

1 July 1998

**H.M. PRINCIPAL SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

PUCKLECHURCH CUSTODIAL SERVICES LIMITED

**CONDITIONS OF CONTRACT
for the Design, Construction, Management
and Financing of a Custodial Service at
Pucklechurch, Bristol**

THIS AGREEMENT is made on 1 July 1998

BETWEEN

HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR THE HOME DEPARTMENT (the *Authority*); and

PUCKLECHURCH CUSTODIAL SERVICES LIMITED whose registered office is at Centennial Court, Easthampstead Road, Bracknell, Berkshire RG12 1YQ (Company No. 3403669) (the *Contractor*).

NOW IT IS AGREED as follows:

PART I - GENERAL

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:

Actual Full Operation Date means the date upon which the Contractor first provides 400 Available Prisoner Places;

Actual Opening Date means the date upon which the Contractor first provides no less than 50 Available Prisoner Places;

Additional Prisoner Place means an Available Prisoner Place (additional to the 400 Available Prisoner Places) to be provided by the Contractor on the request of the Authority pursuant to Clause 40 (***Additional Prisoner Places***);

Agent shall have the meaning assigned to it in the Direct Agreement;

Assets shall have the meaning assigned to it in Clause 5.1;

Available Prisoner Place shall have the meaning assigned to it in Clause 29.1;

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 5% of the equity share capital in any of the Shareholders (other than through exercise of their rights in the manner contemplated in the Direct Agreement) and that all such persons and their ultimate parent companies (if any) are both resident and incorporated in countries which are members of the Organisation for Economic Co-operation and Development;

Baseline Total means, in respect of any Performance Quarter, the relevant number of Performance Points listed in Schedule F, and referred to as such;

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 as a special category young offender 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**);

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 [REDACTED] trading together as a joint venture known as [REDACTED] 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 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;

Contractual Opening Date means 1 November 1999 as the same may be altered pursuant to Clause 24 (***Extension of Time***);

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

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 after the Actual Opening Date;

Daily Report means the daily report to be completed by the Contractor and made available to the Controller via the Prison's computer network within one hour of Prisoners' lock-up with details (inter alia) as to the number of Available Prisoner Places and Additional Prisoner Places during the day prior to lock-up and since the previous lock-up and presented in hard form to a representative of the Authority as contemplated in Clause 35.4 substantially in the form of Schedule I;

Database System has the meaning given to it in Clause 15 (***Issue of IT Equipment***);

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

Development Cost has the meaning given to it in Clause 39.3;

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 given to it in Clause 56.1 (***Facilities for Authority***);

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

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

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

Engineer's Certificate has the meaning given to it in the Preamble to Schedule A;

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

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

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

Expert has the meaning assigned to it in Clause 72.1;

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;

Final Notice has the meaning given to it in Clause 44(a)(ii);

Final Recommendation has the meaning given to it in Clause 39.5;

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

Financing Agreements means all agreements and documents, including any Hedging Agreements:

- (a) 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; and
- (b) 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;

First Notice has the meaning given to it in Clause 44(a)(y);

Fixed Availability Fee means the fee referred to as such in Schedule E;

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 14.1;

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

Full Operation Date means 10 January 2000 , as the same may be altered pursuant to Clause 24 (***Extension of Time***);

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

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 agreements falling within (a) of the definition of Financing Agreements; or
- (b) refinancing the Contractor's obligations under such agreements and documents referred to in (a) above (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;

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 [REDACTED] Limited or any named representative thereof, or such other qualified, experienced and independent person or firm so appointed from time to time by the Authority on the terms of the Monitoring Contract following consultation with the Contractor;

Indexed Availability Fee means the fee referred to as such in Schedule E;

Indexed Costs Fee means the fee referred to as such in Schedule E;

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

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

Insurance Threshold Amount has the meaning assigned to it in 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) all principal, interest (excluding default interest) which (i) has accrued but not yet fallen due and payable as at the date of the relevant Rectification Notice or Termination Notice, and (ii) accrues for a period not exceeding 180 days after the date of such Rectification Notice or Termination Notice or such longer period as the Authority may agree, in each case in accordance with the provisions of the Financing Agreements (other than the Hedging Agreements) and other amounts (except for interest and default interest or amounts representing interest and/or default interest) outstanding including banking fees due to the Banks under the terms of the Financing Agreements (other than the Hedging Agreements); and
- (b) all amounts (if any) payable to the Banks by the Contractor 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) above);

less the aggregate of:

