it will use reasonable endeavours to enforce the terms of the Monitoring Contract at all times up to and including the date of issue of the Engineer's Declaration provided that the Authority shall be under no obligation to pay the Contractor any damages the Authority may recover in any proceedings the Authority brings to enforce the Monitoring Contract.

- 26.5 Nothing in this Contract shall be deemed to imply that the Authority makes any representation or warranty of whatsoever nature as to the value, design, construction, maintenance, operation or fitness for use of the Prison or any of the equipment referred to in Schedule B (***Equipment***) except in the case of the equipment referred to in Part 2 of Schedule B (***Equipment***), in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract as unavoidably require use of such equipment which is not fit for use for such period as such lack of fitness continues.
- 26.6 If (in accordance with his obligations under the Monitoring Contract) the Independent Engineer gives written notice to the Authority that a matter has come to his attention in the course of any inspection by him of the Works which may adversely affect his decision to issue the Engineer's Declaration, the Authority shall, without unreasonable delay, notify the Contractor in writing of such matter.
- 26.7 For the avoidance of doubt, nothing done by the Authority or the Independent Engineer in accordance with this Clause 26 (***Engineer's Declaration***), Clause 13 (***Provision of the Prison***) or Schedule M (***Compliance Monitoring***) shall in any respect relieve or absolve the Contractor from its responsibility for the design or construction of the Works under or in connection with the Contract.

26A ENGINEER'S HOUSEBLOCK DECLARATION

- 26A.1 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 this Clause 26A (***Engineer's Houseblock Declaration***).
- 26A.2 When the Contractor considers that the Houseblock Works will be, or have been, completed in accordance with Part 2 of Schedule A (***Design***

and Construction Specification) and will be, or have been, satisfactorily commissioned by passing all the tests referred to in Part 2 of Schedule A (**Design and Construction Specification**), the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer. In the event that at the time such notice is given, the Contractor considers that the Houseblock Works will be completed at a later date, the Contractor must specify such date, which shall be not less than fourteen (14) days and not more than thirty (30) days from the date of the notice.

26A.3 The Authority shall procure that the Independent Engineer shall within twenty one (21) days of the date of the delivery of the notice referred to in Clause 26A.2 (**Engineer's Houseblock Declaration**) (or, if the Houseblock Works will be completed at a later date, within seven (7) days of the date of completion specified in the notice) either issue a certificate to the Authority (signed by a director in the firm appointed as Independent Engineer) declaring that in his reasonable opinion the Houseblock Works have been completed in accordance with Part 2 of Schedule A (**Design and Construction Specification**) or give notice to the Contractor in writing specifying all the matters which must in his reasonable opinion be satisfied before the Engineer's Houseblock Declaration can be issued. If such notice is given by the Independent Engineer, the Contractor shall carry out such works as may be required to obtain the Engineer's Houseblock Declaration and the requirements of Clause 26A.2 (**Engineer's Houseblock Declaration**) and 26A.3 (**Engineer's Houseblock Declaration**) shall apply except that the Independent Engineer will respond as soon as reasonably practicable.

26A.4 The Authority shall use its best endeavours to procure that the Houseblock Works Monitoring Contract contains obligations on the Independent Engineer to carry out the acts attributed to him in this Clause 26A (**Engineer's Houseblock Declaration**). The Authority agrees that it will not amend or waive any of its rights under the Houseblock Works Monitoring Contract in a manner that could reasonably be expected to be adverse to the interests of the Contractor or the Houseblock Construction Sub-contractor. The Authority agrees that at the request and cost of the Contractor from time to time, it will use reasonable endeavours to enforce the terms of the Houseblock Works Monitoring Contract at all times up to and including the date of issue of the Engineer's Houseblock Declaration provided that the Authority shall be under no obligation to pay the Contractor any damages the Authority may recover in any proceedings the Authority brings to enforce the Houseblock Works Monitoring Contract.

- 26A.5 Nothing in this Contract shall be deemed to imply that the Authority makes any representation or warranty of whatsoever nature as to the value, design, construction, maintenance, operation or fitness for use of the Houseblock or any of the equipment referred to in Schedule B (***Equipment***) except in the case of the equipment referred to in Part 4 of Schedule B (***Equipment***), in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract as unavoidably require use of such equipment which is not fit for use for such period as such lack of fitness continues.
- 26A.6 If (in accordance with his obligations under the Houseblock Works Monitoring Contract) the Independent Engineer gives written notice to the Authority that a matter has come to his attention in the course of any inspection by him of the Houseblock Works which may adversely affect his decision to issue the Engineer's Houseblock Declaration, the Authority shall, without unreasonable delay, notify the Contractor in writing of such matter.
- 26A.7 For the avoidance of doubt, nothing done by the Authority or the Independent Engineer in accordance with this Clause 26A (***Engineer's Houseblock Declaration***), Clause 13A (***Provision of the Increased Capacity***) or Schedule M (***Compliance Monitoring***) shall in any respect relieve or absolve the Contractor from its responsibility for the design or construction of the Houseblock Works under or in connection with the Contract.

26B SNAGGING MATTERS

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

- 26B.3 If, within the period referred to in Clause 26B.2 (***Snagging Matters***) the Contractor has failed to rectify the Snagging Matters specified in such notice, the Authority may by itself or by the engagement of others carry out the works necessary to rectify the Snagging Matters.
- 26B.4 The issue of the certificate of the Independent Engineer in accordance with Clause 26A (***Engineer's Houseblock Declaration***) shall in no way affect the obligations of the Contractor under this Contract.

27. CELL CERTIFICATION

- 27.1 When the Contractor declares a Prison Cell to be available, and for the duration of the Contract, the Contractor shall ensure that each and every Prison Cell, and any other living accommodation to be occupied by a Prisoner, shall comply with such parts of Schedules A, B and C as relates to Prison Cells and such other living accommodation to be occupied by a Prisoner.
- 27.2 Prior to its first ever occupation by a Prisoner and immediately following any subsequent refurbishment or rebuilding, each and every Prison Cell shall be inspected by the Authority (which expression shall for the purposes of this Clause 27 (***Cell Certification***) mean an officer of the Authority) to determine whether the Prison Cell complies with such parts of Schedules A, B and C as relate to Prison Cells. When the Authority agrees that an inspected Prison Cell complies with such parts of Schedules A, B and C as relate to Prison Cells, the Authority shall issue the Contractor with a Cell Certificate for the inspected Prison Cell, in accordance with Clause 28 (***Timetable for cell certification***). For the avoidance of doubt, prior to a Prison Cell's first ever occupation by a Prisoner, in determining compliance of such Prison Cell with the relevant parts of Schedules A, B and C, the Authority shall rely on the Engineer's Declaration to the extent it addresses compliance with such relevant parts of Schedules A, B and C (except where deterioration to such Prison Cell has occurred since the issue of the Engineer's Declaration which renders the Prison Cell non-compliant with the relevant parts of Schedules A, B and/or C).
- 27.3 Following the issue of any initial Cell Certificate in accordance with Clause 27.2 (***Cell Certification***), the Authority shall carry out such further inspections during the term of the Contract as it thinks fit, in order to reassess the certification of any Prison Cell. In the event that the Authority identifies during any such further inspection that a Prison Cell does not comply substantially with all of the requirements of such parts of Schedule A (***Design and Construction Specification***), B and C as

relate to Prison Cells, it shall notify the Contractor in writing of the nature of the non-compliance (through a **Non-Compliance Notice**). If within ten days of service of a Non-Compliance Notice, the Contractor has not remedied the matter referred to in the Non-Compliance Notice, until such time as the Contractor has rectified the Prison Cell so that it complies substantially with all of the requirements of such parts of Schedules A, B and C as relate to Prison Cells as aforesaid the Authority may (without prejudice to its other rights hereunder) withdraw the Cell Certificate. Such Cell Certificate shall be reinstated promptly after the Contractor has demonstrated to the Authority that it has rectified the Prison Cell so that it complies substantially with such parts of Schedules A, B and C as relate to Prison Cells and the Authority agrees that it will, at the reasonable request of the Contractor promptly inspect any relevant Prison Cell for the purposes of ascertaining whether a Cell Certificate should be so reinstated.

28. TIMETABLE FOR CELL CERTIFICATION

- 28.1 A minimum of thirty (30) days prior to any date when the Contractor considers it can provide the Authority with Available Prisoner Places and Available TC Places as required by Clauses 22A (**Increased Capacity Phase-in Period**), 23 (**Full Main Operation Date**) and 23A (**Contractual Increased Capacity Date**), it shall give written notice to the Authority of such opinion, and the said thirty (30) days shall be the notice period. The Contractor shall specify the number of Prison Cells and Available Prisoner Places and/or Available TC Places that it considers it can provide to the Authority at the expiry of the notice period.
- 28.2 The Authority, and such other persons as the Authority may specify, whenever so notified, shall carry out inspections of:
- 28.2.1 the Prison Cells and the Prison; and
- 28.2.2 prior to the Contractual Houseblock Opening Date and up to and including the Actual Houseblock Opening Date, the Houseblock for the purpose of granting Cell Certificates in accordance with Clause 27 (**Cell Certification**).
- 28.3 The Authority shall issue each Prison Cell with a Cell Certificate within the notice period referred to in Clause 28.1 (**Timetable for Cell Certification**), unless the Prison Cell does not comply with Clause 27 (**Cell Certification**), in which case the Authority shall provide the Contractor with a written record of those parts of Schedule A (**Design and Construction Specification**), B or C that are not complied with.

28.4 In the event that:

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

then if, but for the Authority's failure as set out in (a) or (b) above, upon expiry of the notice period referred to in Clause 28.1 (***Timetable for Cell Certification***) a Prisoner Place would have been treated as being an Available Prisoner Place and/or, as the case may be, a TC Place would have been treated as an Available TC Place, then for the sole purpose of Clauses 25 (***Liquidated Damages***) and 38 (***Price***), the Prisoner Place shall be treated as an Available Prisoner Place and/or the TC Place shall be treated as an Available TC Place until such time as the Authority certifies the Prison Cell so as to make it an Available Prisoner Place within the meaning of Clause 29.1 (***Available Prisoner Places***) or, as the case may be, an Available TC Place within the meaning of Clause 29.2 (***Available TC Places***) or the Authority provides the Contractor with a written record in accordance with Clause 28.3 (***Timetable for Cell Certification***) so that the Prisoner Place ceases to be treated as an Available Prisoner Place or, as the case may be, the TC Place ceases to be treated as an Available TC Place.

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

29. AVAILABLE PLACES

Available Prisoner Places

29.1 ***Available Prisoner Places*** is a concept applicable to Moreton (Main). There shall be no Available Prisoner Places in the Existing Prison until:

- (a) the Engineer's Declaration has been obtained;

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

There shall be no Available Prisoner Place in respect of the Increased Capacity until:

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

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

- (x) the Prison Cell in which that Prisoner Place is contained has been issued with a Cell Certificate pursuant to Clause 27.2 (***Cell certification***) (or such Cell Certificate has been reinstated pursuant to Clause 27.3) (***Cell Certification***) and any such Cell Certificate has not subsequently been withdrawn pursuant to Clause 27.3 (***Cell Certification***); and

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

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

Available TC Places

29.2 **Available TC Places** is a concept applicable only to the TC and there shall be no Available TC Places until:

- (a) the requirements set out in Clauses 29.1(a) (**Available Places**), (b) (**Available Places**) and (d) (**Available Places**) have been satisfied;

- (b) the Authority's final approval of the Operational Proposals referred to in Clause 20.1(c) (***Preparation for Operation of the Prison***) has been obtained in accordance with Clause 20.6 (***Preparation for Operation of the Prison***);
- (c) the Contractor has demonstrated to the satisfaction of the Authority that it is capable of providing properly trained and certified Staff for the provision of the Custodial Service in the TC; and
- (d) the Contractor has demonstrated to the satisfaction of the Authority that it is capable of providing properly qualified Staff for the provision of the Therapy Service in the TC.

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

- (aa) the requirements set out in Clause 29.1(a) (***Available Prisoner Places***) have been satisfied as if the reference to the Prisoner Place therein were to a TC Place;
- (bb) the requirements set out in Clause 29.1(b) (***Available Prisoner Places***) have been satisfied as if each reference therein to: a Prisoner Place were to a TC Place; an Available Prisoner Place were to an Available TC Place; and a Prisoner were to a TC Prisoner; and
- (cc) (i) that TC Place has complied in all respects with the TC Requirements throughout that day; or
 - (ii) the Contractor has notified any failure (in respect of that TC Place on that day) to comply in all respects with the TC Requirements to the Authority immediately and:
 - (A) that TC Place is occupied by a Prisoner on that day and the Authority has failed to require that Prisoner to be removed from that TC Place on that day;
 - (B) that TC Place is not occupied by a Prisoner on that day, in which case that TC Place shall (until the requirements of Clause 29.2(cc)(i) (***Available TC Places***) above are satisfied) only constitute an Available TC Place for a period of twenty four (24) hours following first notification in respect of that failure, and provided the TC Requirements are complied with before the expiry of that twenty four (24) hour period, they shall be deemed to have been

complied with throughout that period for the purpose of determining whether or not that TC Place is an Available TC Place; or

- (C) the twenty four (24) hour period referred to in (B) above has expired before that TC Place complies with the requirements of Clause 29.2(cc)(i) (**Available TC Places**) above and the Authority has directed that such TC Place be occupied by a TC Prisoner and provided that TC Prisoner occupies that TC Place for any part of that day that TC Place shall be deemed to be an Available TC Place for the whole of that day,

provided that if a TC Place does not constitute an Available TC Place by virtue of Clause 29.2(cc)(i) (**Available TC Places**) but constitutes an Available TC Place by virtue of Clause 29.2(cc)(ii) (**Available TC Places**) then, notwithstanding any other provision of this Contract, the Authority shall pay to the Contractor a reduced fee in respect of that Available TC Place which fee shall be equal to the fee that would have been payable if that Available TC Place were, for the purposes of Clause 38 (**Price**) and Schedule E (**Payment Mechanism**), an Available Prisoner Place in Moreton (Main),

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

- 29.3 The Contractor shall on each day following the Actual Main Opening Date produce the Daily Report and, additionally, shall on each day following the Actual TC Opening Date produce the TC Daily Report and, in respect of both the Daily Report and the TC Daily Report, deliver a copy thereof to the representative of the Authority.
- 29.4 No Single Prison Cell shall be used to accommodate more than one Prisoner at any one time (other than, in each case, Prison Cells designated for multiple occupancy in the healthcare centre of the Prison), except to the extent that the number of Prisoners sharing a Single Prison Cell with another Prisoner does not exceed the Permitted Level (and where the Permitted Level is so exceeded, Clause 29.5 (**Available Places**) shall apply).
- 29.5 Where two (2) Prisoners share a Single Prison Cell otherwise than as expressly permitted in Clause 29.4 (**Available Places**), or permitted

pursuant to Clause 4.8 (***Indemnities***), the amount payable by the Authority for the services of the Contractor hereunder shall, without prejudice to the Authority's rights under Clauses 44 (***Default by Contractor***) and 45 (***Rectification and Termination for Default***), be reduced in the following manner:

Where:

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

then the Fixed Fee, the Indexed Fee and the Indexed Costs Fee in respect of the Prisoner Places occupied by all such Prisoners shall each be reduced by 70% for each day the sharing referred to above is, and for so long as it continues to be, so reported in Daily Reports, with effect from and including the first such Daily Report, the calculation being made monthly and in accordance with Paragraph 9 of Schedule E (***Payment Mechanism***).

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

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

29.8.1 The Contractor shall at least six months before the Contractual TC Opening Date send to each appropriate prison in England and Wales (marked for the attention of the "Governor's Representative - Therapeutic treatment of prisoners") the Information and Referral Package referred to and defined in Schedule D (***Operational Requirements***). Each Governor's Representative who receives such

Information and Referral Package shall distribute the same according to published protocols.

29.8.2 A Governor's Representative shall be responsible for the collation of the information required in order for a Prisoner, in the prison in respect of which that Governor's Representative has been appointed, to make an Application for Referral and for the sending of that Application for Referral to the Director of Therapy.

29.8.3 The Director of Therapy (who in this regard shall act on behalf of the Contractor) shall within five (5) Business Days of receipt of an Application for Referral acknowledge receipt (in writing to the relevant Governor's Representative) of such Application for Referral.

29.8.4 The Director of Therapy (who in this regard shall act on behalf of the Contractor) shall, within twenty eight (28) days of receipt of an Application for Referral determine, in accordance with the Referral Criteria, whether to accept a Prisoner (other than a Category A Prisoner) for transfer to the TC for Observational Assessment. Each TC Prisoner shall complete Observational Assessment before commencing Therapy save where the Authority has, in respect of a particular Prisoner, otherwise agreed in writing.

29.8.5 If the Director of Therapy determines to accept a Prisoner for transfer to the TC for Observational Assessment and:

(a) at that time:

- (i) there is no TC Waiting List;
- (ii) the number of Available TC Places occupied by TC Prisoners undergoing Observational Assessment does not exceed forty (40) and will not exceed forty (40) before or if that Prisoner were transferred to the TC for Observational Assessment; and
- (iii) there are less than one hundred and seventy four (174) TC Prisoners,

the Contractor shall within two (2) Business Days of the end of the period referred to in Clause 29.8.4

(Available Places) notify that Prisoner by notice to the relevant Governor's Representative (and, where that Prisoner is a life-sentenced Prisoner, the Lifer Management Unit of the Authority) that there is a space in the TC for that Prisoner to undergo Observational Assessment and that arrangements should be made for the transfer, as soon as possible, of that Prisoner to the TC;

(b) at that time the number of Available TC Places occupied by Prisoners undergoing Observational Assessment exceeds (40) or will exceed forty (40) before or if that Prisoner were transferred to the TC for Observational Assessment, either:

(i) that Prisoner's name will be placed on to the TC Waiting List; or

(ii) that Prisoner may be accepted for Observational Assessment at the Director of Therapy's discretion (for the avoidance of doubt, the Contractor shall not, until the first date thereafter on which there are less than forty one (41) Prisoners undergoing Observational Assessment, be compensated in any way for any Available Prisoner Place occupied by such Prisoner).

29.8.6 (a) The Contractor shall:

(i) record on the TC Waiting List the name, prisoner number, sending prison and parole eligibility date (or, in the case of a life-sentenced Prisoner, the date of his next F75 review or date of his Parole Review Board) of each Prisoner referred to in Clause 29.8.5(b)(i) **(Available Places)** and the date on which that Prisoner's Application for Referral was received by the Director of Therapy and the date of the Director of Therapy's determination referred to in Clause 29.8.4 **(Available Places)**;

(ii) provide to the Authority a monthly update of the TC Waiting List;

- (iii) inform each Prisoner placed on the TC Waiting List that he has been selected for a place in the TC; and
 - (iv) inform each Prisoner referred to in (iii) above and the relevant Governor's Representative (and, where that Prisoner is a life-sentenced Prisoner, the Lifer Management Unit of the Authority) of that Prisoner's position on the TC Waiting List.
- (b) The Contractor shall:
- (i) once every three months write to each Prisoner on the TC Waiting List and the relevant Governor's Representative (and, where that Prisoner is a life-sentenced Prisoner, the Lifer Management Unit of the Authority) to update the Prisoner as to his position on the TC Waiting List and, if possible, provide an estimate of the date upon which the Contractor expects that Prisoner to be transferred to the TC for Observational Assessment;
 - (ii) at the written request of a Governor's Representative, within five (5) Business Days give a substantive explanation of the reasons for any delay in admitting to the TC a Prisoner on the TC Waiting List; and
 - (iii) provide (and update, as necessary) to each Governor's Representative the title and telephone number of the individual at the TC responsible for administering the TC Waiting List together with an invitation to enquire of such individual as to the position of a Prisoner on the TC Waiting List and, if available, the likely date upon which the Contractor expects that such Prisoner might be transferred to the TC for Observational Assessment. The Contractor shall respond to any such enquiries within two Business Days.