- (i) all amounts (if any) payable by the Banks to the Contractor under the terms of the Hedging Agreements; and
- (ii) any amounts of Cash deposited or placed by or on behalf of the Contractor to secure obligations owed to the 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 the amount of the Lender Liabilities is increased by reason of any refinancing of or amendment to any of the Original Financing Agreements, 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 above shall be extended accordingly;

Level of Return means the amount determined by reference to the notes in Schedule K 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 given to it in Clause 15.1;

Losses has the meaning given to it in Clause 4.1;

Monitoring Contract means the contract dated 17 October 1997 and effective from 5 September 1997 between the Authority and the Independent Engineer setting out the terms of the Independent Engineer's appointment as amended from time to time;

Named Representatives of the Authority means those persons whose names appear at Schedule J 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 at Schedule J 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);

Notice of Change has the meaning given to it in Clause 9.1;

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 or, if applicable, any replacement thereof entered into by the Contractor and any replacement Operating Sub-contractor pursuant to the provisions of Clause 39A;

Operating Sub-contractor means [REDACTED] Limited or, with the prior written approval 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 (other than those undertaken by the Construction Sub-Contractor in its capacity as such) including any replacement Operating Sub-contractor appointed pursuant to the provisions of Clause 39A;

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; and

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 13.84% 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;

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(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, being multiplied by $(1.1384)^n$ 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, being multiplied by such amount as is agreed by the Authority and the Contractor in respect of each single investment;

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(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 $(1.1384)^n$ multiplied by X;

For the purposes of this definition:

n = the number of days which on the Termination Date pursuant to Clause 39.5 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;

Performance Measure means an event or circumstance listed as such in Schedule F in respect of which there may be a reduction in the amount payable hereunder as provided in Clause 41.6;

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

Performance Quarter means each of the four successive periods of three calendar months during the Performance Year;

Performance Year means the year commencing on the first day of the first month following Full Operation Date and each year commencing on each anniversary of such day;

Permitted Level means on any date the aggregate of:

- (a) 5% of the aggregate number of Available Prisoner Places occupied on that date (excluding Additional Prisoner Places); and
- (b) twice the number of Additional Prisoner Places occupied on that date;

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

Personal Data shall have the same meaning as Section 1(3) of the Data Protection Act 1984;

Phase-in Period means the period defined in Clause 22 (***Phase-in Period***) as extended pursuant to Clause 24 (***Extension of Time***);

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

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;

Planting has the meaning given to it in the Preamble to Schedule A;

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, 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 ~~and by virtue of Section 92(1) of the Criminal Justice Act 1991, includes Young Offender Institution and all references to Prison in the contract shall be so construed;~~

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 by virtue of Section 92(1) of the Criminal Justice Act 1991, includes Young Offender and all references to Prisoner in the contract shall be so construed;~~

Prisoner Custody Officer means a person, as defined in the Criminal Justice Act 1991, in respect of whom a certificate is for the time being in force certifying that he has been approved by the Authority for the purpose of performing Custodial Duties;

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

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

Prison Legislation means any Legislation or any amendment or modification of any Legislation (whether on reenactment 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 or prisons generally or of contracted out prisons or which otherwise discriminates solely against those in the business of the provision (including building), holding shares in and/or running of prisons generally or of contracted out prisons or the provision of Prisoner Escort Services of the type to be provided under Clause 36 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);

Project means the provision of the Services;

Rectification Notice shall have the meaning assigned to it in Clause 45.1;

Relevant Event means any of the following events:

- (a) a change of service is required by the Authority under Clause 9 (**Change to Services Required**) or Prison Legislation is enacted as contemplated in Clause 39 (**Variation of Price**) and that change or Prison Legislation requires the Contractor to perform or procure building works upon the Site or to change the nature or extent of, or to reprogramme, the Works or to redesign or amend the nature or extent of the Custodial Service;
- (b) Planning Approval not having been obtained by 18 March 1998;
- (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);
- (g) specified perils under the Sub-contract entered into between the Contractor and the Construction Sub-contractor, being (except where caused by the wilful or reckless default or breach of a relevant

obligation under a Sub-contract by any of the Contractor and the Sub-contractors) fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom;

- (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; or
- (i) any award by an arbitrator pursuant to Clause 72 to the extent such award includes a determination that the Contractual Opening Date should be deferred;

A 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***);

Retail Prices Index or ***RPI*** means the Retail Prices Index as published from time to time in Table 5 (in respect of all items other than mortgage interest payments (***RPIX***)) of Business Monitor (MM23) published by the Office of National Statistics or such index in such other journal as shall replace such table (and, for the avoidance of doubt, if RPI is rebased during the Contract Term, it shall nevertheless be determined for the purposes hereof as if no such rebasing had occurred);

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

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 which have not been accurately reflected in the indexation provisions contained in Schedule E or otherwise in Clause 39 (***Variation of Price***) (other than Clause 39.5), occurring since the date hereof;

in each case without taking into account any changes effected voluntarily by the Contractor or a Sub-contractor or to the actual level of costs in comparison with those referred to in the Finance Plan. A Significant Change does not include any of the circumstances which may give rise to a variation of the Contract Price under Clause 9 (***Change to Service Required***) or Clause 39 (***Variation of Price***) (other than Clause 39.5);

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

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

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

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 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***);

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;

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***);

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

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

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 Schedule A;

year means calendar year unless otherwise specified.

~~***Young Person*** means a Prisoner aged between 15 and 17 years or a Prisoner held under a Detention and Training Order.~~

~~***Young Adult*** means a Prisoner aged between 18 and 20 years.~~

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

- (a) the masculine includes the feminine;
- (b) the singular includes the plural;
- (c) references to the 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 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;
- (e) reference to a prison includes ~~a Young Offender's Institution and a~~ Remand Centre;
- (f) 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 Agreement is entered into under the private finance initiative, the consideration due under this Agreement is determined in part by reference to both the standards attained in the performance of a service, and one party to this Agreement is a minister of the Crown. Accordingly, this Agreement 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 Agreement.

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*), any other provisions herein relating to termination and the Direct Agreement, the contract term will be 25 years from the Contractual Opening Date.

2.3 In the event that the Prison does not open until after the Contractual Opening Date in accordance with Clause 21 (*Contractual Opening Date*), the Contract Term will nonetheless begin on the Contractual Opening Date, and the Authority shall not be obliged to grant the Contractor any extension of the Contract Term.

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;

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

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

3.2 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.

4. INDEMNITIES

4.1 Subject to Clauses 4.2, 4.6 and 4.7, 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:

- (i) 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); and
- (ii) any Losses in respect of any redundancy costs except (i) those referred to in Clauses 39A.9(b) and 39A.12(b) arising by operation of Clause 39A and (ii) arising as a result of the Authority exercising its right under Clause 46 to terminate the Contract and (iii) any other

employment costs for which the Authority is liable as provided in Clause 9.6 or 33.6;

- (iii) subject to Clause 4.8 below, any Losses suffered or incurred by the Authority in connection with its housing Prisoners outside the Prison due to any failure by the Contractor to fulfil its obligation hereunder to provide Available Prisoner Places or Additional Prisoner Places; and
- (iv) any Losses suffered or incurred by the Authority in anyway connected with or arising from or relating to the provision of information under Clause 33.15.

4.2 Clause 4.1 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 therefor;
- (d) any Losses attributable to any act, event, matter or omission after the expiry of the Contract Term, excluding, for the avoidance of doubt, those attributable to any matters for which the Contractor has accepted responsibility under Clause 10 (***Provision and Interpretation of Information***);
- (e) any Losses incurred by the Authority or any servant, agent or representative of the Authority in connection with a breach by the Authority of any public procurement rules; and
- (f) (except as expressly provided in Clause 4.1(iii) 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) 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 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 for the first year from the date hereof be [REDACTED] for any one incident or series of related incidents and [REDACTED] in aggregate. In subsequent years, the maximum of [REDACTED] and [REDACTED] shall be increased on each anniversary of the date hereof 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 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) 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 4.4 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) exceeds the amount referred to in Clause 4.4(b)(i) in respect of any Losses, the Contractor shall not be required to remit the amount of the excess to the Authority except in so far 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 paragraph (c) shall in any way affect the Contractor's obligation

to make payment up to the amount specified in Clause 4.4(b)(i) in respect of any Losses.