29.8.7 If, at any time:

- (i) the number of TC Prisoners undergoing Observational Assessment is less than forty (40) and will not exceed forty (40) before or if the next Prisoner on the TC Waiting List (as defined below) were

transferred to the TC for Observational Assessment;
and

- (ii) there are less than one hundred and seventy four (174) TC Prisoners,

the Contractor shall within two (2) Business Days notify the **next Prisoner on the TC Waiting List** through the relevant Governor's Representative (and, where that Prisoner is a life-sentenced Prisoner, the Lifer Management Unit of the Authority) that there is a space in the TC for that Prisoner to undergo Observational Assessment and notify the relevant Governor's Representative that arrangements should be made for the transfer, as soon as possible, of that Prisoner to the TC. The **next Prisoner on the TC Waiting List** shall be the Prisoner on the TC Waiting List whose Application for Referral (as compared with the Applications for Referral made by the other Prisoners on the TC Waiting List) was the first received by the Director of Therapy, unless otherwise agreed in writing by the Authority.

29.9.1 Subject to the operation of the Director of Therapy's discretion in Clause 29.8.5(b) (**Available Places**), on and from the date falling three months after the Full TC Operation Date, the number of Available TC Places occupied by TC Prisoners undergoing Observational Assessment shall not exceed forty (40). If and to the extent that such limit is exceeded (whether or not by operation of the Director of Therapy's discretion in Clause 29.8.5(b) (**Available Places**)), each Available TC Place forming part of such excess shall be deemed not to be an Available TC Place.

29.9.2 At no time shall the number of Available TC Places occupied by TC Prisoners undertaking the High Intensity Programme exceed thirty (30). If and to the extent that such limit is exceeded, each Available TC Place forming part of such excess shall be deemed not to be an Available TC Place unless otherwise agreed in writing by the Authority.

29.10 The Director of Therapy (who in this regard shall act on behalf of the Contractor) shall, in respect of each TC Prisoner who has completed Observational Assessment, determine, in accordance with the Acceptance Criteria, whether that TC Prisoner should remain in the TC and shall within five Business Days of that determination notify the Authority

thereof. If the Director of Therapy determines that a TC Prisoner should not remain in the TC, the Director of Therapy (who in this regard shall act on behalf of the Contractor) shall, within five Business Days of the twenty eight (28) day period referred to in Clause 29.16 (**Available Places**), notify that Prisoner through the Governor's Representative at the prison from which that Prisoner was transferred to the TC (and, where that Prisoner is a life-sentenced Prisoner, the Lifer Management Unit of the Authority) of that determination and notify the relevant Governor's Representative that arrangements should be made for the transfer, as soon as possible, of that TC Prisoner from the TC. If the Director of Therapy determines that a TC Prisoner should remain in the TC, that Prisoner shall forthwith commence a course of Therapy in accordance with the other provisions of this Contract.

29.11 The Director of Therapy (who in this regard shall act on behalf of the Contractor) shall not refuse to accept a Prisoner (other than a Category A Prisoner) (i) for transfer to the TC for Observational Assessment, when he receives an Application for Referral in accordance with Clause 29.8.4(**Available Places**) or (ii) onto the HIP, when he receives an Application for Referral from the Authority's Lifer Management Unit requesting a place on the HIP or (iii) for a course of Therapy following Observational Assessment, in accordance with Clause 29.10 (**Available Places**) unless:

- (a) all Available TC Places are at that time occupied by TC Prisoners;
- (b) in the case of a refusal to accept for transfer a Prisoner to the TC for Observational Assessment, the number of Prisoners in the TC undergoing Observational Assessment exceeds forty (40) or will exceed forty (40) before or if that Prisoner were transferred the TC for Observational Assessment;
- (c) in the case of a refusal to transfer a Prisoner onto the HIP, the number of Prisoners in the TC undergoing the HIP exceeds thirty (30) or would exceed thirty (30) if that Prisoner were to be transferred onto the HIP;
- (d) in so doing the Director of Therapy is acting in accordance with the Referral Criteria or the Acceptance Criteria (as the case may be); or
- (e) the Director of Therapy has reasonable cause to believe that the acceptance of that Prisoner would prejudice the Contractor's ability to maintain security and control within the TC.

29.12.1 The Director of Therapy (who in this regard shall act on behalf of the Contractor) may remove a TC Prisoner from the TC at any time if:

- (a) that TC Prisoner would not meet the Referral Criteria or the Acceptance Criteria if such criteria were applied to that TC Prisoner on the date of that TC Prisoner's removal from the TC as if such TC Prisoner were being considered for acceptance into the TC for Observational Assessment (under Clause 29.8.4 (**Available Places**)) or Therapy (under Clause 29.10(**Available Places**)) (as the case may be);
- (b) that TC Prisoner has voluntarily expressed in writing to the Director of Therapy his desire prematurely to cease Therapy and leave the TC before the completion of his course of Therapy;
- (c) he has reasonable cause to believe that such TC Prisoner's continued presence within the TC would prejudice the Contractor's ability to maintain security and control within the TC; or
- (d) the Authority has informed the Director of Therapy pursuant to Clause 29.12.2 (**Available Places**) that the Referral Criteria and/or the Acceptance Criteria were incorrectly applied by the Director of Therapy in deciding whether or not to admit that TC Prisoner to the TC.

29.12.2 The Authority may, at any time and without notice, assess any TC Prisoner against the Referral Criteria and/or the Acceptance Criteria. The Contractor shall, upon request, render all reasonable assistance to the Authority so as to permit the Authority properly to conduct such assessment. If, following such assessment, the Authority decides (using the information available to the Director of Therapy at the time of the relevant determination by him in relation to that TC Prisoner) that the Referral Criteria or the Acceptance Criteria were incorrectly applied by the Director of Therapy in determining whether or not to admit that TC Prisoner to the TC, then:

- (a) the Authority may require that TC Prisoner to be removed from the TC;
- (b) an amount equal to the lesser of:
 - (i) the amount paid (or due to be paid) to the Contractor by the Authority in respect of the Available TC Place occupied by that TC Prisoner; and

- (ii) the total amount (before any deduction) which this Contract provides (as at the date of such assessment) should be paid to the Contractor in respect of one Available TC Place for a period of thirty (30) days,

shall be deducted from the amount which would otherwise be payable to the Contractor in respect of Available TC Places (save where such assessment concludes that any of the Subjective Acceptance Criteria (as defined in Schedule D (**Operational Requirements**), Part 1) were incorrectly applied and the Acceptance Criteria were otherwise correctly applied); and

- (c) the Authority shall promptly inform the Director of Therapy of its decision.

29.13.1 If:

- (a) the Director of Therapy has determined not to accept a Prisoner for transfer to the TC for Observational Assessment (under Clause 29.8.4);
- (b) the Director of Therapy has failed to add a Prisoner's name to the TC Waiting List in accordance with Clause 29.8.5(b) (**Available Places**);
- (c) the Director of Therapy has determined that a TC Prisoner should not remain in the TC following Observational Assessment (under Clause 29.10(**Available Places**));
- (d) the Director of Therapy has removed a Prisoner from the TC (under Clause 29.12.1(**Available Places**)); or
- (e) a Prisoner has commenced Therapy (other than the High Intensity Programme) before completing Observational Assessment,

(in each case, a **Director of Therapy Decision**), the Director of Therapy shall immediately notify the Authority of such determination, removal or circumstance and shall give his reasons therefore. No more than one Prisoner shall be the subject of any one such notice and each such notice shall specify a unique reference number for the Director of Therapy Decision to which it relates.

If the Authority disagrees with a Director of Therapy Decision (for whatever reason), it shall within one month of the date on which it was notified of such decision, notify the Director of Therapy of that disagreement (each such notice an **Authority Challenge**) and shall refer the matter to a Named Representative of the Authority. Following the service of an Authority Challenge, the Director of Therapy shall consult in good faith with the Named Representative of the Authority and shall forthwith upon request provide the Named Representatives of the Authority with such information as he may require. The Named Representative of the Authority shall, within seven days of an Authority Challenge, either confirm or revoke (in writing to the Contractor) that Authority Challenge and if not revoked within that period, the Authority Challenge shall be deemed to have been confirmed.

29.13.2 If an Authority Challenge is confirmed (each Authority Challenge so confirmed being a **Confirmed Authority Challenge**) the Contractor may before the expiry of fourteen (14) days after the date of a Confirmed Authority Challenge, refer that matter to the Adjudicator for its decision in accordance with Clause 72 (**Dispute Resolution**) as to whether or not the Director of Therapy Decision to which that Confirmed Authority Challenge relates was correct at the time it was made.

29.13.3 If the Adjudicator's decision is that the Director of Therapy Decision was correct at the time it was made, no further action shall be taken in respect of that Director of Therapy Decision. If the Adjudicator decides otherwise or, if no referral is made to the Adjudicator within the fourteen (14) day period referred to in Clause 29.13.2 (**Available Places**), then on and from the date of such decision or on and from the expiry of such period (as appropriate):

- (a) a Named Representative of the Authority may:
 - (i) in respect of a Prisoner not transferred to the TC for Observational Assessment (under Clause 29.8.5 (**Available Places**)), direct the Director of Therapy to accept the Prisoner in question for transfer to the TC for Observational Assessment in accordance with Clause 29.8.3 (**Available Places**) (unless the number of Available TC Places occupied by TC Prisoners undergoing Observational Assessment exceeds forty (40) or will exceed forty (40) before or

- if the Director of Therapy were to transfer that Prisoner to the TC for Observational Assessment); or
- (ii) in respect of a TC Prisoner whom the Director of Therapy has determined (under Clause 29.10 (**Available Places**)) should not remain in the TC, direct the Director of Therapy (who in this regard shall act on behalf of the Contractor) to accept the TC Prisoner in question for an Available TC Place; or
 - (iii) in respect of a TC Prisoner removed from the TC (under Clause 29.12.1(**Available Places**)), direct the Director of Therapy (who in this regard shall act on behalf of the Contractor) to re-admit the TC Prisoner in question to the TC; or
 - (iv) in respect of a Prisoner whose name should have been added to the TC Waiting List, require the Contractor so to do; and
- (b) one Available TC Place shall be deemed not to be an Available TC Place for a period of 30 days from the date of the Confirmed Authority Challenge if the matter has not been referred to an Adjudicator, or if the matter has been referred to an Adjudicator, from the date of that Adjudicator's decision and, following the elapse of that period, shall not be reinstated as an Available TC Place until:
- (x) where a Named Representative of the Authority has issued a direction under Clause 29.13.3(a)(i), (ii) or (iii), the earlier to occur of the following:
 - (A) the Director of Therapy complies with such direction; and
 - (B) save in respect of the TC Phase-in Period and the period before one hundred and seventy four (174) Prisoners have, at any one time, occupied the TC, one hundred and seventy four (174) Prisoners have occupied the TC at any one time after the date of such notice;
 - (y) where a Named Representative of the Authority has not issued a direction under Clause 29.13.3(a)(i), (ii) or (iii) above, and save in respect of the TC Phase-in

Period and the period before one hundred and seventy four (174) Prisoners have occupied the TC at any one time, one hundred and seventy four (174) Prisoners have occupied the TC at any one time after the date of the Confirmed Authority Challenge;

(z) in the case of a Director of Therapy Decision falling within Clause 29.13.1(e), the date on which the relevant TC Prisoner commences Observational Assessment; or

(zz) in the case of a Director of Therapy Decision falling within Clause 29.13.1(b), the date on which the relevant TC Prisoner is placed on the TC Waiting List.

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

(a) to remove any such Category A Prisoners from the Prison at the earliest possible opportunity; and

(b) to negotiate with the Contractor to agree the level of extra resources (if any) which the Authority will provide to the Contractor in order to ensure that the Contractor can maintain security and control within the Prison (provided that no such extra resources shall be required to be provided by the Authority if the Category A Prisoners in question are not introduced to the Prison for more than three prisoner days in any six (6) month period). To the extent that provision of any such extra resources is by way of payment, the level of the payment shall be ascertained by reference to the principles set out in Clause 39.4 (***Variation of Price***).

The Authority shall not, in any event, introduce Category A Prisoners into the TC.

29.15 An Available Prisoner Place shall be deemed not to be an Available Prisoner Place if the Contractor refuses to accept a Prisoner to occupy such Available Prisoner Place, unless in requesting that the Prisoner occupy such Available Prisoner Place, the Authority is not acting in accordance with its own guidelines for placing Prisoners in its own prisons. If the Contractor refuses to comply with the Authority's request and the Authority is not acting in accordance with such guidelines, the Available Prisoner Place shall continue to be an Available Prisoner Place

(subject to the requirements of Clause 29.1 (**Available Places**)); if the Authority is acting in accordance with such guidelines the Available Prisoner Place shall not be an Available Prisoner Place until the earlier to occur of the following:

- (a) save in respect of the Main Phase-in Period, six hundred (600) or more Prisoners have occupied Moreton (Main) (or eight hundred and sixty (860) or more Prisoners have occupied Moreton (Main) from the Actual Increased Capacity Date) at any one time after the date of the Contractor's refusal; and
- (b) three months have passed since the date of the Contractor's refusal.

29.16 An Available TC Place shall, following Actual TC Full Operation Date, be deemed not to be an Available TC Place if the Director of Therapy has failed to reach a decision (a) under Clause 29.8.4 (**Available Places**), as to the acceptability or otherwise of a Prisoner for transfer to the TC for Observational Assessment, within twenty eight (28) days of receipt by it of an Application for Referral or (b) under Clause 29.10, as to the acceptability or otherwise of a Prisoner for such Available TC Place, within twenty eight (28) days of the end of the period of Observational Assessment, from such 28th day until the earlier to occur of the following:

- (a) save in respect of the TC Phase-in Period and the period before 174 Prisoners have occupied the TC at any one time, 174 or more Prisoners have occupied the TC at any one time after such request;
- (b) such decision is made; and
- (c) three months have passed since such request.

29.17 If, in respect of any Prisoner, the Contractor has failed to give a notice required of it under Clauses 29.8.5(a), 29.8.7 or 29.10 within the period specified in Clauses 29.8.5(a), 29.8.7 or Clause 29.10 (as the case may be) for the giving of that notice and that notice relates to that Prisoner being transferred to or from the TC then if the relevant notice has not been given within 10 days of the last date specified for the giving of that notice, one Available TC Place shall be deemed not to be an Available TC Place from the date falling 10 days after the last date specified for the giving of the relevant notice until the earlier to occur of the following:

- (a) the date of the request by the Director of Therapy for the transfer of such Prisoner to or from the TC (as appropriate); and
 - (b) the date falling thirty (30) days after the expiry of the relevant notice period.
- 29.18 Any dispute relating to a decision made by the Named Representatives of the Authority under Clause 29.13.2 (**Available Places**) or the Authority under Clause 29.12.2 (**Available Places**) may be referred by either party to dispute resolution in accordance with Clause 72 (**Dispute Resolution**).
- 29.19 The Contractor shall be under a duty to inform the Authority promptly (and record the same in the Daily Reports and/or the TC Daily Reports, as appropriate) if any event occurs which could reasonably be expected to result in a Cell Certificate being withdrawn pursuant to Clause 27.3 (**Cell Certification**), or in a failure to comply in all respects with the Standard Requirements or in a failure to comply in all respects with the TC Requirements.
- 29.20 If, in relation to one TC Prisoner on a particular day, an Available TC Place is, pursuant to a provision of this Clause 29 (**Available Places**), deemed not to be an Available TC Place then no other provision of this Clause 29 (**Available Places**) shall, in relation to that TC Prisoner on that day, cause a second Available TC Place to be deemed not to be an Available TC Place.

PART V - OPERATION

30. CONDUCT OF OPERATION

- 30.1 The Contractor is responsible for the operation and maintenance of the Prison, in accordance with the terms and specifications of the Contract, and in accordance with the Authority's powers under the Criminal Justice Act 1991.
- 30.2 The Contractor shall at all times operate the Prison in accordance with all relevant provisions of Legislation including but not limited to the Prison Act 1952, the Criminal Justice Act 1991, the Prison Rules 1999 and the Young Offender Institution Rules 1988.
- 30.3 Without prejudice to Clause 30.2 (**Conduct of Operation**), the Contractor shall operate the Prison in accordance with the terms of Part 1 of Schedule D (**Operational Requirements**).

- 30.4 Without prejudice to Clause 30.2 (***Conduct of Operation***) and 30.3 (***Conduct of Operation***), the Contractor shall in respect of the provision of Therapy Service give consideration to, and make proposals to the Authority in respect of, the recommendations made by the Committee in accordance with Clause 34.4 (***The Controller and Committee***).

31. THE DIRECTOR AND THE DIRECTOR OF THERAPY

- 31.1 The appointment of the Director of the Prison shall be subject to the approval of the Authority and to his certification as a Prisoner Custody Officer under Sections 85 and 89 of, and Schedule 10 to, the Criminal Justice Act 1991.
- 31.2 The appointment of the Director of Therapy shall be subject to the approval of the Authority and to his certification as a Prisoner Custody Officer under Sections 85 and 89 of, and Schedule 10 to, the Criminal Justice Act 1991.
- 31.3 The Contractor shall submit a nomination for the position of each of the Director and the Director of Therapy to the Authority in accordance with Clause 20 (***Preparation for Operation***), which nomination the Authority may accept or reject as it thinks fit. The Contractor will submit to the Authority such further particulars of each of the proposed Director and the proposed Director of Therapy and the terms of their respective employment contracts as the Authority may require in order to decide upon the appointment. The Authority will consult with the Contractor with respect to any such nominee and if a Contractor's nominee is rejected by the Authority, the Authority shall provide reasons for the rejection, and the Contractor shall nominate a new candidate for the Authority's approval or rejection in the same manner as the earlier nomination.
- 31.4 During the term of the Contract, the Director and the Director of Therapy shall be appointees of the Contractor. Any change to the person occupying the position of the Director or the Director of Therapy must be approved by the Authority before being effected.
- 31.5 The Contractor shall ensure that any person required to exercise the powers of the Director or the Director of Therapy, by reason of the Director's or, as the case may be, the Director of Therapy's absence, or to replace the existing Director or, as the case may be, the Director of Therapy or for whatsoever reason, will be subject to the same terms of approval and appointment as specified in this Clause.

32. PRISONER CUSTODY OFFICERS

- 32.1 For the purpose of this Clause, and Clause 33 (**The Staff**), ***member of staff*** shall mean a person who is required to work or perform duties at the Prison at any time during the period from Actual Main Opening Date to the end of the Contract Term and who is an employee of the Contractor, or an employee of any Sub-contractor or is self-employed, and ***staff*** shall have the like meaning. For the avoidance of doubt, the Director and the Director of Therapy shall both be members of staff for the purposes of this Clause and Clause 33 (**The Staff**).
- 32.2 All persons carrying on Custodial Duties in the Prison shall be subject to certification as Prisoner Custody Officers by the Authority as required by Sections 85 and 89 (and where appropriate Section 80) of, and Schedule 10 to, the Criminal Justice Act 1991. Whenever the Contractor requests a person be certified as a Prisoner Custody Officer, the Contractor shall submit to the Authority the name of any proposed Prisoner Custody Officer and such other particulars as the Authority may require, to assist in the Authority's decision as to his certification.
- 32.3 No person certified as a Prisoner Custody Officer may be employed in that capacity if his certification has been revoked or during any period when his certificate is suspended. The Contractor shall notify the Authority immediately of any behaviour of a Prisoner Custody Officer which would cast doubt on his fitness for certification as a Prisoner Custody Officer.
- 32.4 The Contractor shall ensure that all Prisoner Custody Officers shall carry out their duties.

33. THE STAFF

- 33.1 The Contractor shall be responsible for the recruitment and provision of suitable staff and in particular the Contractor shall appoint one or more suitably qualified individuals to the position of prison medical officer. All staff shall receive proper training in their functions and duties and such training is subject to approval by the Authority (such approval or refusal not to be unreasonably delayed).
- 33.2 The Contractor shall submit for the Authority's approval any and all uniforms to be worn by the staff of the Prison (including the Prisoner Custody Officers) at least three (3) months prior to Estimated Main Opening Date and, in any event, before such uniforms are taken into use. Such uniform and the Contractor's and Operating Sub-contractor's required standards of dress for the staff shall be subject to approval by

the Authority before being implemented. Any change to the uniforms or standards shall be subject to the Authority's approval (such approval or refusal not to be unreasonably delayed).

- 33.3 All members of staff who are not required to be certified as Prisoner Custody Officers (including, for the purposes of this Clause 33.3 (***The Staff***), the medical officer or officers) shall be subject to approval by the Authority. The Contractor shall provide to the Authority such details of the said members of staff as may be required by the Authority for the purposes of approval. Nothing in this sub-Clause shall require the Contractor to obtain the Authority's approval for persons engaged upon the design and construction of the Prison except where such persons are engaged on matters relating to the security of the Prison, and the Authority may exempt other categories of staff from the requirements of this sub-Clause if it so chooses.
- 33.4 Without prejudice to Clause 33.3 (***The Staff***), the members of staff carrying out the Therapy Service as at the Contractual TC Opening Date shall have professional qualifications or appropriate training both as defined in Part 1 of Schedule D (***Operational Requirements***) and shall be subject to approval by the Authority and thereafter shall meet the staffing requirements set out in Part 1 of Schedule D (***Operational Requirements***) as the same may have been amended and shall be subject to approval by the Authority.
- 33.5 The Contractor shall provide all staff with the operating and procedural instructions prepared in accordance with Clause 20 (***Preparation for operation of the Prison***) which are relevant to them, and all staff shall be provided with any revised or amended operating and procedural instructions which are relevant to them which may be issued during the term of the Contract.
- 33.6 The Contractor shall ensure that all staff are under an obligation of confidence owed not only to the Contractor but also to the Authority not to disclose any information acquired during the course of their employment otherwise than in the proper discharge of their duties or as authorised by the Authority, and shall provide in the terms of the Sub-contracts that the Sub-contractors will undertake in the same terms to the Authority as the provisions of this Clause 33.6 (***The Staff***) .
- 33.7 Without prejudice to Clauses 31 (***The Director and Director of Therapy***) and 32 (***Prisoner Custody Offices***), if, in the opinion of the Authority, or where, in relation to the Director of Therapy, the Authority has received a recommendation that such is the case from the

Committee pursuant to Clause 34.5 (***The Controller and The Committee***), any member of staff including, without limitation, the Director and the Director of Therapy, is guilty of misconduct, incapable of efficiently performing his duties or it is not in the public interest for such a person to work in the Prison, then the Authority shall notify this to the Contractor and the Contractor shall immediately suspend such person from his work and refuse the admission of such person to the Prison (except if the Authority consents, in connection with disciplinary matters) and shall, immediately on being required to do so, remove such person from the Prison and will cause such person's work to be performed by such other person as may be deemed necessary. The Authority shall, in respect of any such member of staff who has been certified as a Prisoner Custody Officer and in respect of any such other member of staff, take such action as it considers appropriate.

- 33.8 The Contractor and the Authority shall, following the suspension, refusal of admission and/or removal of such member of staff, consult in good faith to ascertain whether the relevant member of staff should be allowed to recommence his or her duties in the Prison. If the Contractor considers in good faith that suspension is no longer appropriate and that the relevant member of staff should be allowed to resume duties at the Prison, it shall notify the Authority in writing. Following receipt of any such notice (an ***Original Notice***) by the Authority, the Authority shall be entitled, by giving notice (a ***Second Notice***) in writing to the Contractor (within fourteen (14) days of receipt of the Original Notice), to require continued suspension and refusal of admission to the Prison except as aforesaid, of the relevant member of staff for a specified period or permanently. If no such Second Notice is received by the Contractor by the date falling fourteen (14) days after receipt by the Authority of the Original Notice, then after such date (but not otherwise) the relevant member of staff may be allowed to continue his or her duties and to be admitted to the Prison. If a member of staff brings any claim in respect of any suspension or refusal of admission to the Prison pursuant to this Clause (following termination of employment by the Contractor or otherwise) then the Contractor shall take all appropriate actions to procure that such claim is defended with all reasonable diligence. If the member of staff nevertheless makes a successful claim in respect of any dismissal, the Authority shall (provided that the Contractor has complied with its obligations under this Contract) reimburse the Contractor for any reasonable losses it suffers as a result of such successful claim. If the Contractor fails to comply with any such requirement of the Authority under this Clause 33.8 (***The Staff***) to suspend, dismiss, refuse admission and/or remove such person, or delays in doing so, the

Authority may employ such other person as it may deem necessary for the purpose of carrying out the work, and any additional costs thereby incurred shall be a debt due from the Contractor to the Authority.

- 33.9 The Contractor will note and comply with the provisions of Section 88 of the Criminal Justice Act 1991. The Contractor shall ensure the inclusion in the contract of employment of each member of staff a condition requiring the said member of staff to co-operate with any Governor who may be appointed to the Prison under the terms of Section 88(2) of the Criminal Justice Act 1991.
- 33.10 The Contractor shall maintain sufficient staff to perform the Custodial Service and the Therapy Service, including the provision of cover for annual and sick leave or other absence and other emergencies.
- 33.11 The Contractor shall provide written job descriptions, staff record systems, and a performance evaluation plan which shall be available for inspection by the Authority. All members of staff shall be provided with written job descriptions before beginning work in the Prison. Job descriptions shall be amended as necessary and reissued to the members of staff concerned after each amendment.
- 33.12 If, whilst operating the Prison, the Contractor or a Sub-contractor seeks to engage a new member of staff, and such person has not been the subject of prior approval or certification in accordance with this Clause, Clause 32 (***Prisoner Custody Officers***) and Clause 31 (***The Director and the Director of Therapy***), or such approval or certification has lapsed, the Contractor shall not permit the said person to commence work at the Prison until the Authority has been provided with the information required by this Clause 33 (***The Staff***) and has given the requisite approval or certification.
- 33.13 The Contractor shall ensure that members of staff (including Prisoner Custody Officers, the Director, the Director of Therapy and other senior management of, and senior therapists at, the Prison or their delegated representatives) with sufficient authority to take decisions necessary for the proper operation of the Prison, shall be available twenty four (24) hours a day on every day throughout the Contract Term in respect of the Custodial Service and the Therapy Service.
- 33.14 The Contractor shall ensure that a member of the senior management of the Contractor's and the Operating Sub-contractor's organisation, as distinguished from the senior management of the Prison, is contactable by the Authority twenty four (24) hours a day on every day throughout

the Contract Term. The Contractor shall ensure that the Authority is informed well in advance of the procedures by which this obligation will be performed (and of any changes thereto) and such procedures (and of any changes thereto) shall be subject to the approval of the Authority.

- 33.15 The Contractor shall be entirely responsible for all aspects, including costs, of the contracts of employment of its employees.
- 33.16 Subject as expressly provided herein, the Contractor shall be liable for any costs and payment of redundancy awards to its employees (except in the case of voluntary termination under Clause 46 (***Voluntary Termination***), as to which the provisions of Schedule H (***Payments on Voluntary Termination***) shall apply) including any costs and payment of redundancy awards to the employees of an outgoing Operating Sub-contractor if a replacement Operating Sub-contractor is appointed pursuant to the provisions of this Contract and/or the Direct Agreement.
- 33.17 During the period of eighteen (18) months preceding the Expiry Date or after notice has been given to terminate the Contract, and in each case within twenty eight (28) days of being so requested by the Authority, the Contractor shall (and shall ensure that the Operating Sub-contractor shall) fully and accurately disclose to the Authority information relating to its employees engaged in providing services under the Contract (or Operating Sub-contract) in particular but not necessarily restricted to:
- (a) the number of personnel whose employment is likely to be terminated by the Contractor or the Operating Sub-contractor at the expiry of the Contract (and the Operating Sub-contract) but for any operation of the law;
 - (b) the payroll bill of those employees (i.e. basic pay, all allowances, employers' contributions to pension schemes);
 - (c) their terms and conditions of employment; and
 - (d) their length of service and the cost of their redundancy entitlement.
- 33.18 The Contractor shall (and shall ensure that the Operating Sub-contractor shall) permit the Authority to use the information for such purposes as it shall deem appropriate and shall enable and assist the Authority and, in respect of the staff at the TC, the Committee and such other persons as the Authority may determine to communicate with and meet those employees and their trade union or other employee representatives when and where the Authority may determine.

- 33.19 From the earlier of the date eighteen (18) months prior to the Expiry Date or the date of being given written notice of the Authority's intention to terminate the Contract or re-tender the services performed under the Contract and until the termination or expiry of the Contract (and the Operating Sub-contract), the Contractor shall not (and shall ensure that the Operating Sub-contractor shall not) amend the rates of remuneration or hours to be worked by any employee performing any part of the Services at the Prison, including holidays, or change the number of employees performing services under the Contract without the prior written agreement of the Authority, which will not be unreasonably withheld.

33A TUPE Transfers

- 33A.1 Unless otherwise agreed by both parties, the Contractor and the Authority acknowledge that the TUPE Regulations will apply at the expiry or on the termination of this Contract.
- 33A.2 During the period of eighteen (18) months preceding the expiry of the Contract or at any other time as directed by the Authority or after the Authority has given notice to terminate the Contract, the Contractor shall:
- (a) fully and accurately disclose to the Authority the information listed in Part 1 of Schedule T (***TUPE Information***) relating to personnel who are engaged in providing the Services; and
 - (b) shall permit the Authority to use the information to inform any tenderer bidding for any services which are substantially the same type of services as provided by this Contract provided that, prior to doing so, any such tenderer shall have executed in writing a confidentiality undertaking in favour of the Contractor.
- 33A.3 During the period of six (6) months preceding the expiry of the Contract, or after the Authority has given notice to terminate the Contract, the Contractor shall provide all reasonable assistance and facilities to the Authority, or any prospective employer of the said personnel as the Authority may determine, to include the communication with and meeting of those personnel whom the Contractor reasonably believes will be involved in the TUPE transfer and their trade union or other employee representatives when and where the Authority may determine.
- 33A.4 During the period of three (3) months preceding the expiry of the Contract or at any time as directed by the Authority or after the

Authority has given notice to terminate the Contract, the Contractor shall fully and accurately disclose to the Authority the information listed in Part 2 of Schedule T (**TUPE Information**) which relates to its employees who are engaged in providing the Services and shall permit the Authority to use the information to inform any prospective employer about its prospective employees provided that, prior to doing so, the prospective employer shall have executed in writing a confidentiality undertaking in favour of the Contractor.

33A.5 The Contractor warrants that it will supply complete and accurate information and agrees to indemnify and keep the Authority indemnified fully in respect of any costs and liabilities whatsoever arising from the provision of information pursuant to Clauses 33A.2 (**TUPE Transfers**), 33A.3 (**TUPE Transfers**), 33A.4 (**TUPE Transfers**) and Schedule T (**TUPE Information**) which is incorrect, the failure to provide information pursuant to such Clauses and/or the failure to provide assistance pursuant to Clause 33A.3 (**TUPE Transfers**). The indemnity pursuant to this Clause will survive the expiry or termination of this Contract **PROVIDED THAT** the Contractor will only be obliged to indemnify the Authority in respect of those costs or liabilities which are notified to the Contractor by the Authority for a period no later than nine (9) months after the termination or expiry of this Contract.

33A.6 From the date of being given notice of the Authority's intention to re-tender the Services (and the Operating Sub-contract) or where notice terminating the Contract (and the Operating Sub-contract) for whatever reason has been given, the Contractor shall not (and shall ensure that the Operating Sub-contractor shall not) without the prior written agreement of the Authority:

- (a) materially amend the rates of remuneration, hours to be worked, or holiday entitlement of any employee performing any part of the Services;
- (b) replace any of the individuals providing any part of the Services (and the Operating Sub-Contract) or deploy any person other than those already providing Services) to perform the Services;
- (c) make or propose any changes to the terms or conditions of employment in respect of any employee performing any part of the Services;
- (d) give notice to terminate the employment of any employee performing any part of the Services (save in respect of gross

misconduct or following a disciplinary investigation, in which event the Contractor shall inform the Authority forthwith).

- 33A.7 Agreement by the Authority in respect of Sub-clauses 33f.(i), (ii), (iii) and (iv) above shall not be unreasonably withheld or delayed.
- 33A.8 All salaries and other emoluments (but excluding leave entitlement) including tax and national insurance payments, contributions to retirement benefit schemes, allowances, expenses and bonus and commission payments relating to employees providing services under the Contract and appertaining to the period up to the expiry or termination of the Contract (or the Operating Sub-contract, as the case may be) shall be borne by the Contractor and all necessary apportionments shall be made.
- 33A.9 Within fourteen (14) days prior to the TUPE Transfer Date the Contractor shall provide to the Authority and the New Contractor a complete and accurate list of all Transferring Employees.
- 33A.10 Within fourteen (14) days following the TUPE Transfer Date, the Contractor shall provide to the Authority and the New Contractor in writing Final Pay Details of the Transferring Employees.
- 33A.11 From the date of being given notice of the Authority's intention to re-tender the Services being performed under the Contract (and the Operating Sub-contract) or where notice terminating the Contract and Operating Sub-contract has been given, the Contractor shall (and shall ensure that the Operating Sub-contractor shall) promptly notify the Authority:
- (a) of the period of notice given by the Contractor or received from any employee performing any part of the Services regardless of when such notice is to take effect;
 - (b) of the termination, for whatever reason of the employment of any employee performing any part of the Services; and
 - (c) of any other change to any employee performing part of the Services and their terms and conditions of employment, the information set forth in Part 2 of Schedule T (***TUPE Information***) and the Relevant Personnel Documentation.
- 33A.12 The Contractor warrants that it shall satisfy all of its obligations up to the TUPE Transfer Date in respect of all salaries and other emoluments, tax and national insurance payments, contributions to retirement benefit

schemes and bonus arrangements in respect of each Transferring Employee provided that (i) where the same are due to be paid before the TUPE Transfer Date in respect of the period after the TUPE Transfer Date, the same shall be paid by the Contractor who shall forthwith on demand be indemnified in respect thereof by the Authority; and (ii) where the Transferring Employees are to be paid after the TUPE Transfer Date in respect of the period up to and including the TUPE Transfer Date the Authority forthwith on demand shall be indemnified by the Contractor in respect of this payment.

33A.13 The Contractor shall indemnify and keep the Authority indemnified in respect of all and any costs and liabilities whatsoever suffered or incurred by the Authority or the New Contractor by reason of any proceeding, claim or demand arising out of or in connection with:

- (a) any claim against the Authority, or the New Contractor nominated by the Authority, by any Transferring Employee included on the list provided in accordance with Clause 33A.9 (***TUPE Transfers***) so far as it relates to any act or omission of the Contractor prior to the TUPE Transfer Date;
- (b) any claim against the Authority or the New Contractor by any Transferring Employee engaged in providing the Custodial Services under this Contract whose name is not included on the list provided by the Contractor pursuant to Clause 33A.9 (***TUPE Transfers***).
- (c) any claim against the Authority or the New Contractor by any person engaged in providing the Custodial Services under this Contract who is not a Transferring Employee that they were employed immediately prior to the TUPE Transfer Date in the provision of the Services and that accordingly their employment has been transferred to the New Contractor provided that the New Contractor terminates their employment within ten (10) days of becoming aware of that person's claim.

33A.14 The Authority shall (and shall procure that any New Contractor shall), so far as reasonable, ensure that the Authority (or any New Contractor) does not impede or prevent the Contractor from complying with its duties in accordance with Regulation 10 of TUPE and the Authority shall make reasonable endeavours to provide (or procure the provision) of relevant and accurate information to the Contractor. The provision or procurement by the Authority of information or other assistance shall not

import or imply any warranty or other representation by the Authority in connection with such information or assistance.

33A.15 For the purposes of this Clause 33A (**TUPE Transfers**); **Final Pay Details** means in respect of each of the Transferring Employees the following: copy pay slip data for the final month, cumulative pay for tax and pension purposes, cumulative tax paid, tax code, voluntary deductions from pay, bank/building society account details for payroll purposes; **TUPE Transfer Date** means the date of termination or expiry of this Contract; **Transferring Employees** means those employees of the Contractor or any Sub-contractor who are at the TUPE Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to TUPE or the Acquired Rights Directive EEC 187/77 or otherwise to the New Contractor; **Relevant Personnel Documentation** means all documents, manuals, codes, handbooks, procedure guides, publications and agreements (including collective agreements) that relate to the Transferring Employees' terms and conditions of employment and benefits; **New Contractor** means the person nominated by the Authority to undertake the services substantially the same as the Services after the expiry or termination of this Contract.

34. THE CONTROLLER AND THE COMMITTEE

34.1 The Contractor will note and comply with the provisions of Section 85 of the Criminal Justice Act 1991.

34.2 The Controller shall be allowed unrestricted access to the Prison (which, for the avoidance of doubt, includes the TC) at any hour of day, and the Controller shall be provided with accommodation in accordance with Clause 56 (**Facilities for Authority**). In accordance with Section 85(5) of the Criminal Justice Act 1991 the Contractor shall do all that it reasonably can to facilitate the exercise by the Controller of its functions, whether such functions be those conferred by statute or by the Authority.

34.3 At least eight months prior to the Estimated Main Opening Date, the Contractor and the Authority shall consult as to the identity of the two persons that each intends to nominate as members of the Committee and in so doing both the Contractor and the Authority shall act reasonably. At least six (6) months prior to the Estimated Main Opening Date, both the Authority and the Contractor shall nominate, in writing to the other, two persons to be members of the Committee (not more than

one of whom may be an employee of the Contractor or the Authority (as the case may be)). The Authority shall appoint the chairman of the Committee who may (in addition to the member nominated by the Authority) be an employee of the Authority and who shall have a casting vote. In addition to the Committee members referred to above, the Controller and the Director of Therapy shall sit on the Committee as *ex officio* members (for the avoidance of doubt, neither shall have a vote).

34.4 The Committee shall meet approximately every six (6) months and at such other times as it may deem appropriate or when requested to do so either by the Authority or the Contractor to consider and make recommendations to the Director of Therapy (with a copy to the Authority) in relation to the following:

- (a) the provision of the Therapy Service generally;
- (b) the observance of all appropriate professional standards;
- (c) the type, scope and goals of the Therapy Service;
- (d) any other matter relevant to the provision of the Therapy Service including matters relating to the staff (both as regards number and qualification) providing the Therapy Service;
- (e) the provision of Therapy at HMP Grendon and at other therapy centres (focused on a comparison of the same with the Therapy Service) or any other matter relevant to the provision of the Therapy Service;
- (f) the research findings produced pursuant to Clause 59C (**Research**);
- (g) the Referral Criteria and the Acceptance Criteria;
- (h) the TC Requirements set out in Schedule D (**Operational Requirements**), Part 3.

34.5 The Committee's remit shall also extend to monitoring and making recommendations to the Authority in relation to the performance of the Director of Therapy (including, if appropriate, making recommendations to the Authority pursuant to Clause 33.7 (**The Staff**)).

34.6 The Committee may delegate any of its powers to any sub-committee consisting of two (2) or more of its members (at least one of whom shall be nominated by the Contractor). Any such delegation may be made

subject to any conditions the Committee may impose, may be made either collaterally with or to the exclusion of its powers, and may be revoked or altered.