4.5 Subject to Clause 4.6 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 and 4.4.

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 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.

4.7 This Clause 4.7 relates solely to the provision of mutual aid within the terms of paragraph 2.5.1 of Part 1 of Schedule D.

(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), 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), 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 shall not apply to any liability arising pursuant to this Clause 4.7.

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

- (b) Losses shall not be recoverable under Clause 4.1(iii) in respect of the period up to and ending on the Actual Full Operation Date 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 Clause 40 (***Additional Prisoner Places***) to provide Additional Prisoner Places, Losses shall not be recoverable under Clause 4.1(iii) where such failure to provide such Additional Prisoner Places occurs prior to the date falling twelve weeks after the date on which the Authority has served the written notice on the Contractor pursuant to Clause 40.1 in respect of such Additional Prisoner Places.

- (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 and/or Additional Prisoner Places, the Authority shall:

- (i) on the Contractor's written request, increase the Permitted Level (either on a temporary or a permanent basis) if and to the extent that such increase, in the Authority's opinion, will not prejudice

the level of security and safety in the Prison and the control of Prisoners as required under the Operating Procedures;

- (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
 - (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(iii) 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(iii) shall be calculated by deducting (to the extent not already taken into account) from the total of the relevant Losses the aggregate of the following:
 - (i) any damages for breach of contract received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places and/or Additional Prisoner Places (whether pursuant to Clause 21 (***Contractual Opening Date***), Clause 22 (***Phase-in Period***), Clause 23 (***Full 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 Prisoner Places; and
 - (iii) the amount of the Contract Price the Authority would have paid the Contractor if the Contractor had provided the required number of Available Prisoner Places and/or Additional Prisoner Places.
- (g) If the Authority recovers any amount (the ***relevant amount***) pursuant to Clause 4.1(iii) 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 30 days of written demand for reimbursement.

- (h) No amount shall be due under Clause 4.1(iii) in respect of an Available Prisoner Place or an Additional Prisoner Place if the Agent and/or the Banks are required to make a payment in respect of the relevant place pursuant to Clause 6.2(b) of the Direct Agreement.

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

5. INSURANCE

5.1 Subject to Clauses 5.13 and 5.14, but without prejudice to any of its obligations hereunder, including, without limitation, Clauses 4 (Indemnity) and 6 (Liability for Loss or 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 Schedule O, Part 1 (Insurance during Operational Period), Section 7 (Directors and Officers' Liability)) as detailed in the Minimum Insurance Requirements detailed in Schedule O (Construction Phase) and (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 1 (Insurance during Constuction Period), Section 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 1 (Insurance During Operational Period), Section 7 (Directors' and Officers' Liability));
- (b) A provision whereby the insurance shall apply to each of the insured 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 1 (Insurance During Operational Period), Section 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 1 (Insurance During Operational Period), Section 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 90 days' notice, or 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 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) 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).

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 (Construction Phase) shall be effected from the Date of the Contract and continue in force in accordance with Schedule O.

5.5 The Insurances to be effected under Schedule O (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 or the whole of the Prison, the Site or the Assets is destroyed or damaged, where the amount of the Insurance Proceeds (excluding proceeds from Advance Loss of Profits and Business Interruption Insurances required to be maintained under this Clause) 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 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) 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 or the Assets under any insurance policy taken out in accordance with Clause 5.1 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) above.
- (d) The Authority shall pay all Insurance Proceeds it receives under any insurance policy taken out in accordance with this Clause 5 into the account referred to in Clause 5.6(a)(i), 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 30 (thirty) days from the date hereof, 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 Prisoner Custody Officer's (or other employee of the Contractor or Operating Sub-contractor and/or of 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 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 without the prior written agreement of the Authority (except in accordance with the provisions in respect of settling claims set out in Clause 4.6).