34.7 The Contractor shall implement and comply with any recommendation of the Committee if required to do so by notice from the Authority provided that where such implementation or compliance gives rise to a change of service under Clause 9 (***Change to Services Required***), the provisions of Clause 39 (***Variation of Price***) shall apply.

34.8 NOT USED

34.9 At the first meeting of the Committee after the second anniversary of Actual TC Full Operation Date one member of the Committee nominated by the Contractor and one member of the Committee nominated by the Authority shall retire (each Party shall choose which of its nominated members shall retire). At the first meeting of the Committee after each subsequent anniversary the longest serving of the two members of the Committee nominated by the Contractor and the longest serving of the two members of the Committee nominated by the Authority shall retire. The Contractor and/or the Authority may in all circumstances re-nominate its retiring member.

34.10 The Party who appointed a member of the Committee shall nominate, in writing to the other, the replacement for that member of the Committee (whether such replacement is or will be occasioned by retirement or otherwise). Where practicable such nomination shall be sent two months before the date upon which that member is due to cease being a member. The parties shall consult in good faith regarding each such nomination; notwithstanding such consultation the Party making the nomination shall have the right to appoint the person who is the subject of the nomination provided that at no time shall there be more than one employee of the Contractor or the Authority (as the case may be) as a member of the Committee. For the avoidance of doubt, the Authority shall appoint each replacement for the chairman of the Committee who may, in addition to one member of the Committee, be an employee of the Authority.

35. MONITORING AND INSPECTION

35.1 The Contractor shall give or procure access to the Prison and to any training or catering or other facilities of the Contractor or any Sub-contractor where such facilities are used in connection with the provision of the Custodial Service (other than the Works) and/or the Therapy

Service (the Prison and all such facilities being referred to as the **Facilities**) to, and will otherwise co-operate with, Her Majesty's Inspectorate of Prisons, the Prison Ombudsman, the Board of Visitors, the Committee and any other statutory, regulatory or other properly interested body, including relevant international bodies.

35.2 The Contractor shall be required to permit or procure reasonable access to the Facilities to any other person whom the Authority notifies to the Contractor, subject to the Contractor's and the Sub-contractors' security and operational requirements and reimbursement of any reasonable costs, expenses or damage incurred in relation to the Facilities which are caused by such person.

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

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

36. ESCORT ARRANGEMENTS

36.1 The Contractor is under a duty to co-operate with all reasonable requirements of any other person providing a Main Prisoner Escort

Service and/or a TC Prisoner Escort Service to the Prison, but subject at all times to the maintenance of the security and control at the Prison.

36.2 Unless the Authority otherwise notifies the Contractor in writing, the Contractor will provide a Main Prisoner Escort Service and a TC Prisoner Escort Service in accordance with Part 4 of Schedule D (***Operational Requirements***), for each of which the Contractor will be entitled to a fee as set out in Paragraph 11 of Schedule E (***Payment Mechanism***) and payable in accordance therewith.

36.3 The Contractor shall, if the Authority so requires, itself provide a Main Prisoner Escort Service and/or a TC Prisoner Escort Service other than as provided in sub-Clause 36.2 (***Escort Arrangements***), subject to Clause 9 (***Change to Services Required***).

37. VISITORS

37.1 The Contractor shall be responsible for the safety and protection of all visitors to the Prison, and for the maintenance of security in the Prison when visitors are given access onto the Land, for whatever purpose.

PART VI - FINANCE

38. PRICE

38.1 The Authority shall pay to the Contractor the Contract Price which shall be calculated by reference to the relevant formula at Paragraph 9 of Schedule E (***Payment Mechanism***), expressed in pounds sterling per day, subject to any variations of the Contract Price as provided for in Clause 9 (***Change to Services Required***) and Clause 39 (***Variation of Price***) (which for the avoidance of doubt shall not include any direct reimbursement by the Authority of specific costs or expenses).

38.2 Without prejudice to the Authority's obligations pursuant to Clauses 9.3 (***Change to Service Required***) and 39.2 (***Variation of Price***), no payment of the Contract Price shall become due to the Contractor until the earlier of:

- (a) the date upon which the Authority first makes use of Available Prisoner Places provided by the Contractor under Clause 22.1 (***Phase-in Period***);
- (b) the date falling on or after CMOD+7 upon which the Contractor first provides fifty (50) Available Prisoner Places in accordance with the Main Phase-in Timetable; and

- (c) the date falling on or after Contractual TC Opening Date upon which the Contractor first provides thirty two (32) Available TC Places in accordance with the TC Phase-in Timetable.

- 38.3 Payment of the Contract Price shall be claimed monthly and in arrears, by means of an invoice, together with such other documentation supporting the invoice as the Authority may reasonably require, submitted to the Contracts and Competition Group of HM Prison Service or its successor, and shall be subject to any reduction pursuant to the terms hereof. The first such invoice and documentation shall be due on the last day of the month in which the Contractor provides fifty (50) Available Prisoner Places to the Authority or thirty two (32) Available TC Places to the Authority, whichever is the earlier.
- 38.4 Payment will be due in accordance with Schedule E (***Payment Mechanism***), thirty (30) days from the presentation by the Contractor of each valid monthly invoice, and such other documentation as may be reasonably required.
- 38.5 Interest shall accrue on any amounts due hereunder which are not paid on the due date at the rate of LIBOR from time to time plus 1% on the unpaid amount from the due date until the date of payment thereof.
- 38.6 The Authority shall pay to the Contractor in accordance with Parts 1 and 2 of Schedule R (***Houseblock Works Fee***) ~~the Houseblock Works Fee.~~

39. VARIATION OF PRICE

- 39.1 The Contract Price is fixed and is not subject to revision except as provided in Clause 9 (***Change to Services Required***) or this Clause 39 (***Variation of Price***).
- 39.2 Where any Prison Legislation alters the costs incurred by the Contractor in fulfilling its obligations hereunder the following shall apply:
 - (i) where such Prison Legislation does not result in an obligation on the Contractor to incur any Capital Expenditure, the Contractor may notify the Authority of such alteration in its costs and request that an adjustment be made to the Contract Price. Following such notification, the parties shall endeavour to agree such adjustment as soon as practicable in accordance with the following provisions:
 - (a) the Contractor shall provide the Authority with a quotation to decrease or increase the Contract Price;

- (b) the Contractor shall submit all such information referred to in Clause 60 (***Contractor's Records***) as the Authority may reasonably require together with break-downs of price and supporting material as the Authority may reasonably require including wage rates, suppliers' costs, overhead and profit calculations, for the purpose of satisfying the Authority that the proposed revised price is fair and reasonable; or
 - (ii) where such Prison Legislation results in an obligation on the Contractor to incur any Capital Expenditure, the provisions in Clauses 9.2 (***Change to Services Required***) and 9.3 (***Change to Services Required***) shall apply, save that any reference to a Notice of Change shall be deemed to include Prison Legislation for the sole purpose of this Clause 39.2(ii) (***Variation of Price***).
- 39.3 When any Security Technology Change arises or comes to the attention of the Contractor, the Contractor shall as soon as reasonably practicable notify the Authority of such matter and shall provide to the Authority all information in its knowledge or possession necessary to enable the Authority to evaluate the position. Upon such notification, or if the Authority reasonably believes that a Security Technology Change has occurred or should occur, the Authority shall be entitled to a reduction of the Contract Price equal to 75% of the aggregate of the reduction in the Contractor's costs which has resulted or would result from such Security Technology Change, and may if it wishes serve notice upon the Contractor, whereupon:
- (a) the Contractor shall provide the Authority with a quotation to reduce the Contract Price;
 - (b) the Contractor shall provide all the information referred to in Clause 39.2(i)(b) (***Variation of Price***) as the Authority may require for the Authority to ascertain the amount of reduction in costs which the Contractor will or should achieve as a result of the said Security Technology Change; and
 - (c) the Contractor and the Authority shall agree a reduction in the Contract Price which shall fairly reflect 75% of the reduction in the costs of the Contractor, and (but without double counting) any Sub-contractors (calculated on a consolidated basis) which result or will result from the said Security Technology Change.

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

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

- 39.4 Any variation to the Contract Price pursuant to Clause 9 (***Change to Services Required***) or (except as provided otherwise) this Clause 39 (***Variation of Price***) shall be set at a level so as to allow the parties providing the necessary works or new services in order to comply with the Contract following the date upon which the Notice of Change comes

into effect to receive a reasonable rate of return in respect of such works or services comparable with the return normally obtained by such parties in respect of such works or services in the United Kingdom (taking into account the nature of the financing of such works or services and of any existing financing), such rate not to exceed a real rate of 7.05 % per annum; and any variation to the Contract Price pursuant to Clause 9 (***Change to Services Required***) and this Clause 39 (***Variation of Price***) shall further be made in accordance with the following principles:

- (a) any changes in Wage Costs shall be reflected by an appropriate change in the amount of the Indexed Costs Fee and by the appropriate change in the amount of the Variable Payment and any other amounts previously agreed as being payable pursuant to Clause 40.3 (***Additional Prisoner Places***) and/or Clause 40A.3 (***Additional Local Prisoner Places***) to reflect the proportion of the Variable Payment and such other amounts which is attributable to Wage Costs;
- (b) any changes in any financing costs resultant upon the financing of any Capital Expenditure pursuant to Clause 9.2 (***Change to Services Required***) shall be reflected by an appropriate change in the amount of the Fixed Fee (taking into account the repayment Schedule O (***Minimum Insurance Requirements***)) of such financing);
- (c) any changes in the costs of the Contractor or the Sub-contractors other than in respect of the matters referred to in (a) and (b) above shall be reflected by an appropriate change in the amount of the Indexed Fee and by appropriate changes in the amount of Variable Payment to reflect the proportion of the Variable Payment and such other amounts which is not attributable to Wage Costs;
- (d) if the Authority requires a reduction in the number of Available Prisoner Places and/or Available TC Places to be provided by the Contractor pursuant hereto, appropriate changes will be made to the Contract Price such that:
 - (i) the Contractor's existing and ongoing payment and scheduled repayment obligations under the Financing Agreements are fully reflected (provided that if prior to the relevant variation of price a payment breach has occurred and is continuing or is reasonably forecast, then this sub-Paragraph (i) should be

applied so as to result in the Debt Service Cover Ratio reasonably forecast immediately prior to the date of the variation being maintained);

- (ii) the Contractor's obligation to comply with the financial covenants contemplated by the Credit Agreement at the date hereof shall be reflected so as to provide the Banks with at least the same Loan Life Cover Ratio and Debt Service Cover Ratio as are reasonably forecast immediately prior to the date of the variation for the remaining term of their facilities;
 - (iii) the Shareholders' actual real post-tax percentage equity return is preserved; and
 - (iv) the Operating Sub-contractor's actual percentage operating margin is preserved; and
- (e) any benefit or saving accruing to the Contractor, the Operating Sub-contractor or any of their affiliates at any other prison(s) or other type of custodial facility operated by them in the United Kingdom as a direct result of the matter giving rise to the change in the Contract Price shall be taken into account (for the purpose of this Clause 39.4(e), **affiliate** means an entity the majority of whose shares is, at the time of variation of the Contract Price, owned indirectly by the holding company (as defined in the Companies Act 1985) of the Contractor or the Operating Sub-contractor, or by any company which at the relevant time owns directly or indirectly 50% or more of the issued share capital in the Contractor or the Operating Sub-contractor.

39.5 Except in the circumstances where the other provisions of this Clause 39 (**Variation of Price**) are applicable, where as a direct result of any Significant Change occurring since the date hereof (or, if there has been any variation of the Contract Price under this Clause 39.5 (**Variation of Price**), since the date of such variation) the aggregate costs incurred by the Contractor or the Operating Sub-contractor in the operation of the Prison have altered by more than 5% in real terms and a party believes that the effect thereof is significantly to alter the Level of Return, it may serve notice on the other party applying for a review of the Contract Price in accordance with the provisions of this Clause 39.5 (**Variation of Price**). Such notice may only be served on the fifth, tenth and fifteenth anniversaries of the date hereof or within one (1) month thereafter. If

such notice is served and it can be demonstrated that the aggregate costs and Level of Return have so altered, the following procedure shall apply:

- (a) the parties will attempt to agree a fair variation of the Contract Price which will ensure the Level of Return is maintained thereafter;
- (b) if the parties do not reach such agreement within one month of the date of the notice, the matter must be referred to the Adjudicator, who will receive and be entitled to ask for all reasonably necessary information from the parties as he sees fit, and will recommend within one month of the referral of the matter to him whether the Contract Price should be varied, and if so the manner of such variation, so that the Level of Return is obtained thereafter;
- (c) the parties may thereupon make such further representations to the Adjudicator as they wish, following which the Adjudicator shall within two weeks of the date of his original recommendation issue a final recommendation (the ***Final Recommendation***) as to whether and to what extent there should be such a variation;
- (d) within two (2) weeks of the date of the Final Recommendation, each party shall notify the Adjudicator whether it accepts the Final Recommendation; and
- (e) in the event that the Authority accepts the Final Recommendation, the Contract Price shall forthwith be varied in accordance with the contents of the Final Recommendation. In the event that both parties reject the Final Recommendation, no variation of the Contract Price will occur except as otherwise agreed between the parties. In the event that the Authority rejects the Final Recommendation but the Contractor accepts it, unless the parties otherwise agree, there shall be no variation of the Contract Price but the Contract shall terminate three months after the date of the Final Recommendation and the Authority shall pay to the Contractor the Original Value.

39.6 In respect of any price review or amount payable under this Clause, Clause 72 (***Dispute Resolution***) shall apply, other than in respect of

any determination of the Adjudicator or the Final Recommendation under Clause 39.5 **Variation of Price**).

40. ADDITIONAL PRISONER PLACES

40.1 Subject to Clause 40.2 (**Additional Prisoner Places**), the Contractor shall, following the day falling six (6) months after the Full Main Operation Date, provide to the Authority Additional Prisoner Places in accordance with Clauses 40.1(a) (**Additional Prisoner Places**) and (b) (**Additional Prisoner Places**) below.

- (a) Up to twenty (20) Additional Prisoner Places shall be immediately available to the Authority (and a further five (5) Additional Prisoner Places shall be available to the Authority on the Contractual Houseblock Opening Date) at any time provided that the Authority shall liaise with the Director regarding the transfer to the Prison of those Prisoners who will occupy such Additional Prisoner Places. Any failure to conduct or conclude such liaison shall not prejudice the Authority's right to utilise such Additional Prisoner Places.
- (b) Up to forty (40) Additional Prisoner Places (in addition to those specified in (a) above) shall be available to the Authority (and a further eight (8) Additional Prisoner Places shall be available to the Authority on the Contractual Houseblock Opening Date) at any time following written notice requiring the Contractor to provide such number of Additional Prisoner Places as is specified in the notice and for such period as is specified in the notice (or in each case specified in any notice amending such notice (an **Amendment Notice**)). If the Authority serves any notice under this Clause 40.1(b) (**Additional Prisoner Places**) which requires less than twenty (20) (prior to the Contractual Houseblock Opening Date) or twenty five (25) (after the Contractual Houseblock Opening Date) Additional Prisoner Places to be provided, the Contractor shall be entitled to reject such notice and if so rejected such notice shall be invalid for the purposes of this Clause 40 (**Additional Prisoner Places**). The length of the notice period given to the Contractor pursuant to this Clause 40.1(b) (**Additional Prisoner Places**) shall be such period as is reasonable in the circumstances except in the case of emergencies, in which case the Authority may require provision of such Additional Prisoner Places with immediate effect, but will provide the Contractor with such assistance as is reasonably required in the

circumstances (including, if appropriate, a temporary waiver of any relevant obligations of the Contractor pursuant to Part 1 of Schedule D (***Operational Requirements***) and/or Schedule F (***Performance Measures***)).

For the avoidance of doubt, the number of Additional Prisoner Places provided at any time pursuant to this Clause 40 (***Additional Prisoner Places***) shall not, from the Contractual Houseblock Opening Date, exceed seventy three (73).

40.2 The Contractor shall not be obliged to provide an Additional Prisoner Place if it has reasonable cause to believe that accepting a Prisoner for that Additional Prisoner Place would prejudice the Contractor's ability to maintain security and control within the Prison or the Authority, in requesting that a Prisoner occupy such Additional Prisoner Place, is not acting in accordance with its own guidelines for placing Prisoners in its own prisons.

40.3 The Contractor shall receive a Variable Payment:

- (a) for each Additional Prisoner Place occupied by a Prisoner pursuant to Clause 40.1(a) (***Additional Prisoner Places***), for each whole or part of a day of such occupation; and
- (b) for each Additional Prisoner Place required by notice pursuant to Clause 40.1(b) (***Additional Prisoner Places***), for each day during the period stated in that notice. For the purpose of calculating the payment due to the Contractor in respect of Additional Prisoner Places provided to the Authority pursuant to Clause 40.1(b) (***Additional Prisoner Places***):
 - (i) if the period stated in the notice is less than thirteen (13) weeks such period shall be deemed to be thirteen (13) weeks; and
 - (ii) an Amendment Notice shall only come into effect thirteen (13) weeks after the date of that Amendment Notice,

in each case, provided that each such Additional Prisoner Place satisfies the conditions contained in Clause 29.1 (***Available Places***) and is recorded in the Daily Report. The Variable Payment shall be paid in accordance with Schedule E (***Payment Mechanism***).

40A **ADDITIONAL LOCAL PRISONER PLACES**

40A.1 Subject to Clause 40A.2 (***Additional Local Prisoner Places***), the Contractor shall, following the day falling six (6) months after the Actual Increased Capacity Date, provide to the Authority Additional Local Prisoner Places in accordance with Clauses 40A.1(a) (***Additional Local Prisoner Places***) below.

- (a) Up to sixty (60) Additional Local Prisoner Places shall be available to the Authority at any time following written notice requiring the Contractor to provide such number of Additional Local Prisoner Places as is specified in the notice (or in each case specified in any notice amending such notice) (a ***Local Amendment Notice***). If the Authority serves any notice under this Clause 40A.1(a) (***Additional Local Prisoner Places***) which requires less than twenty (20) (or any multiple thereof) Additional Local Prisoner Places to be provided, the Contractor shall be entitled to reject such notice and if so rejected such notice shall be invalid for the purposes of this Clause 40A (***Additional Local Prisoner Places***). The length of the notice period given to the Contractor pursuant to this Clause 40A.1(a) (***Additional Local Prisoner Places***) shall be such period as is reasonable in the circumstances except in the case of emergencies, in which case the Authority may require provision of Additional Local Prisoner Places with immediate effect (up to a maximum of thirty (30) Additional Local Prisoner Places), but will provide the Contractor with such assistance as is reasonably required in the circumstances (including, if appropriate, a temporary waiver of any relevant obligations of the Contractor pursuant to Part 1 of Schedule D (***Operational Requirements***) and/or Schedule F (***Performance Measures***)).

For the avoidance of doubt, the number of Additional Local Prisoner Places provided at any time pursuant to this Clause 40A (***Additional Local Prisoner Places***) shall not exceed sixty (60).

40A.2 The Contractor shall not be obliged to provide an Additional Local Prisoner Place if it has reasonable cause to believe that accepting a Local Prisoner for that Additional Local Prisoner Place would prejudice the Contractor's ability to maintain security and control within the Prison or the Authority, in requesting that a Local Prisoner occupy such Additional Local Prisoner Place, is not acting in accordance with its own guidelines for placing Local Prisoners in its own prisons.

40A.3 The Contractor shall receive a Variable Payment for each Additional Local Prisoner Place required by notice pursuant to Clause 40A.1(a) (**Additional Local Prisoner Places**), for each day during the period stated in that notice. For the purpose of calculating the payment due to the Contractor in respect of Additional Local Prisoner Places provided to the Authority pursuant to Clause 40A.1(a) (**Additional Local Prisoner Places**):

- (i) if the period stated in the notice is less than thirteen (13) weeks such period shall be deemed to be thirteen (13) weeks; and
- (ii) a Local Amendment Notice shall only come into effect thirteen (13) weeks after the date of that Local Amendment Notice,

in each case, provided that each such Additional Local Prisoner Place satisfies the conditions contained in Clause 29.1 (**Available Places**) and is recorded in the Daily Report. The Variable Payment shall be paid in accordance with Schedule E.

40A.4 If the Authority shall require the Contractor to cease to provide any number of Additional Local Prisoner Places notified to the Contractor pursuant to a Local Amendment Notice issued under this Clause 40A (**Additional Local Prisoner Places**), the Authority shall issue a notice (a **Withdrawal Notice**) to the Contractor. The minimum notice period stated in the Withdrawal Notice shall be six (6) months.

41. PLANS AND PERFORMANCE MEASURES

41.1 At least six (6) months prior to the Estimated Main Opening Date, the Contractor shall provide a project implementation plan to operate the Prison and to provide the Therapy Service which shall cover the period from the Contractual Main Opening Date or the Contractual TC Opening Date as appropriate to six months after the Contractual Main Opening Date or the Contractual TC Opening Date as appropriate. On or before six months after the Contractual Main Opening Date, the Contractor shall provide a strategic development plan to operate the Prison in respect of the Custodial Service to cover the three (3) year period commencing on the Full Main Operation Date. The Contractor shall be under a duty to meet the requirements and targets contained in the project implementation plan in respect of the operation of the Prison and the provision of the Therapy Service and the strategic development plan for achieving continuing improvements to the Custodial Service. On or

before the Contractual TC Opening Date, the Contractor shall, in consultation with the Committee, provide a guide to and plan of the provision of the Therapy Service in respect of the three year period commencing on the Full TC Operation Date. The Contractor shall be under a duty to meet the requirements and targets contained in the guide and plan in respect of the Therapy Service.

- 41.1A The Contractor shall provide an update to the current strategic development plan to operate the Prison, including the Houseblock at least six (6) months prior to the Contractual Increased Capacity Date. The Contractor shall use its reasonable endeavours to meet the requirements and targets in the said plan for achieving continual improvements to the Custodial Services.
- 41.2 At the end of the first three (3) year strategic development plan and the Therapy Service guide and plan, and every five (5) years thereafter, the Contractor shall consult with the Authority and submit such further strategic development plans and Therapy Service guides and plans to the Authority for its approval as the Authority may reasonably require.
- 41.3 The project implementation plan and the strategic development plans and Therapy Service guides and plans referred to in Clauses 41.1(***Plans and Performance Measures***) and 41.2 (***Plans and Performance Measures***) are to accord with the policies and vision statements adopted from time to time by the Authority, provided (and without prejudice to the provisions of Clause 9 (***Change to Services Required***)) that the Contractor shall only be obliged to implement such plans to the extent they would not increase the cost to the Contractor of providing the Custodial Service and/or the Therapy Service.
- 41.4 The Contractor shall operate systems to ensure the continuing quality of the Custodial Service and the Therapy Service and such systems shall (where applicable) be at a level not less than that indicated in the Operational Proposals.
- 41.5 The Contractor shall have no recourse to Clause 39 (***Variation of Price***) as a result of any obligation imposed by this Clause.
- 41.6 Without prejudice to the Authority's rights under Clauses 44 (***Default by Contractor***) and 45 (***Rectification and Termination for Default***), the amount payable by the Authority for the services of the Contractor hereunder shall be reduced in the event that Performance Measures arise such that the number of Performance Points accrued exceeds the Baseline Total during the relevant Performance Quarter. The amount of

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

41.7 In the event of the escape of any Prisoner, which for the purposes of this Clause shall mean when such Prisoner overcomes a substantial barrier such as the perimeter wall of the Prison (a ***Prison Escape***) or, in the case of a Prisoner being escorted outside the Prison, is no longer within the custody of the Contractor or its Sub-contractors for any period (an ***Escort Escape***), the Contractor shall be liable forthwith to make a payment to the Authority of [REDACTED] ([REDACTED]) per incident in respect of a Prison Escape or [REDACTED] ([REDACTED]) per incident in respect of an Escort Escape (in each case regardless of the number of Prisoners who have escaped), such amount to be indexed as the Variable Payment is indexed pursuant to Schedule E (***Payment Mechanism***).

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

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

42. VALUE ADDED TAX

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

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

42.3 The Contractor shall, if so requested by the Authority, furnish such information as may be reasonably required by the Authority as to the amount of Value Added Tax chargeable in accordance with the Contract, and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall

be a sum of money recoverable from the Contractor for the purposes of Clause 43 (***Recovery of Sums Due***).

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

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

43. RECOVERY OF SUMS DUE

43.1 Whenever, under the Contract, any sum or sums of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract, or under any other contract which the Contractor has with the Authority or with the Crown provided that the Authority agrees not to set-off any amounts due from the Contractor against its obligations to pay a termination sum under Clauses 5.14 (***Insurance***), 39.5 (***Variation of Price***), 49 (***Payment for Termination***), 51 (***Corrupt Gifts and Payments***), 56.3 (***Facilities of Authority***) except to the extent that such termination sum is greater than the Lender Liabilities.

PART VII - TERMINATION

44. DEFAULT BY CONTRACTOR

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

- (a) any failure (except if falling within (c) or (d) below or in connection with the execution of the Works) by the Contractor to perform, keep, observe, meet or comply with any of the terms of the Contract where such failure:

- (i) occurs after Engineer's Declaration and has a material effect on the performance of the Custodial Service as a whole or the Therapy Service as a whole; or
- (ii) does not give rise to Performance Measures or otherwise constitute an Event of Default but is a failure which has continued or recurred within six months after the date of a Final Notice (as defined below) served on the Contractor; or
- (iii) either by itself or in addition to any other failure or failures (whether or not remedied), casts, in the Authority's reasonable opinion, serious doubt on the competence or suitability of the Contractor to provide the Services.

For the purposes of (ii) above:

- (i) If a failure which does not give rise to Performance Measures or otherwise constitute an Event of Default has continued or occurred persistently, the Authority may serve a notice (a **First Notice**) on the Contractor duly signed by a Named Representative of the Authority, specifying that it is a First Notice as defined in Clause 44(a) (**Default by Contractor**) of this Contract, giving reasonable details of that failure and stating that such failure is a failure which (if it continues, or recurs persistently) may result in a termination of this Contract.
- (ii) If, following the service of a First Notice, the failure specified therein has continued, or recurred persistently following the date falling thirty (30) days after the date of service of the First Notice and the Operating Sub-contractor has not been replaced then the Authority may serve another Notice (a **Final Notice**) on the Contractor duly signed by a Named Representative of the Authority and specifying that it is a Final Notice as defined in Clause 44(a) (**Default by Contractor**) of this Contract, that the failure specified has been the subject of a First Notice served within the twelve month period prior to the date of service of the Final Notice and that if such

failure continues or recurs within the six (6) month period following the date of service of the Final Notice, the Contract may be terminated.

- (iii) No Final Notice may be served pursuant to this Clause unless a First Notice has been served in respect of the same failure within the twelve month period preceding the date of service of the Final Notice.
 - (iv) A First Notice may not be served in respect of any failure in respect of which a First Notice has already been served until a period of twelve (12) months has elapsed since the date of service of such First Notice.
- (b) failure by the Contractor to pay any amount due from it hereunder (except for (i) liquidated damages payable under Clause 25 (**Liquidated Damages**) to which Clause 44(f) (**Default by Contractor**) applies and (ii) liquidated damages payable under Clause 25A (**Liquidated Damages - Increased Capacity**)) within fifteen (15) Business Days of a written demand which refers to either a previous invoice or other written demand for the same sum which is unpaid (unless the relevant amount is disputed in good faith);
 - (c) failure to obtain the Engineer's Declaration on or before the date falling nine (9) months after the Contractual Main Opening Date;
 - (d) failure to provide fifty (50) Available Prisoner Places on or before the date falling three (3) months after the date upon which the Engineer's Declaration is obtained or failure to provide thirty two (32) Available TC Places on or before the date falling nine months after the date upon which the Engineer's Declaration is obtained unless resulting from a breach by the Authority of its obligations hereunder;
 - (e) failure to provide (i) all six hundred (600) Available Prisoner Places and any Additional Prisoner Places during the period up to but not including the Actual Increased Capacity Date or (ii) one hundred and seventy four (174) Available TC Places from nine (9) months after the Actual TC Full Operation Date, in each case for a continuous period exceeding thirty (30) days

except (i) in circumstances where Clause 48 (***Force Majeure***) applies, or (ii) where:

- (i) such failure results from matters entirely outside the Contractor's control (including a breach by the Authority of its obligations hereunder); and
 - (ii) the Contractor is using best endeavours to restore all such Prisoner Places and/or TC Places (as the case may be) as soon as practicable;
- (f) failure to pay any liquidated damages in accordance with Clause 25 (***Liquidated Damages***) on or before the date falling thirty (30) days after the due date (except where such failure results from a technical failure in the banking system), but not, for the avoidance of doubt, a failure on the Contractor's behalf to pay any liquidated damages in accordance with Clause 25A (***Liquidated Damages - Increased Capacity***);
- (g) if:
 - (i) a court makes an order that the Contractor be wound up; or
 - (ii) any receiver or manager is appointed in respect of the Contractor (other than for the purpose of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the receiver is appointed by the Banks under the Financing Agreements); or
 - (iii) a meeting of creditors of the Contractor passes or a meeting of any class of shareholders of the Contractor is convened for the purposes of considering, a resolution for the winding-up of the Contractor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the meeting is convened by the Banks under the Financing Agreements); or
 - (iv) a petition for an administration order is presented and such petition is not withdrawn within thirty (30) days (except when it is presented by the Banks in

the manner contemplated in the Direct Agreement);
or

- (v) a petition is presented or other steps are taken for the purposes of the winding up of the Contractor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority or as a result of action being taken by the Banks in exercise of their rights under the Financing Agreements as contemplated in the Direct Agreement) and any such petition is not, or such other steps are not discharged or withdrawn within thirty (30) days of receiving notice of such petition;
or
- (h) if distress or execution is levied against all or a substantial part of the Contractor's assets and is not paid or discharged within twenty eight (28) days, or a judgment against the Contractor in excess of [REDACTED] ([REDACTED]) remains unsatisfied for more than twenty eight (28) days, except in either case where the Contractor has lodged a bona fide appeal against such levy or judgment;
- (i) if a change of control of the Contractor (as defined in Clause 50 (***Change of Control***)) occurs (without the consent of the Authority and except as otherwise permitted in Clause 50 (***Change of Control***)); or
- (j) an Event of Default as defined in the Credit Agreement occurs (unless resulting from a breach by the Authority of its obligations hereunder) and the Banks (or a requisite majority of the Banks or the Agent) have accelerated all or part of the indebtedness outstanding pursuant to the Financing Agreements (except where the Contractor has demonstrated within 10 days of such acceleration to the satisfaction of the Authority that it is able to continue to comply with its obligations under the Contract); and
- (k) failure to provide all eight hundred and sixty (860) Available Prisoner Places and any Additional Prisoner Places and/or Additional Local Prisoner Places on and from the Actual Increased Capacity Date for a continuous period exceeding thirty (30) days except where:

- (i) such failure results from matters entirely outside the Contractor's control; or
 - (ii) the Contractor is using best endeavours to restore eight hundred and sixty (860) Available Prisoner Places as soon as practicable.
- (l) failure to provide all two hundred (200) Available TC Places on and from the Actual Increased Capacity Date for a continuous period exceeding thirty (30) days except where:
 - (i) such failure results from matters entirely outside the Contractor's control; or
 - (ii) the Contractor is using best endeavours to restore all such Available TC Places as soon as practicable.

44A Houseblock Default

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

- (a) in respect of the Houseblock Works, the Contractor does not perform the Houseblock Works for a continuous period of forty five (45) Business Days or for a period of one hundred and thirty five (135) days (whether continuous or not) at any time after the date of the Amending Agreement;
- (b) failure to obtain the Engineer's Houseblock Declaration on or before the Long Stop Date;
- (c) failure to provide thirty five (35) Available Prisoner Places in the Houseblock on or before the date falling six (6) months after the date upon which the Engineer's Houseblock Declaration is obtained; and
- (d) failure to deliver the declaration to the Health and Safety Executive pursuant to Clause 13A.2 (***Provision of Increased Capacity***).

44B Termination of Houseblock Construction Sub-contract

- 44B.1 If and whenever it becomes reasonably apparent to the Contractor that the fulfilment of its obligations under the Contract are being or are likely to be delayed or adversely effected, such that the Contractor will not meet its obligations under the Contract in respect of the Houseblock Works as a result of a Houseblock Construction Sub-contractor Event of Default, the Contractor shall forthwith give written notice to the Authority (the ***Houseblock Construction Sub-contract Default Notice***) of the relevant circumstances.
- 44B.2 The Houseblock Construction Sub-contract Default Notice shall:
- (a) identify the nature of the Houseblock Construction Sub-contractor Event of Default; and
 - (b) identify clearly which of the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date and the dates in the Increased Capacity Phase-in Period Timetable or other obligations in respect of the Houseblock Works are to be affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Houseblock Construction Sub-contractor Event of Default; and
 - (c) the action the Contractor intends to take under the Houseblock Construction Sub-contract.
- 44B.3 As soon as reasonably practicable following service of a Houseblock Construction Sub-contract Default Notice, the parties shall meet and seek to agree the action to be taken by the Contractor.
- 44B.4 If the Contractor does not intend to procure that the Operating Sub-contractor terminates the Houseblock Construction Sub-contract, the Contractor shall provide to the Authority, as soon as reasonably practicable, and in any event within twenty (21) days following service of the Houseblock Construction Sub-contract Default Notice, details of the programme for rectification or remedy of the Houseblock Construction Sub-contractor Event of Default.
- 44B.5 If the Contractor intends to terminate or has terminated the Houseblock Construction Sub-contract, the Contractor shall provide to the Authority, as soon as reasonably practicable, and in any event within three (3) months following service of the Houseblock Construction Sub-contract Default Notice:

- (a) details of the estimated additional costs or savings of procuring a replacement construction sub-contractor to complete the Houseblock Works;
- (b) details of the identity of the proposed replacement construction sub-contractor;
- (c) details of whether and to what extent there will be a delay to any of the Contractor's obligations under the Contract which are to be met on or before the Contractual Houseblock Opening Date or any date of the Increased Capacity Phase-in Period Timetable or the Contractual Increased Capacity Date in respect of the Houseblock Works;
- (d) details of any changes necessary to this Contract, including in respect of the Contractual Houseblock Opening Date or any date of the Increased Capacity Phase-in Period Timetable, the Contractual Increased Capacity Date,

and the Authority and the Contractor shall seek to agree the matters referred to in paragraphs (a) to (c) above, and in the event that the parties cannot reach agreement the matter shall be determined in accordance with Clause 72 (***Dispute Resolution***).

44B.6 If the Houseblock Construction Sub-contract is terminated, and following the procedure set out in Clause 44B.5 (***Termination of Houseblock Construction Sub-contract***), the parties have reached agreement or such matters have been determined pursuant to Clause 72 (***Dispute Resolution***), then the Contractor shall appoint the replacement construction sub-contractor to carry out the Houseblock Works, and:

- (a) to the extent that the costs of carrying out the Houseblock Works exceed the Houseblock Works Fee, then the amount of any such excess shall borne as follows:

Amount by which the additional costs exceed the Houseblock Works Fee	Percentage to be borne by the Contractor	Percentage to be borne by the Authority
Up to and including [REDACTED]	100	0
From [REDACTED] up to and including [REDACTED]	75	25

From [REDACTED] up to and including [REDACTED]	50	50
From [REDACTED] up to and including [REDACTED]	25	75
From [REDACTED]	0	100

or

- (b) to the extent that the costs of procuring that a replacement construction sub-contractor to carry out the Houseblock Works is lower than the Houseblock Works Fee, the amount of any such saving shall be shared as follows:

Amount by which the costs are lower than the Houseblock Works Fee [REDACTED]	Percentage to be applied for the benefit of the Contractor	Percentage to be applied for the benefit of the Authority
Up to and including [REDACTED]	0	100
From [REDACTED]	50	50

44B.7 If the Houseblock Construction Sub-contract is terminated during the period from the Contractual Houseblock Opening Date but before the Actual Houseblock Opening Date during which Liquidated Damages are due and payable by the Contractor to the Authority pursuant to Clause 25A (**Liquidated Damages - Increased Capacity**), then:

- (a) if the Houseblock Construction Sub-contract has been terminated as the result of an event which is same as or similar to those set out in Clauses 44.1 (g) or (h) (**Default by Contractor**) occurring in relation to the Houseblock Construction Sub-contractor, then the Contractor's liability to pay Liquidated Damages pursuant to **Clause 25A (Liquidated Damages - Increased Capacity)** shall cease from the date of termination of the Houseblock Construction Sub-contract;

- (b) if the Houseblock Construction Sub-contract is terminated as the result of a Houseblock Construction Sub-contractor Event of Default (other than of the type referred to in Clause 44B.7(a)) (***Termination of Houseblock Construction Sub-contract***) above, the Contractor shall continue to be liable to pay to the Authority Liquidated Damages in accordance with Clause 25A (***Liquidated Damages - Increased Capacity***), until such time as a replacement construction sub-contractor has been appointed to perform the Houseblock Works.

45. RECTIFICATION AND TERMINATION FOR DEFAULT

- 45.1 Subject to Paragraph 1 of Schedule Q (***Excusing Causes***), where an Event of Default has occurred by reason of any matter occurring which is referred to in Clauses 44(a)(i) (***Default by Contractor***) or 44(e), the Authority shall (if the breach or matter giving rise to the breach is capable of remedy) give notice to the Contractor in writing (a ***Rectification Notice***), and the Contractor shall either propose a programme of rectification or remedy such Event of Default on or before the date falling fifteen (15) days after the date of such Rectification Notice.
- 45.2 Where no proposal for rectification is received by the Authority within fifteen (15) days of the date of the Rectification Notice, but the Event of Default has been remedied within that fifteen (15) day period, no further action will be taken and the Contract will continue.
- 45.3 Where a proposal for rectification is received by the Authority within fifteen (15) days of the date of the Rectification Notice and is approved by the Authority (such approval not to be unreasonably withheld or delayed), the Contractor shall carry out such approved rectification and remedy the default within such period comprised in the proposal (not to exceed forty five (45) days from the date of the Rectification Notice unless the Authority otherwise agrees, having regard to any consequential increase in the amount of Lender Liabilities), save that the Authority may subsequently extend the said period if it thinks fit. At the expiry of such period, if the Contractor has remedied the Event of Default, no further action will be taken and the Contract will continue. If at the expiry of such period the Contractor has failed to carry out such approved rectification to the satisfaction of the Authority, the Authority shall notify the Contractor in writing of such failure and (subject to the provisions of the Direct Agreement) may terminate the Contract in

accordance with Clause 45.6 (***Rectification and Termination for Default***).