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 2 in relation to each policy of insurance maintained in accordance with this Clause 5.

5.10 Without prejudice to Clause 5.13 and Clause 5.14, 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) 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, 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 voidable 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 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) 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 Clause 5, 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 Clause 5, 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 60 days from the Authority receiving a notice from the Contractor pursuant to Clause 5.13. (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 60 day period, the parties cannot agree the Proposals (or any amendments to them) then either party may terminate the Contract on 30 days' written notice. If the Contract is terminated under this Clause 5.8, the Authority will pay to the

Contractor the Lender Liabilities plus the aggregate of: (i) the nominal value of and any share premium account attributable to any equity in the Contractor; and (ii) any outstanding loans or loan stock (whether subordinated or otherwise) which at the Termination Date under this Clause 5.8 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, the Authority retains the right to require the Contractor to amend the insurance programme detailed in Schedule O 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, and shall be effected in accordance with the provisions of Clause 9.1.

5.16 Except for Clauses 5.1, 5.3, 5.4, 5.12, 5.13, 5.14 and 5.15, the provisions of Clause 5 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), 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 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 we become aware, or could reasonably be expected to become aware by reason of the matter having been reported within [REDACTED], 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;
- (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 Clause 6.1.

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). The Contractor agrees not to make any amendment to, nor grant any extension of time, nor waive any right to liquidated damages under, either Sub-contract without the prior written consent of the Authority unless the Authority has agreed to a like amendment, extension or waiver under this Contract. The Authority shall be deemed to have approved any amendment to any Sub-contract which is required as a result of any change being made to this Contract (provided that any changes made correspond exactly in each of the Sub-contract 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, 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 33.5 and 33.7 (*The Staff*), 57 (*Public relations and Publicity*) and 58 (*Confidential Information*).

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; 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.

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

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 45 days from receipt of a valid invoice as required by the terms of the Sub-contract.

8. ASSIGNMENT

8. 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 give, bargain, sell, assign, sub-let, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, save that nothing in this Clause shall prevent the assignment and/or transfer of the Contract with the

consent of the Authority in accordance with the provisions of the Direct Agreement.

9. CHANGE TO SERVICES REQUIRED

9.1 Subject to Clauses 9.2 and 9.8, 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 or Custodial Service, or add to such obligations of the Contractor under the Contract, by giving written notice (the ***Notice of Change***) to the Contractor of the required change. In the case of emergency, the requirements set out in the Notice of Change shall come into immediate effect, and the Contract Price 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 10 working days after the date of the Notice of Change with a reasonable estimate of the increase or reduction in the Contract Price (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 (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 any 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 extension of time as it considers fair which will be effective

until such time as the Contract Price 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 shall be deemed to be so changed on a provisional basis. In the event that the provisional Contract Price set by the Authority is less than the Contract Price 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 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 was so agreed or determined pursuant to Clause 72 (***Dispute Resolution***) and vice versa by the Contractor to the Authority if the provisional Contract Price set by the Authority is more than the Contract Price 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 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 weeks) of the date of the Notice of Change, the Contractor shall (within 14 days of receiving such offer of finance) provide two estimates of the increase or decrease in the Contract Price which it believes should occur as a result of the changes set out in the Notice of Change, 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 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 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 to in Clause 9.1 (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 or, if the Authority does not accept such estimate, such amount of Capital Expenditure as is agreed or determined in accordance with Clause 9.3;
 - (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; and
 - (iii) the Contract Price 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 and any change to the Contract Price 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. The parties shall attempt to agree an estimate of such Capital Expenditure but if no agreement is reached within 7 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 7 days of the date of determination of the estimate that the Notice of Change should lapse). During execution by the Contractor of all necessary works to comply