- 45.4 If an Event of Default occurs under Clauses 44(a)(i) or 44(e) (***Default by Contractor***) which has not been rectified or in respect of which the Authority (acting reasonably) does not approve the proposal for rectification, or if no proposal for rectification is received by the Authority within the fifteen (15) day period specified in Clause 45.2 (***Rectification and Termination for Default***) and that Event of Default has not been remedied, or if the breach in question is incapable of remedy, then the Authority shall so notify the Contractor and may proceed to terminate the Contract in accordance with Clause 45.5 (***Rectification and Termination for Default***).
- 45.5 Where an Event of Default (other than under Clauses 44(a)(i) or 44 (e) (***Default by Contractor***)) has occurred or in the circumstances set out in Clause 45.4 (***Rectification and Termination for Default***), the Authority may proceed to terminate the Contract by giving notice in writing of its intention to terminate the Contract (a ***Termination Notice***) to the Contractor, receiver, liquidator, or any person in whom the Contract may be vested, specifying the Termination Date which is at least ninety (90) days after the date of the Termination Notice or, in the circumstances set out in Clause 45.4, at least one hundred and twenty (120) days after the Rectification Notice. Subject to Clause 45.7 (***Rectification and Termination for Default***), the Contract shall terminate on the Termination Date and the termination shall take effect in accordance with the provisions of Clause 49 (***Payment for Termination***) and the Direct Agreement.
- 45.6 If, following approval of a proposal for rectification under Clause 45.3 (***Default by Contractor***), the Contractor fails to carry out such approved rectification to the satisfaction of the Authority, the Authority may proceed to terminate the Contract as set out in Clause 45.5 (***Rectification and Termination for Default***), save that the Termination Notice must specify a Termination Date which is at least seventy five (75) days after the date of the Termination Notice.
- 45.7 Where:
- (a) an Event of Default has occurred other than by reason of any matter occurring which is referred to in Clauses 44(a)(i) or 44(e) (***Default by Contractor***);

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

then the Termination Notice shall be revoked; provided that the Authority shall only be obliged to revoke two Termination Notices pursuant to this Clause 45.7 (***Rectification and Termination for Default***) and pursuant to Clause 5.3 of the Direct Agreement in any rolling five year period.

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

45A HOUSEBLOCK WORKS TERMINATION

- 45A.1 Where a Houseblock Event of Default has occurred by reason of any matter occurring which is referred to in **Clause 44A.1(a) (*Houseblock Default*)**, the Authority shall give notice to the Contractor in writing (a ***Houseblock Rectification Notice***), and the Contractor shall either propose a programme of rectification or remedy such Houseblock Event of Default on or before the date falling fifteen (15) days after the date of such Rectification Notice. For the avoidance of doubt, a Houseblock Rectification Notice shall only be issued by a Named Representative of

the Authority. Where a Houseblock Event of Default has occurred which is referred to in **Clauses 44A.1(b) (*Houseblock Default*)** or **44A.1(c) (*Houseblock Default*)** the Authority may proceed to terminate the Houseblock Works by giving notice in writing of its intention to terminate the Houseblock Works (a ***Houseblock Works Termination Notice***) to the Contractor, specifying the Houseblock Works Termination Date. The Houseblock Works shall terminate on the Houseblock Works Termination Date.

- 45A.2 Where no proposal for rectification is received by the Authority within fifteen (15) days of the date of the Houseblock Rectification Notice, but the Houseblock Event of Default has been remedied within that fifteen (15) day period, no further action will be taken and the Contract will continue.
- 45A.3 Where a proposal for rectification is received by the Authority within fifteen (15) days of the date of the Houseblock Rectification Notice and is approved by the Authority (such approval not to be unreasonably withheld or delayed in the case of a breach which is capable of remedy), the Contractor shall carry out such approved rectification and remedy the default within such period comprised in the proposal (not to exceed forty five (45) days from the date of the Houseblock Rectification Notice, unless the Authority otherwise agrees), save that the Authority may subsequently extend the said period if it thinks fit. At the expiry of such period, if the Contractor has remedied the Houseblock Event of Default, no further action will be taken and the Contract will continue. If at the expiry of such period the Contractor has failed to carry out such approved rectification to the reasonable satisfaction of the Authority, the Authority shall notify the Contractor in writing of such failure and may terminate the Houseblock Works in accordance with **Clause 45A.6 (*Houseblock Works Termination*)**.
- 45A.4 If a Houseblock Event of Default occurs under **Clause 44A.1(a) (*Houseblock Default*)** which has not been rectified or in respect of which the Authority (acting reasonably) does not approve the proposal for rectification, or if no proposal for rectification is received by the Authority within the fifteen (15) day period specified in **Clause 45A.2 (*Houseblock Works Termination*)** and that Houseblock Event of Default has not been remedied, or if the breach in question is incapable of remedy, then the Authority shall so notify the Contractor and may proceed to terminate the Houseblock Works in accordance with **Clause 45A.5 (*Houseblock Works Termination*)**.

- 45A.5 Where a Houseblock Event of Default (other than under **Clause 44A.1(a) (Houseblock Default)**) has occurred, or in the circumstances set out in **Clause 45A.4 (Houseblock Works Termination)**, the Authority may proceed to terminate the Houseblock Works by giving notice in writing of its intention to terminate the Houseblock Works (a **Houseblock Termination Notice**) to the Contractor, specifying the Houseblock Termination Date which, in the case of a Houseblock Event of Default other than under **Clause 44A.1(a) (Houseblock Default)**, is at least ninety (90) days after the date of the Houseblock Termination Notice or in the circumstances set out in **Clause 45A.4 (Houseblock Works Termination)**, at least one hundred and twenty (120) days after the date of the Houseblock Rectification Notice. Subject to **Clause 45A.7 (Houseblock Works Termination)**, the Houseblock Works shall terminate on the Houseblock Termination Date and the termination shall take effect in accordance with the provisions of **Clause 49 (Payment for Termination)**.
- 45A.6 If, following approval of a proposal for rectification under **Clause 45A.3 (Houseblock Works Termination)**, the Contractor fails to carry out such approved rectification to the reasonable satisfaction of the Authority, the Authority may proceed to terminate the Houseblock Works as set out in **Clause 45A.5 (Houseblock Works Termination)**, save that the Houseblock Termination Notice must specify a Houseblock Termination Date which is at least seventy five (75) days after the date of the Houseblock Works Termination Notice.
- 45A.7 Subject to **Clause 45A.8 (Houseblock Works Termination)**, where:
- (a) a Houseblock Event of Default has occurred;
 - (b) a Houseblock Works Termination Notice has been served but the Houseblock Works Termination Date has not occurred; and
 - (c) the Authority is satisfied that such Houseblock Event of Default has been remedied and the Authority is reasonably satisfied that the default or defaults that gave rise to such Houseblock Event of Default are unlikely to recur,
- then the Houseblock Works Termination Notice shall be revoked; provided that only two Houseblock Works Termination Notices in aggregate shall be capable of being revoked pursuant to this **Clause 45A.2 (Houseblock Works Termination)**.
- 45A.8 The parties acknowledge and agree that each of the failures set out in **Clauses 44A.1(b) (Houseblock Default)** and **44A.1(c) (Houseblock**

Default) shall (without limitation) be a breach that is incapable of remedy for the purposes of **Clause 45A.2 (*Houseblock Works Termination*)**.

45B HOUSEBLOCK WORKS CONSEQUENTIAL ARRANGEMENTS ON TERMINATION

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

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

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

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

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

45B.2.3 the provisions relating to the dates for delivery of the Increased Capacity shall be amended such that the Contractual Houseblock Opening Date, the Increased Capacity Phase-In Timetable and the Contractual Increased Capacity Date shall be such dates as

the Authority shall determine from time to time, but shall otherwise remain in full force and effect; and

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

45B.3 If the Authority makes an election pursuant to Clause 45B.2 (***Houseblock Works consequential arrangements on Termination***) and the performance by the Authority of the Contractor's obligations in respect of the Houseblock Works and the provision of the Increased Capacity interferes adversely with, or causes a failure of, the performance of the Custodial Services and/or causes the occurrence of a Performance Measure and provided that the effect of such adverse interference is claimed within ten (10) Business Days of the date on which the Contractor became aware (or ought reasonably to have become so aware) of such adverse interference, then (subject to Clauses 45B.4 and 45B.5 (***Houseblock Works consequential arrangements on Termination***)) to the extent such failure or interference of occurrence of a Performance Measure arises as a result of such adverse interference:

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

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

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

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

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

not limited to non-disclosure or under-insurance) or any other policy of insurance which the Contractor has taken out and maintained.

45B.5 The Contractor shall take all reasonable steps to mitigate the consequences of any adverse interference (as described in Clause 45B.3 (***Houseblock Works Consequential Arrangements on Termination***)) on the Contractors' ability to perform its obligations under this Contract in respect of the Custodial Services. To the extent that the Contractor does not take such steps, the Contractor shall not be entitled to and shall not receive, the relief specified in Clause 45B.3 (***Houseblock Works Consequential Arrangements on Termination***).

45B.6 Where the Authority elects not to complete the Houseblock Works, the Contractor shall comply with all instructions of the Authority to ensure that those parts of the Site upon which any part or parts of the Houseblock Works have been commenced and/or completed are left in a safe and secure condition, including the removal of any temporary buildings, tools, goods, plant, equipment and/or materials remaining on the Site in relation which the Authority has not made payments and/or is not liable to make payment to the Contractor pursuant to this Contract. The Contractor shall itself and shall procure that any Sub-contractor engaged to perform any of the Contractor's obligations under this Contract complies with this Clause 45B (***Houseblock Works Consequential Arrangements on Termination***) and the Contractor shall be responsible for its own and any Sub-contractor's costs in complying with this Clause 45B (***Houseblock Works Consequential Arrangements on Termination***).

46. VOLUNTARY TERMINATION

46.1 The Authority shall have an option to terminate the Contract at will at any time from five (5) years after the Contractual Main Opening Date or the Contractual TC Opening Date, whichever is the first to occur. If upon the fifth (5th) anniversary of the Contractual Opening Date, or at any time thereafter, the Authority wishes to terminate the Contract it shall give six (6) months notice to the Contractor whereupon compensation will be payable to the Contractor in accordance with Clause 49.2.

47. UNILATERAL TERMINATION

47.1 After the Engineer's Declaration has been issued, the Authority may, after service of a Termination Notice in respect of an Event of Default under Clause 44 (***Default by Contractor***), terminate the Contract at

will, in which case compensation will be payable in accordance with Clause 49.3 (***Payment for Termination***).

48. FORCE MAJEURE

- 48.1 In the event of a Force Majeure event arising during the term of the Contract which directly causes the Contractor or the Authority to be materially unable to comply with its obligations hereunder, the Contractor and the Authority may, if they so choose, agree such terms as are appropriate for the continued performance of the Contract (including, if such terms are agreed, any appropriate variation to the Contract Price, the Contractual Main Opening Date, Contractual TC Opening Date, the Full Main Operation Date, the Full TC Operation Date and any Phase-in Timetable), and such terms shall be agreed in accordance with Clause 62 (***Authority to Commit and Variation***). If no such terms are agreed within sixty (60) days of the commencement of the said event, and such event is continuing or its consequence remains that the Contractor or the Authority is materially unable to comply with its obligations, the parties hereby agree that both parties shall be excused performance of any and all obligations imposed upon them by the Contract, and the Contract shall thereupon terminate, subject to the terms of Clause 49 (***Payment for Termination***).

The Force Majeure events are:

- (a) war, civil war (whether declared or undeclared) or armed conflict arising within and affecting England and Wales; or
- (b) radioactive, chemical or biological contamination of the Site arising from any of the events at (a) above or arising from an act of terrorism; or
- (c) substantial damage arising from the effect of sonic booms.

For the avoidance of doubt, the Contractor shall incur no liability to the Authority pursuant to Clause 41.6 (***Plans and Performance Measures***) hereof by reason of Performance Measures occurring by reason of the continuance of an event of Force Majeure.

49. Payment for termination

49.1 Termination for Default

- 49.1.1 Where the Contract terminates as contemplated in Clause 45 (***Rectification and Termination for Default***) the Authority

shall, provided that the Banks have complied with their obligations under the Direct Agreement (and in particular their obligation to use all reasonable endeavours as set out in Clause 9.1 of the Direct Agreement), pay to the Contractor the amounts due under Part 1 of Schedule G (***Payments on Termination for Default***), and if the Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the date of termination of the Houseblock Works the amounts as set out in Part 2 of Schedule G (***Payments on Termination for Default***).

49.1.2 Where the Houseblock Works terminate as contemplated in Clause 45A (***Houseblock Works Termination***) the Authority shall promptly pay to the Contractor the amounts as set out in Part 2 of Schedule G (***Payments on Termination for Default***).

49.2 In the event of termination under Clause 46 (***Voluntary Termination***) the Authority shall pay to the Contractor the amounts as set out in Part 1 of Schedule H (***Payments on Voluntary Termination***).

49.3

49.3.1 In the event of termination under **Clause 47 (*Unilateral Termination*)** the Authority shall pay to the Contractor the amount of the Lender Liabilities and if the Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the date of termination of the Houseblock Works, the amounts as set out in Part 2 of Schedule G (***Payments on Termination for Default***);

49.3.2 In the event of termination under **Clause 48 (*Force Majeure*)** the Authority shall pay to the Contractor the amount of the Lender Liabilities plus, and if the Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the date of termination of the Houseblock Works, the amounts set out in Part 2 of Schedule H (***Payments on Voluntary Termination***).

49.4 Without prejudice to the express provisions of the Direct Agreement, this Clause 49 (***Payment for Termination***) and Clauses 5.14, 39.5, 51.4

and 56.3 contain the Contractor's sole contractual entitlement to payment in the event of proper termination of the Contract. Further, without prejudice to any rights (including any right to a claim for damages) accrued up to and including the date of termination and except for compensation payable as a result of termination under Clause 48 (***Force Majeure***) as provided in Clause 49.3 (***Payment for Termination***) or as expressly provided in the Direct Agreement no compensation shall be payable if the Contract is properly terminated prior to the date of the Engineer's Declaration.

49.5 (a) All sums payable by the Authority under Clause 49 (***Payment for Termination***) shall be increased in the event that the Contractor shall incur any liability for Taxation in respect of any Termination Payment, so as to ensure that the net amount received by the Contractor (after account is taken of the Taxation consequences of the increased payment) is equal based on the following provisions of this Clause 49.5 (***Payment for Termination***) to the full amount which would have been received by it had no such liability to Taxation been incurred.

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

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

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

(c) The Contractor shall keep the Authority fully informed of all negotiations with the Inland Revenue relating to any liability for Taxation in respect of any Termination Payment. The Contractor shall not agree, accept or compromise any claim or issue or dispute

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

- (d) The increased amount which is payable under Clause 49.5(a) (***Payment for Termination***) shall be determined upon the following assumptions and bases:
- (i) the Project and the Contractor's interest under the Lease comprise the sole trade and business of the Contractor;
 - (ii) the assets and equipment held, owned, hired, leased or otherwise used by the Contractor for the purposes of the Project comprise the sole assets and equipment of the Contractor;
 - (iii) that full account shall be taken of any unrelieved trading losses or other reliefs derived from the Project (including advance corporation tax attributable to any distribution in respect of profits or other matters properly related to the Project) and the Contractor's interest under the Lease which can be set off against, or against Taxation in respect of, the Termination Payment;
 - (iv) losses or other amounts eligible for relief from corporation tax derived from the Project or the Contractor's interest under the Lease which have been surrendered by the Contractor by way of group relief or consortium relief shall be assumed for these purposes not to have been

surrendered and to remain available as carried forward trading losses or other reliefs;

(v) that, where Clause 49.2 (***Payment for Termination***) applies, (a) the Contractor is deemed to redeem any subordinated debt of the Contractor at an amount equal to the present value of the Extracted Cash Flows forecast to arise from the Termination Date to the Expiry Date as computed for the purposes of (and as defined in) Schedule H (***Payments on Voluntary Termination***) to the extent the same are attributable to interest and repayments in respect of such subordinated debt and (b) the Contractor is deemed to make a payment to the Operating Sub-contractor to terminate the Operating Sub-contract of an amount equal to the Net Present Value of the Future Operating Margin as computed for the purposes of (and as defined in) Schedule H (***Payments on Voluntary Termination***); and

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

(e) The additional payment under Clause 49.5(a) (***Payment for Termination***) shall be made five Business Days before the Contractor's liability for Taxation in respect of the Termination Payment is due and payable, subject to the provision, at least four weeks in advance, of evidence in sufficient detail for the Authority to satisfy itself of the basis on which such liability has been calculated, and to the Authority being satisfied that arrangements are in place to ensure that the relevant sum will be paid to and retained by the Inland Revenue. However, if and to the extent that the liability is reduced by a claim, loss or relief which is not derived from the Project or the Contractor's interest under the Lease then payment will be made when and to the extent that the surrendering company or the Contractor as the case may be first makes a payment of Taxation which would not otherwise have been made.

49.6 In the event of voluntary termination pursuant to Clause 46 (***Voluntary Termination***), the Contractor shall provide and/or procure that the Operating Sub-contractor shall provide to the Authority such information concerning its respective financial position as shall be necessary to enable the relevant termination payment calculation to be carried out in

accordance with Clause 49.2 (***Payment for Termination***) and Schedule H (***Payments on Voluntary Termination***) (together with such supporting evidence as the Authority may reasonably require). Such information shall include, without limitation, Project Cash Flows and Extracted Cash Flows (both as defined in Schedule H (***Payments on Voluntary Termination***)). The Project Cash Flows and Extracted Cash Flows shall be prepared in respect of six-monthly periods (i) from the date of signature of the Contract up to the Termination Date (or in respect of such shorter period where the final period prior to the Termination Date is less than six (6) months) and (ii) from the Termination Date until the Expiry Date (or in respect of such shorter period where the final period prior to the Expiry Date is less than six months).

- 49.7 (a) The Contractor agrees that it will not take or refrain from taking any action in relation to its contractual arrangements (including, without limitation, pursuant to any Sub-contract or Financing Agreement) or otherwise that is motivated primarily by a desire to increase the payment that would be due from the Authority on a termination of the Contract rather than by other considerations.
- (b) The Authority agrees that it will not take or refrain from taking any action that is motivated primarily by a desire to decrease the payment that would be due from it on termination of the Contract if such termination payment is calculated in accordance with Schedule G (***Payments on Termination for Default***).
- (c) In relation to any action or inaction prior to the date falling twelve (12) months before the relevant Termination Date, the certificate of the Contractor or the Authority as to whether a breach of Clause 49.7(a) or (b) (***Payment for Termination***) respectively has occurred will be conclusive in the absence of manifest error.

- 49.8 Amounts due under this Clause 49 (***Payment for Termination***) shall be determined and paid in accordance with Clause 14 of the Direct Agreement.

50. CHANGE OF CONTROL

- 50.1 The Contractor shall inform the Authority immediately of any change in the ownership of the Contractor. Change of ownership for this purpose means any material change to the direct or indirect legal or beneficial ownership of the Contractor, and a change in the ownership is material if

it relates directly or indirectly to 3% or more of the Contractor's issued share capital.

50.2 The Contractor shall obtain the Authority's written consent (which may be given subject to conditions) prior to any change of control of the Contractor or Shareholders (other than where the Banks exercise their rights in respect of shares of the Contractor granted in any document conferring security over any of the shares of the Contractor). The Authority has the right to terminate the Contract at its election, if such consent is not so obtained and a change of control occurs, as set out in Clause 44(i) (**Default by Contractor**). Change of control means for these purposes an event where any single person or group of persons acting in concert (within the meaning of The City Code on Take-Overs and Mergers) acquires any direct or indirect interest in the relevant share capital (as defined in Section 198(2) of the Companies Act 1985) of the Contractor or Shareholders as a result of which that person or group of persons has:

- (i) a direct or indirect interest in more than 25% of the relevant share capital of the Contractor or Shareholders; or
- (ii) (in relation to a person or group of persons who at the relevant time already has a direct or indirect interest in more than 25% of the relevant share capital of the Contractor or Shareholders) a direct or indirect interest in 75% or more of the relevant share capital of the Contractor or Shareholders.

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

- (a) any change in beneficial or legal ownership of any shares that are listed on a stock exchange shall be disregarded; and
- (b) any transfer of shares or of any interest in shares by a person to its affiliate shall be disregarded. For these purposes an **affiliate** is, in relation to any person, any holding company of that person and any subsidiary of that person or of any such holding company (**subsidiary** and **holding company** having for this purpose the meanings ascribed to those terms in the Companies Act 1985).

51. CORRUPT GIFTS AND PAYMENTS

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

- (a) offer to give or agree to give any person in Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other agreement for Her Majesty's Service or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for Her Majesty's Service;
- (b) enter into this or any other agreement with Her Majesty or any Government Department in connection with which commission has been paid or agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and Clauses of any contract for the payment thereof have been disclosed in writing to the Authority; or
- (c) defraud or attempt to defraud or conspire to defraud the Crown.

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

- (a) where the breach or commission of any offence is occasioned by the Contractor or an employee of the Contractor, and such person intended thereby to benefit the Contractor, the Authority shall be entitled to determine the Contract immediately and at the Authority's option either to recover from the Contractor the amount of any loss resulting from the breach and/or to recover from the Contractor the amount or value of any such gift, consideration or commission;
- (b) where the breach or commission of any offence is occasioned by the Operating Sub-contractor, the Houseblock Construction Sub-contractor, the Construction Sub-contractor or any of their employees and such person intended thereby to benefit that Sub-contractor, the Authority shall be entitled as set out in (a)

above unless the Contractor terminates the relevant Sub-contract and procures that all those parts of the Services which were performed by that person are performed by the Contractor itself or another Sub-contractor in accordance with Clause 7 (***Sub-contracting***) within thirty (30) days of notification to the Contractor of the breach or commission of an offence or such longer period as the Authority permits in writing;

- (c) where the breach or commission of any offence is occasioned by any person other than the Contractor, the Operating Sub-contractor, the Houseblock Construction Sub-contractor or the Construction Sub-contractor and whether or not any benefit to that person's employer was intended, the Authority shall be entitled as set out in (a) above unless within thirty (30) days of notification to the Contractor of the breach or commission of an offence the Contractor has procured that the employment of such person (and, in the case of an individual other than an individual employed by the Contractor, the Operating Sub-contractor, the Houseblock Construction Sub-contractor or the Construction Sub-contractor, of that person's employer) in performing parts of the Services has been terminated and the Contractor has procured that all those parts of the Services as were performed by such person or persons are performed by another person in accordance with Clause 7 (***Sub-contracting***).

- 51.3 Any dispute relating to this Clause 51 (***Corrupt Gifts and Payments***) (other than in respect of Clause 51.2(c)) may be referred by either party to dispute resolution in accordance with Clause 72 (***Dispute Resolution***), except that the arbitrator shall be a Queen's Counsel nominated by the Chairman of the Bar Council, who shall determine the issue on the balance of probabilities.
- 51.4 In the event of termination of the Contract by the Authority pursuant to this Clause 51 (***Corrupt Gifts and Payments***), the Authority shall pay to the Contractor the amount of the Lender Liabilities and where termination arises and if the Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the date of termination of the Houseblock Works, the amounts calculated in accordance with Part 2 of Schedule G (***Payments on Termination for Default***).

52. TERMINATION SURVEY

- 52.1 Twelve (12) months prior to the Expiry Date or within seven days of service of a Termination Notice after the Full Main Operation Date, whichever is the earlier, the Authority shall carry out a final dilapidation survey of the Prison. The provisions of Clauses 19.2 (***Dilapidation Survey***) and 19.3 (***Dilapidation Survey***) (and Clause 17 (***Maintenance of Prison***) to the extent that such Clause is referred to in Clause 19.2 (***Dilapidation Survey***)) shall apply to this survey.
- 52.2 If upon the Termination Date or the Expiry Date, as applicable, the Contractor has failed to carry out any repairs to or maintenance of the Prison required as a result of the final dilapidation survey, the value of the repairs shall be off-set against any payment due to the Contractor hereunder, or to the extent no such sums are due shall become a debt due to the Authority from the Contractor.
- 52.3 Twelve (12) months prior to the Expiry Date or upon service of a Termination Notice, if earlier, the Authority shall establish an account into which it shall pay five per cent. of the Contract Price for each month thereafter on a monthly basis until the end of the Contract Term or the revocation of the Termination Notice in accordance with the terms of this Contract and the Direct Agreement, such amounts being a reduction of the amount payable to the Contractor hereunder. Such amounts shall be released to the Contractor if a Termination Notice is revoked or withdrawn under the Direct Agreement more than twelve (12) months prior to the Expiry Date and the relevant repairs and maintenance required as a result of the final dilapidation survey have been carried out. If the relevant repairs and maintenance have not been carried out, the Authority may carry them out itself and apply any amounts standing to the credit of such account in so doing; where such amounts are insufficient to cover the Authority's whole cost of carrying out the repairs and maintenance, the uncovered cost shall be off-set against any payment due to the Contractor hereunder, or to the extent no such payment is due, shall become a debt due to the Authority from the Contractor.
- 52.4 Upon or after the Expiry Date or Termination Date, the Authority shall be entitled to apply any amounts standing to the credit of the account referred to in Clause 52.3 (***Termination Survey***) towards payment of any debt due under Clause 52.2 (***Termination Survey***) . To the extent that, following completion of any repairs or other works as are referred to in this Clause 52 (***Termination Survey***) , the amount standing to the credit of such account exceeds the amount of such debt due, such excess

shall forthwith be paid by the Authority to the Contractor together with any interest accrued on amounts standing to the credit of such account from time to time.

53. NOTICE OF DEFAULT EVENTS

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

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

54. CONSEQUENTIAL ARRANGEMENTS ON TERMINATION

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

54.2 If upon the termination of the Contract the pumping station referred to in Paragraph 3(i) of the schedule to the Planning Agreement has not been adopted by the Environment Agency (or any successor to the relevant functions of that agency), then the Authority may serve a notice on the Contractor within twenty eight (28) days of the date of termination of the Contract (the ***Pumping Station Notice***) requiring the Contractor to transfer or procure the transfer to the Authority of the land (being the Land as referred to and defined in the Section 106 Agreement) together

with all easements and rights appurtenant to such land within six weeks of the date of such notice.

- 54.3 The Authority shall reimburse to the Contractor and the Sub-contractors all reasonable costs and expenses incurred in satisfying the provisions of Clauses 54(a) (***Consequential Arrangements on Termination***) and 54(b) (***Consequential Arrangements on Termination***), such amount of reimbursement being subject to reduction in respect of any amounts outstanding from the Contractor or any Sub-contractor to the Authority.

PART VIII - MISCELLANEOUS

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

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

56. FACILITIES FOR AUTHORITY

- 56.1 From the date hereof, the Contractor shall provide suitable accommodation at the Site or (following the date of the Engineer's Declaration) in the Prison as the Authority may require, at no additional cost, for the use of the Controller and his representatives, the Committee and its representatives, and any other representative of the Authority who has cause to visit the Site or the Prison. Without prejudice to the foregoing, the accommodation provided for the Committee and its representatives, and any other representative of the Authority who has cause to visit the Site or the Prison will not be in addition to that provided for in Schedule A (***Design and Construction Specification***).

All such accommodation shall be adequately furnished, lighted, heated and ventilated, and shall include cloakroom and telephone facilities providing for communication to parties both within and outside the Prison, including in respect of accommodation for the Controller at least two direct telephone lines (the **Direct Lines**) linked to, and limited to calls within, the UK national telephone network which shall not be routed through any exchange or network gateway within the Prison or operated by the Contractor or any Sub-contractor. Accommodation for the Controller and the Committee shall be deemed to be capable of being made secure by means of door locks or other such equipment. Accommodation for the Controller shall, in addition, comprise of at least two separate rooms, one of which shall be suitable for accommodating the Controller's team of three staff, and the other shall be suitable for accommodating the Controller and be of sufficient size to hold meetings of at least four people. The Contractor shall, as the Authority may require, provide, or procure the provision to Board of Visitors members the opportunity to receive Hepatitis B immunisations at no additional cost to the Authority.

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

- (a) where the commission (or attempted commission) of such act is occasioned by the Operating Sub-contractor, the Construction Sub-contractor, the Houseblock Construction Sub-contractor or any of their employees and such person intended thereby to benefit that Sub-contractor, the Authority shall be entitled to terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from the commission (or attempted commission) of such act, unless the Contractor terminates the relevant Sub-contract and procures that all those parts of the Services which were performed by that Sub-contractor are performed by the

Contractor itself or another Sub-contractor in accordance with Clause 7 (***Sub-contracting***) within thirty (30) days of written notification to the Contractor by the Authority of the commission or attempted commission of such act or such longer period as the Authority permits in writing; and

- (b) where the commission (or attempted commission) of such act is occasioned by any person other than the Contractor, the Operating Sub-contractor, the Construction Sub-contractor or the Houseblock Construction Sub-contractor and whether or not any benefit to that person's employer was intended, the Authority shall be entitled to act as set out in (a) above unless within thirty (30) days of written notification by the Authority to the Contractor of the commission or attempted commission of such act the Contractor has procured that the employment of such person (and, in the case of an individual other than an individual employed by the Contractor, the Operating Sub-contractor, the Construction Sub-contractor or the Houseblock Construction Sub-contractor, of that person's employer) in performing parts of the Services has been terminated and the Contractor has procured that all those parts of the Services as were performed by such person or persons are performed by another person in accordance with Clause 7 (***Sub-contracting***).

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

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

57. PUBLIC RELATIONS AND PUBLICITY

- 57.1 The Authority reserves the right to publish information about the performance of the Contract and/or any other information as it may

deem appropriate from time to time, other than in respect of the Confidential Matters, which it may only publish in response to enquiries from Parliament, its members and officers and to enquiries legitimately made by persons acting in the public interest.

57.2 The Contractor shall not by itself, its servants, agents or Sub-contractors communicate with any part of the media, either written or broadcast, concerning the Contract without referring to and complying with the guidelines set out in the Protocol on Media Handling issued by the Authority (and as may be amended from time to time). The Authority will provide appropriate training on application of the Protocol, at no charge to the Contractor, for no more than two (2) of the Contractor's staff.

57.3 No facilities to photograph or film in or upon the Land or the Prison shall be given or permitted by the Contractor unless the Authority has given its prior written approval, in accordance with the Protocol referred to in Clause 57.2 (***Public Relations and Publicity***).

58. INFORMATION AND CONFIDENTIALITY

58.1 The Contractor will note and comply with the provisions of Section 91 of the Criminal Justice Act 1991 on the wrongful disclosure of information acquired by persons who are or have been employed at a Prison (whether as a Prisoner Custody Officer or otherwise).

58.2 The Contractor will note and comply with the provisions of the Official Secrets Acts 1911 -1989.

58.3 The Contractor shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all persons including Staff or Sub-contractors employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue to apply to them after the completion or earlier termination of the Contract and after termination of their employment.

58.4 The Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract, except with the written consent of the Authority.

58.5 At the end of the Contract Term, the Contractor shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to a particular Prisoner who is or has been detained at the Prison, including any documents in the possession, custody or control of a Sub-contractor, are delivered up to the Authority.

Any rights belonging to the Contractor and subsisting in the said documents are hereby assigned to the Authority upon termination by virtue of this Clause.

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

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

58.7

- (a) The parties agree that the provisions of this Contract shall, subject to Clause 58.7(b) (***Information and Confidentiality***), not be treated as Confidential Information and may be disclosed without restriction.
- (b) Clause 58.7(a) (***Information and Confidentiality***) shall not apply to provisions of this Contract which are designated as Commercially Sensitive Information and listed in Part 1 of Schedule S (***Commercially Sensitive Information***) which shall, subject to Clause 58.8 (***Information and Confidentiality***), be kept confidential for the periods specified in that Part 1 of Schedule S (***Commercially Sensitive Information***).
- (c) The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Contract or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

58.8 Clauses 58.7(b) (***Information and Confidentiality***) and 58.7(c) (***Information and Confidentiality***), shall not apply to;

- (a) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Contract for the performance of those obligations;
- (b) any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 58 (***Information and Confidentiality***);
- (c) any disclosure to enable a determination to be made under Clause 72 (***Dispute Resolution***) or in connection with a dispute between the Contractor and any of its subcontractors;
- (d) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any provision of information to the parties' own professional advisers or insurance advisers or to the Banks or the Banks' professional advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under this Contract, or may wish to acquire shares in the Contractor in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (g) any registration or recording of the Planning Approvals and property registration required;
- (h) any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing

services to the Authority for any purpose related to or ancillary to this Contract; or

- (i) any disclosure for the purpose of:
 - (i) the examination and certification of the Authority's or the Contractor's accounts;
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,
 - (iii) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (iv) (without prejudice to the generality of Clause 58.8 (b) (**Information and Confidentiality**)) compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither Clauses 58.8 (iv) (**Information and Confidentiality**) 58.8(i)(iv) (**Information and Confidentiality**) shall permit disclosure of Confidential Information otherwise prohibited by Clause 58.7(c)(**Information and Confidentiality**) where that information is exempt from disclosure under section 41 of the FOIA.

58.9 Where disclosure is permitted under Clause 58.8 (**Information and Confidentiality**), other than Clauses 58.8(b), 58.8(d), 58.8(e) or 58.8(h) (**Information and Confidentiality**), the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

58.10 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary. It is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in

relation to the Contractor is not a function exercisable under this Contract.

- 58.11 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.
- 58.12 Where the Contractor in carrying out its obligations under the Contract is provided with information relating to prisoners, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that prisoner and has obtained the prior written consent of the Authority.
- 58.13 The parties acknowledge that the National Audit Office has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 58.14 The provisions of this Clause 58 (***Information and Confidentiality***) are without prejudice to the application of the Official Secrets Acts 1911 and 1989.
- 58.15 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 58.16 to 58.21 (***Information and Confidentiality***).
- 58.16 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within seven (7) days of receiving a Request for Information and the Contractor shall:
- (i) provide the Authority with a copy of all such information in the form that the Authority requires as soon as practicable and in any event within ten (10) days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
 - (ii) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information

within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

58.17 Following notification under Clause 58.16 (***Information and Confidentiality***), and up until such time as the Contractor has provided the Authority with all the Information specified in Clause 58.16 (***Information and Confidentiality***), the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:

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

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

58.18 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure at least five (5) years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.

58.19 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two (2) days of receiving it.

58.20 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

58.21 In the event of a request from the Authority pursuant to Clause 58.16 (***Information and Confidentiality***) the Contractor shall as soon as practicable and in any event within five (5) days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction

with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) day period for compliance shall be extended by such number of days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

58.22 The Contractor acknowledges that (notwithstanding the provisions of Clauses 58.7 (**Information and Confidentiality**) to 58.22 (**Information and Confidentiality**) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:

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

provided always that where Clause 58.22(i) (**Information and Confidentiality**) applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

59. INTELLECTUAL PROPERTY RIGHTS

59.1 In this Clause 59 (**Intellectual Property Rights**) and in Clause 59A (**Procurement of IP and IT**):

Contractor's Work Product means any Work Product (whether in existence before, on or after the date of the Contract), the Intellectual Property Rights subsisting in or relating to which are owned by the Contractor or the Operating Sub-contractor, and which are necessary to enable the Contractor to provide the

Services, excluding a Work Product licensed under Clause 59.2 (***Intellectual Property Rights***);

IT/IP Contract means a licence or other right to use any Intellectual Property Rights owned by any third party (other than a Sub-contractor), or a contract for the procurement of computer and/or communications technology or services, or other services concerning information or communications technology or services, or its or their procurement, in each case the benefit of which (or part thereof) is necessary to enable the Contractor to provide the Services;

Relevant IP Event has the same meaning as given in Clause 59A.3 (***Procurement of IP and IT***);

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

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

For the purpose of Clauses 59 (***Intellectual Property Rights***) and 59A (***Procurement of IP and IT***), all or any of the Contractor's Work Products, Work Products to which Clause 59.2 (***Intellectual Property Rights***) refers and IP/IT Contracts to which Clauses 59A.1 (***Procurement of IP and IT***) and 59A.2 (***Procurement of IP and IT***) refer shall continue to be the subject of Clauses 59 (***Intellectual Property Rights***) and 59A (***Procurement of IP and IT***), except to the extent in relation to any Contractor's Work Product (or part thereof), any Work Product to which Clause 59.2 (***Intellectual Property Rights***) refers (or part thereof), or any such IT/IP Contract, the Contractor demonstrates to the Authority that the relevant Contractor's Work Product (or part thereof), Work Product to which Clause 59.2 refers (or part thereof), and/or any such IP/IT Contract, is or are not ***necessary (Intellectual Property Rights)*** to enable the Contractor to provide the Services.

59.2 The Contractor hereby grants to the Authority, or shall procure the Operating Sub-contractor shall grant to the Authority, a perpetual, irrevocable, non-exclusive, non-transferable licence to use all materials, records, reports, designs, drawings, plans and specifications used by the Contractor or the Operating Sub-contractor in connection with the

Services and which are necessary to enable the Contractor to provide the Services, for the sole purpose of the continuance of the Services where a Relevant IP Event has occurred.

- 59.3 The Contractor hereby grants, or shall procure there is granted, to the Authority a perpetual, irrevocable, non-exclusive, non-transferable licence to use all of the Contractor's Work Products for the sole purpose of the continuance of the Services where a Relevant IP Event has occurred.
- 59.4 The licences in Clauses 59.2 (*Intellectual Property Rights*) and 59.3 (*Intellectual Property Rights*) shall include the right to grant sub-licences free of charge for a period of twelve (12) months to third parties for the purpose of the design, construction, maintenance, operation, or management of the Prison where such activities are carried on or intended to be carried on by that third party.
- 59.5 The Contractor hereby undertakes to the Authority that, upon the request of the Authority, it shall, or shall procure that the Operating Sub-contractor shall, enter into negotiations with any third party referred to in Clause 59.4 (*Intellectual Property Rights*) to agree, in good faith, commercial terms upon which such third party may acquire a licence in the terms of Clauses 59.2 (*Intellectual Property Rights*) or 59.3 (*Intellectual Property Rights*) as the case may be (excluding for this purpose Clause 59.4 (*Intellectual Property Rights*)).
- 59.6 The Contractor shall notify any proposed assignee of any Intellectual Property Rights owned by the Contractor subsisting in or relating to the Contractor's Work Products, or Work Products licensed under Clause 59.2 (*Intellectual Property Rights*), and shall procure that the Operating Sub-contractor notifies any assignee of any Intellectual Property Rights owned by the Operating Sub-contractor subsisting in or relating to any such Work Products, of the existence of the Contract and of the licences granted under or in accordance with the Contract.
- 59.7 All Intellectual Property Rights in Work Products produced by the Authority shall vest in and be the property of the Crown (the *Authority's Work Products*).
- 59.8 The Authority hereby grants to the Contractor free of charge and for the Contract Term a non-exclusive royalty-free licence to use such of the Authority's Work Products as are necessary to perform the Services for use in connection with the design, construction, maintenance, operation or management of the Prison in accordance with the Contract.

- 59.9 If the Contractor employs or engages a Prisoner to work in return for financial consideration, no property or Intellectual Property Rights relating to the product of a Prisoner's labour shall vest in the Authority, and the ***product of a Prisoner's labour*** shall be those things resulting directly from the paid employment or engagement.
- 59.10 If a Prisoner creates or produces a work or an invention or a performance, and the said work or invention or performance is not a "product of a Prisoner's labour" within the meaning of Clause 59.9 (***Intellectual Property Rights***), no Intellectual Property Rights shall vest in the Authority or the Contractor in relation to the said work, invention or performance.