with the Notice of Change, the Authority shall either (a) promptly reimburse the Contractor, or, (b) at the option of the Contractor, pay on behalf of the Contractor against invoices in respect of those parts of such works which have been completed, subject to an aggregate maximum payment of the agreed estimate or, as the case may be, the amount determined in accordance with Clause 72 (***Dispute Resolution***), in either case within 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 or 9.2, 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 7 days. If the Authority accepts the proposal, the Finance Plan will automatically be deemed changed as proposed; if the Authority rejects the proposal, the parties shall attempt to agree the manner in which the Finance Plan should be changed but if no agreement is reached within 7 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, 9.2 or 9.3 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 or to the Works pursuant to this Clause 9.5 which may be accompanied by proposed changes to the Contract Price or the other terms hereof. Any such changes shall require the prior written consent of the Authority. A change to the Works may only be requested by the Contractor in the manner set out in Schedule M, Part 3.

(b) In the event of any increase in the costs of the Contractor, the Operating Sub-contractor or the Construction Sub-contractor resulting from any changes to the Custodial Services or the Works or to their design requested by the Contractor pursuant to this Clause 9.5, there shall be no variation in the Contract Price unless such changes in cost arise from Prison Legislation, in which case Clause 39.2 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 shall take precedence over this Clause.

(d) If at any time the costs incurred by the Contractor, the Construction Sub-contractor or the Operating Sub-contractor have decreased as a result of any changes proposed by the Contractor to the Custodial

Services or the Works or any change to their design (but not as a result of any Design Development as defined in Schedule M) pursuant to this Clause 9.5, then the Authority may request a variation in the Contract Price pursuant to this Clause 9 which shall take into account such cost savings to the Contractor, the Construction Sub-contractor and/or the Operating Sub-contractor to reduce the amount of the Contract Price as though the change was made pursuant to a request by the Authority under Clause 9.1.

9.6 If a Notice of Change served by the Authority under Clause 9.1 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.

9.7 Any change to the Contract Price which is determined under this Clause 9 shall be determined in accordance with the principles set out in Clause 39.4, 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 9.6.

9.8 For the avoidance of doubt, it shall not be deemed a change to any obligation hereunder and there shall not be any variation of the Contract Price if:

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

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

10. PROVISION AND INTERPRETATION OF INFORMATION

10.1 The Contractor shall be deemed to have inspected the Site and its surroundings and to be in possession of information connected therewith and to accept responsibility for and have satisfied 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.

PART II - PROVISION

11. THE LAND

11.1 The Land upon which the Contractor shall provide the Prison shall be the piece of land edged in green 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 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 to be unreasonably delayed or (except in the case

of sub-paragraph (iii) below) withheld), 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 running 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 in accordance with the provisions of this Contract, the Tenant and the Operating Sub-contractor named in the Lease then subsisting will surrender their Lease to the Authority and immediately thereafter the Authority shall grant a new Lease (the ***New Lease***) to the person who has the benefit of the Contract and the person who has been appointed by the Contractor to perform the Custodial Service (such persons respectively constituting the new Tenant and the new Operating Sub-contractor for the purposes of the New Lease) save that nothing in this Clause shall prevent the assignment of the Lease to a Substitute Entity in the circumstances envisaged by Clause 6.9 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 6.9 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 or part of the Retained Property (as defined in the Lease). 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 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.

11.9 The freehold interest in other land and property situate at Pucklechurch South Gloucestershire shall be sold by the Authority to the Contractor in accordance with the provisions of a Contract of even date herewith and made between the Authority of the one part and the Contractor of the other part (the ***Land Contract***).

11.10 The Land and other lands and property adjoining or in the neighbourhood of the Land is subject to an Agreement dated 25 February 1998 and made between South Gloucestershire Council of the one part and the Authority of the other part (the ***Agreement***). The Contractor will observe and perform all the obligations on the part of the Authority contained in the Agreement (except in relation to sub-clauses 8.1 and 8.2 of the Agreement which will be observed and performed by both parties) and indemnify the Authority against all actions, proceedings, costs, charges, claims and demands whatsoever in respect thereof (except in relation to sub-clauses 8.1 and 8.2 of the Agreement where the parties indemnify each other under such sub-clauses).