59A **PROCUREMENT OF IP AND IT**

59A.1 The Contractor shall use reasonable endeavours to procure that each IT/IP Contract entered into on or after the date of the Contract by either it or the Operating Sub-contractor (whichever of them is the party to the IT/IP Contract being the ***Relevant Party***) shall include the following terms:

- (a) a right for the Relevant Party to assign the benefit of the IT/IP Contract to the Authority or its nominee for use in connection with the design, construction, maintenance, operation or management (as the case may be) of the Prison;
- (b) upon receipt of written notice from the Relevant Party, the counter party to the IT/IP Contract (the ***Supplier***) shall novate the rights and obligations of the Relevant Party under that IT/IP Contract to the Authority or its nominee, as the case may be;
- (c) an obligation on the Supplier to execute such deeds or other documents and do such things as the Authority may reasonably require in order to effect the novation; and
- (d) the right of the Relevant Party (or any successor thereto) to receive the benefit of the IT/IP Contract shall not be affected by any change of control of the Relevant Party (or any successor thereto).

59A.2 Where the Contractor or the Operating Sub-contractor has already entered into an IT/IP Contract at the date of the Contract, the Contractor shall use reasonable endeavours to procure that, to the extent the subject matter of the IT/IP Contract is used in connection with the Services and is necessary for the Contractor to provide the Services, the IT/IP Contract is varied to

include the terms of Clauses 59A.1(a) (***Procurement of IP and IT***) to (d) (***Procurement of IP and IT***).

59A.3 The Contractor shall use reasonable endeavours to procure on receipt of the written request of the Authority that such of the IT/IP Contracts to which Clauses 59A.2 (***Procurement of IP and IT***) and 59A.3 (***Procurement of IP and IT***) refer as the Authority may from time to time require shall be either novated in favour of the Authority or its nominee or the benefit thereof assigned to the Authority or its nominee, provided that the Authority may not make such a request except (i) on the expiry or earlier termination of the Contract or (ii) the replacement of the Contractor or any Sub-contractor pursuant to the Direct Agreement or this Contract (any such event being a ***Relevant IP Event***).

59A.4 Where the Authority requires the novation of any IT/IP Contract under Clause 59A.3 (***Procurement of IP and IT***) the Contractor shall, and, where the Operating Sub-contractor is the Relevant Party, shall procure that the Operating Sub-contractor shall, issue the requisite notice to the Supplier and shall:

- (a) use reasonable endeavours to procure that the Supplier complies with its obligations under the IT/IP Contract and otherwise consents to the proposed novation; and
- (b) execute such deeds or other documents and do such other things as the Authority may reasonably require in order to effect the novation.

59A.5 During the period the Authority or its nominee is entitled to the benefit of any IT/IP Contract, the Authority shall, or shall procure that any nominee shall, perform the obligations of the Relevant Party under the IT/IP Contract.

59A.6 Notwithstanding the terms of any novation to which Clause 59A.4 refers:

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

- (b) with effect from the Effective Date, the Contractor shall keep the Authority fully and effectively indemnified against all Losses suffered or incurred by the Authority by reason of the failure before the Effective Date of the Relevant Party to perform its obligations under the novated IT/IP Contract. The Contractor acknowledges that any loss, damage, cost and/or expense to be indemnified under this Clause 59A.6(b) (***Procurement of IP and IT***) may be incurred by the Authority pursuant to an indemnity in similar terms given by the Authority to its nominee.

59A.7 Subject to Clause 59A.8 (***Procurement of IP and IT***), the Contractor shall use all reasonable endeavours to ensure that all computer and communications systems and other technology used by the Contractor or the Operating Sub-contractor as the case may be in connection with the Services shall be able to:

- (a) handle date information before, during and after 1 January 2000, including accepting date input, providing date output and performing calculations on dates or portions of dates;
- (b) function accurately and without interruption before, during and after 1 January 2000, without any change in operations associated with the advent of the year 2000 and the new century;
- (c) respond to two-digit year input in a way that resolves the ambiguity as to century in a disclosed, defined and predetermined manner;
- (d) process two-digit year date information in ways that are similarly unambiguous as to century; and
- (e) store and provide output of date information in ways that are similarly unambiguous as to century

(such capability being ***Millennium Compliance***).

59A.8 For the purpose of Clause 59A.7 (***Procurement of IP and IT***), the Contractor shall be entitled to rely in good faith on any written contractual term binding on, or statement given by, the supplier or licensor of the computer or communications system or other technology to the effect that the system or technology is Millennium Compliant.

59A.9 Without affecting the liability of the Contractor under Clause 59A.7 (***Procurement of IP and IT***), the Contractor shall notify the Authority of the extent to which any computer or communications system or other technology used by the Contractor or the Operating Sub-contractor as the case may be in connection with the Services is not Millennium Compliant, and shall promptly notify the Authority in reasonable detail of proposals to render the system Millennium Compliant; the Contractor shall amend such proposals in the manner reasonably required by the Authority and shall implement those proposals.

59A.10 The Contractor shall not be discharged in whole or part from providing the Services by reason only that any systems or technology used in connection with the Services is or are not Millennium Compliant.

59A.11 The Contractor shall not and shall procure that the Operating Contractor shall not, without the prior written consent of the Authority, use in connection with the Services any systems or technology which is or are not, to the knowledge of the Contractor, Millennium Compliant.

59A.12 The Contractor shall take all reasonable care to ensure the computer and communications systems used by the Contractor are, and shall procure that computer and communications systems used by the Operating Sub-contractor in connection with the Services are, free of Viruses.

59C **RESEARCH**

59C.1 The Contractor shall enter into a contract (the ***Research Contract***) with a recognised educational institution or research body with acknowledged expertise in the field of Therapy provided that the Contractor has first received the prior written approval of the Authority as to both the identity of the proposed counter party, and the terms of, the proposed research contract.

59C.2 The Research Contract shall require that research is carried out and data collected relating to Therapy and the provision of therapy services within a prison setting with a view to monitoring the effectiveness of the TC including the measurement of:

- (i) inputs;
- (ii) outputs;
- (iii) scientific issues;
- (iv) comparisons with results obtained from HMP Grendon; and

- (v) the risk of former TC Prisoners re-offending following their release from the TC.

59C.3 The Contractor shall procure that the Research Contract shall:

- (a) be in writing, signed by and on behalf of the other party (the **Supplier**);
- (b) with effect from the date of the Research Contract assign to the Contractor, with full title guarantee, all Intellectual Property Rights subsisting in or relating to the research and data resulting from the performance of the Research Contract (the **Research**); and
- (c) oblige the Supplier to execute all deeds and other documents and do all other things as may reasonably be required in order to give effect to the assignment to which Clause 59C.3(b) (**Research**) refers.

59C.4 In consideration for the sum of ■ (receipt of which is hereby acknowledged by the Contractor), the Contractor hereby assigns to the Authority with full title guarantee all Intellectual Property Rights subsisting in or relating to the Research.

59C.5 The Contractor shall (at the Contractor's Cost) execute all deeds and other documents and do all other things as may reasonably be required in order to give effect to the assignment to which Clause 59C.4 (**Research**) refers.

60. CONTRACTOR'S RECORDS

60.1 The Contractor shall at all times:

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

where the records are held) and examine the records maintained under this Clause,

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

60.2 For the duration of the Contract, the Contractor:

- (a) shall furnish to the Authority:
 - (i) as soon as they become available (and in any event within ninety (90) days of the end of each of its financial periods) copies of its audited financial statements for that period which shall contain an income statement and a balance sheet and a cash flow statement and be audited and certified without qualification by a firm of independent accountants;
 - (ii) as soon as they become available (and in any event within thirty (30) days of the end of each of its financial half-years and within thirty (30) days of each Review Date) copies of its unaudited financial statements for that half-year or year (as the case may be) which shall contain an income statement, a balance sheet and a cash flow statement; and
- (b) will prepare the financial statements referred to in Clause 60.2(a) (**Contractor's Records**) on a basis consistently applied in accordance with generally accepted accounting principles in England and Wales and those financial statements shall give a true and fair view of the results of its operations for the period in question and the state of its affairs as at the date to which the financial statements are made up and shall disclose or reserve against all the liabilities (actual or contingent) of the Contractor; and
- (c) at the request of the Authority, shall furnish the Authority with any and all information provided by it to the Banks during the term of the Contract.

60.3 The Contractor shall keep (and where appropriate shall procure that the Operating Sub-contractor shall keep) books of account in accordance

with best accountancy practice with respect to the Contract showing in detail:

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

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

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

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

- (a) a full record of all incidents relating to health, safety and security which occur during the term of the Contract;
- (b) full records of all maintenance procedures carried out during the term of the Contract;
- (c) an annual report reviewing the medical work and practice of the Prison;
- (d) a Health and Hygiene report to be completed every six (6) months;
- (e) a full record showing the date upon which each TC Prisoner (throughout the Contract Term) was admitted to the TC and the security categorisation e.g. Category C of each TC Prisoner; and
- (f) a copy of each Application for Referral;

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

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

61. INDEPENDENT CONTRACTOR

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

62. AUTHORITY TO COMMIT AND VARIATION

- 62.1 There shall be Named Representatives of the Authority, whose names shall appear at Part I of Schedule J (***Named Representatives***), and in the event of any change to the Named Representatives of the Authority, the Authority shall give written notice of the change to the Contractor. A change in the Named Representatives of the Authority does not constitute a variation of the Contract.
- 62.2 Only the Named Representatives of the Authority, or their formally nominated officers, have the power to vary the terms and conditions of the Contract, or to commit the Authority to additional expenditure (including pursuant to Clause 9 (***Change to Services Required***)).
- 62.3 Any variation of any provision of the Contract must be effected in writing issued by the Authority or a Named Representative of the Authority and no purported variation by any other means shall bind the Authority.
- 62.4 For the avoidance of doubt, any agreement between the Authority and the Contractor to change the Estimated Main Opening Date or the Estimated TC Opening Date is without prejudice to any of the Contractor's or the Authority's obligations hereunder in respect of Actual Main Opening Date, Actual TC Opening Date, Contractual Main Opening Date, Contractual TC Opening Date, Full Main Operation Date, Full TC Operation Date, Actual Main Full Operation Date and Actual TC Full Operation Date.

63. SERVICE OF NOTICES

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

64. RACE AND SEX DISCRIMINATION

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

65. DATA PROTECTION

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

65.5 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor the Sub-contractors referred to in paragraph (d). Within thirty (30) days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

65.6 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of this Clause 65.1 (**Data Protection**) by the Contractor and/or any act or omission of any Sub-contractor.

66. HEALTH AND SAFETY

66.1 All plant, fixtures, fittings, furniture chattels and other equipment supplied by the Contractor in performance of the Contract shall comply with all provisions of any Legislation relating to health and/or safety from time to time in force. Crown immunity will not apply to the Contractor, who shall be liable for any failure to meet statutory requirements in respect of these items.

66.2 The Contractor shall be responsible for the observance by itself, its Staff and Sub-contractors of all current and relevant health and safety precautions necessary for the protection of itself, its Staff, Sub-contractors and any other persons invited onto or visiting the Site, including all precautions required to be taken by or under any Legislation.

66.3 The Contractor shall be responsible for the observance by itself, its Staff and Sub-contractors of all current and relevant rules, regulations and requirements of statutory or regulatory authorities concerning building works and fire prevention.

67. DUTY OF CARE

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

68. WAIVER

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

69. SEVERABILITY

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

70. COUNTERPARTS

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

71. GOVERNING LAW AND JURISDICTION

- 71.1 The Contract shall be governed by and construed in accordance with the laws of England, and subject to Clause 72.1 (***Dispute Resolution***) the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

72. DISPUTE RESOLUTION

- 72.1 Except in the case of any dispute in respect of matters referred to in Clauses 9 (***Change to Services Required***) (other than any decision of the Authority relating to changes to the Works or the Houseblock Works or their design which do not result in the possibility of a variation of the Contract Price pursuant to Clause 9.5 (***Change to Services Required***), 39.2 (***Variation of Price***), 39.3 (***Variation of Price***) or (in respect of the amount of the Original Value only) Clause 39.5 (***Variation of Price***) or any dispute as to the amounts payable under Clause 49 (***Payment for Termination***), or unless the Authority and the Contractor agree to the dispute being referred to an Arbitrator in accordance with Clause 72.3 (***Dispute Resolution***), the Contractor shall refer any dispute as to a decision or instruction (including any estimate given

pursuant to Clause 24.3 (***Extension of Time***)) issued by the Authority or the reasonableness of any action of the Independent Engineer, or a decision of the Named Representatives of the Authority under Clause 29.13.2 (***Available Places***), and either party shall (except as otherwise expressly provided) refer any dispute as to any other issue arising in relation to the Contract, to a person nominated from a panel of experts established for such purpose who shall all be wholly independent of the Contractor and the Authority (the ***Adjudicator***). The panel of experts shall, in respect of issues relating to the construction of the Prison or the Houseblock Works, be comprised of five (5) persons appointed jointly by the Authority and by the Contractor who shall be experts in relation to construction matters but unrelated to the Authority, the Contractor or the Construction Sub-contractor or any of the major competitors of the Construction Sub-contractor; in respect of issues relating to the provision of the Custodial Service, the panel of experts shall be comprised of five persons appointed jointly by the Authority and the Contractor who shall be experts in relation to the operation and maintenance of prisons but unrelated to the Authority, the Contractor or the Operating Sub-contractor or any of the major competitors of the Operating Sub-contractor; in respect of issues relating to the provision of the Therapy Service (including, without limitation, decisions of the Named Representative of the Authority under Clause 29.13.2 (***Available Places***))), the panel of experts shall be comprised of five persons appointed jointly by the Authority and the Contractor who shall be experts in relation to the provision of therapy in prison settings but unrelated to the Authority, the Contractor or the Operating Sub-contractor or any of the major competitors of the Operating Sub-contractor. In the case of the panel for construction matters, its appointment shall take place within twenty eight (28) days of the date hereof. In the case of the panel for matters relating to the Therapy Service, its appointment shall take place by the date falling three months before the first date on which the Contractor is required pursuant to Clause 20.1 (***Preparation for Operation of the Prison***) to deliver to the Authority any of the Operational Proposals relating to the Therapy Service. The Authority and the Contractor shall appoint a replacement if any member of any panel of experts resigns during the term of the Contract. In the event that the Authority and the Contractor are unable to agree as to the identity of any member of any panel, such member will be selected by the President for the time being of the Chartered Institute of Arbitrators within thirty (30) days of any application for such selection by either party.

72.2 The Adjudicator nominated to consider a dispute referred to him under Clause 72.1 (***Dispute Resolution***) shall be selected on a strictly rotational basis from the panel of experts. Within seven (7) days of his nomination in relation to a particular dispute, the Adjudicator shall require the parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute, and shall, in any event within twenty eight (28) days of his nomination (or such other period as the parties may agree after the reference, or forty two (42) days from the date of reference if the party referring the matter to adjudication agrees), provide to both parties his written decision on the dispute. The Adjudicator shall not state any reasons for his decision, and unless and until revised, cancelled or varied by the Arbitrator pursuant to Clause 72.3 (***Dispute Resolution***), it shall be binding on both parties who shall forthwith give effect to the decision. The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses. The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 (as amended from time to time) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination. The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Subject to Clause 72.1 (***Dispute Resolution***), the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made pursuant hereto. All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator hereunder shall be treated as confidential and the Adjudicator shall not, save as permitted by this Clause 72 (***Dispute Resolution***), or as required by law, disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies thereof shall be returned to such party on completion of the Adjudicator's work. The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability. Insofar as the Adjudicator is determining a matter referred to him pursuant to Clause 29.18 (***Available Places***), his decision shall be final

and binding and not subject to arbitration or appeal whether under Clause 72.3 (***Dispute Resolution***) or otherwise.

72.3 In the case of:

- (a) any dispute in respect of matters referred to in Clause 5.14 (***Insurance***), Clause 9 (***Change to Services Required***) (other than any decision of the Authority relating to changes to the Works or their design which do not result in the possibility of a variation of the Contract Price pursuant to Clause 9.5), Clause 39.2 (***Variation of Price***), Clause 39.3 (***Variation of Price***), Clause 39.5 (***Variation of Price***) (in respect of the amount of the Original Value only) or Clause 49 (***Payment for Termination***); or
- (b) either party being dissatisfied with or otherwise wishing to challenge the Adjudicator's decision made in accordance with Clause 72.2 (***Dispute Resolution***); or
- (c) both parties agreeing so to do;

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

72.4 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary. The Arbitrator shall deliver his decision on any matter referred to him within twenty eight (28) days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) months or such other period as the parties may agree of his

appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both parties. The costs of the arbitration will be in the discretion of the Arbitrator. The parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Clause 72 (***Dispute Resolution***) and shall give effect forthwith to every decision of the Adjudicator and the Arbitrator delivered pursuant to this Clause 72 (***Dispute Resolution***).

- 72.5 If any dispute arising under this Contract raises issues which relate to any dispute between the Contractor and the Construction Sub-contractor arising under the Construction Sub-contract, or otherwise affects the relationship or rights of the Contractor and/or the Construction Sub-contractor under the Construction Sub-contract, (the ***Construction Sub-contract Dispute***) or the Contractor and Operating Sub-contractor under the Operating Sub-Contract (***the Operating Sub-contract Dispute***) or the Operating Sub-contractor and the Houseblock Construction Sub-contractor under the Houseblock Construction Sub-Contract (***the Houseblock Construction Sub-contract Dispute***) the Contractor may include as part of its submissions made to the Adjudicator pursuant to Clause 72.2 (***Dispute Resolution***) or to the Arbitrator, where the dispute is referred to arbitration pursuant to Clause 72.3 (***Dispute Resolution***), submissions made by the Construction Sub-contractor the Operating Sub-contractor or the Houseblock Construction Sub-contractor (as the case may be) as appropriate.
- 72.6 The Adjudicator or the Arbitrator, as appropriate, shall not have jurisdiction to determine the Construction Sub-contract Dispute, the Operating Sub-contract Dispute or the Houseblock Sub-contract Dispute but the decision of the Adjudicator or the Arbitrator shall be binding on the Contractor and the Construction Sub-contractor insofar as it determines the issues relating to the Construction Sub-contract Dispute and on the Contractor and the Operating Sub-contractor insofar as it determines the issues relating to the Operating Sub-contract Dispute and on the Houseblock Construction Sub-contractor and the Operating Sub-contractor insofar as it determines the issues relating to the Houseblock Construction Sub-contract Dispute.
- 72.7 Any submissions made by the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor as part of the Contractor's case shall:

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


72.8 Where the Construction Sub-contractor, Operating Sub-contractor or Houseblock Construction Sub-contractor makes submissions in any reference (i) before the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds by the Contractor; (ii) before the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator. For the avoidance of doubt, the Authority shall have no liability to the Construction Sub-contractor, Operating Sub-contractor or Houseblock Construction Sub-contractor arising out of or in connection with any decision of the Adjudicator or Arbitrator or in respect of the costs of the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor (as the case may be) in participating in the resolution of any dispute under this Contract.

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

- (a) the document is relevant also to the issues relating to the Construction Sub-contract Dispute, Operating Sub-contract Dispute or Houseblock Construction Sub-contract Dispute as the case may be; and
- (b) the Contractor has first delivered to the Authority a written undertaking from the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor (as the case may be) addressed to the Authority that it shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that it shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or Arbitrator or any professional adviser engaged by the Construction Sub-contractor, the Operating Sub-contractor or the Houseblock Construction Sub-contractor (as the case may be) to advise in connection with the dispute.

73. PRECEDENCE OF TERMS

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

SIGNED by) 
for and on behalf of)
MORETON PRISON) 
SERVICES LIMITED)

SIGNED by) 
for and on behalf of)
HM PRINCIPAL SECRETARY OF)
STATE FOR THE HOME) 
DEPARTMENT) (Witness)