12. PLANNING APPROVAL

12.1 The Contractor will note the decision of South Gloucestershire Council (***the Council***) dated 3 June 1997 whereby the Authority was granted outline clearance under the Department of the Environment Circular No. 18/84 to proceed with the development of a prison in accordance with its notice of proposed development (the ***Outline Clearance***). The Contractor will further note the decision of the Council dated 25 February 1998 whereby the Authority was granted outline 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 ***Outline Permission***).

12.2 The Contractor was granted approval by the Council of reserved matters following outline permission for development dated 22 May 1998 (the *Approval*).

12.3 The Contractor shall comply with the conditions and recommendations contained in the Outline Permission and the notice of Approval of reserved matters and, without prejudice to the generality of the foregoing, in the course of providing the Prison the Contractor shall be responsible for applying for all planning permissions and/or approvals required under the terms of the Outline Permission and notice of approvals of reserved matters.

12.4 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.

12.5 Nothing in the Contract nor in any consent granted by the Authority under the Contract shall be deemed to imply or warrant that the Prison or the Land may lawfully be used under the Planning Acts (as defined in the Lease) for the purpose authorised in the Contract or the Lease (or any purpose subsequently authorised).

12.6 If the Highway Authority 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 or other planning agreement in connection with the Project 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 or other planning agreement 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 the 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 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 relevant 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 12.7 shall be limited as specified in Clause 4.4.

13. PROVISION OF THE PRISON

13.1 The Contractor shall design and construct a Prison subject to and in accordance with the terms of Schedule A (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 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 to The Health and Safety Executive within 7 working 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). 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, 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).

14. SUPPLY OF EQUIPMENT

14.1 Prior to the Actual Opening Date the Contractor shall supply and install at the Prison all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the Prison on the Actual Opening Date in the lists agreed between the Contractor and the Authority pursuant to Part 1 of Schedule

B. Subject to Clauses 14.2 and 14.3, all equipment referred to in Part 1 of Schedule B shall be the property of the Contractor and all the equipment referred to in Part 1 of Schedule B 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) and in good and serviceable condition) in order to allow the Contractor to comply with the standards set out in Schedule C, 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 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 (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 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, the Contractor may lease any equipment referred to in Part 3 of Schedule B, 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 which is not referred to in Part 3 of Schedule B, 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 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 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 to the Prison on or prior to the date falling no later than ten weeks prior to the Estimated Opening Date and (ii) any 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 such cabling and ancillary fixtures and fittings and power supplies as the Authority may require for the purpose of installing, maintaining and operating the LIDS 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, maintenance, operation, upgrading and replacement of any LIDS 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 therefor from the Contractor provided that the following provisions are met:

- (a) the Contractor's written request to the Authority to supply and install the Government Data Network Access Point shall be delivered to the Authority at least 16 weeks in advance of the proposed date for its installation; and
- (b) the installation date for the Government Data Network Access Point shall be at least twelve weeks prior to the Estimated 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 LIDS 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 purpose 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 and Section 3.11.1 of Part 1 of Schedule D 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) 10 staff in the operation of the LIDS System prior to the system going live;
- (b) 10 staff in system administration duties for the LIDS System prior to the system going live; and
- (c) 10 staff in respect of and at the time of any 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.

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, 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 in Price***) but subject to Clause 16.4, 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.

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, 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 in accordance with the terms of Schedule C.

17.2 In addition to the obligations set out in Schedule C, 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 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, 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 years after the date hereof and thereafter every two years. The dates of every such survey shall be notified to the Contractor not less than 7 days in advance of the survey taking place. The costs of such surveys shall be borne by the Authority.

19.2 Where, following a survey referred to in Clause 19.1 or Clause 52.1, 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, 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 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, 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 or required following resolution of any dispute regarding the same pursuant to Clause 72 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, 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 *Operation Proposals*):

- (a) at least three months prior to the Estimated Opening Date:
 - (i) the operating procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the staff handbook; and
 - (iv) the public relations procedures;
- (b) a reasonable period in advance of the Estimated Opening Date such other information as the Authority reasonably requests, including but not limited to all the documents listed in Schedule D as requiring submission before Actual Full Operation Date.

20.2 The Contractor shall make any amendments which the Authority reasonably requires for the purpose of ensuring that the Operation Proposals are in accordance with the terms of the Contract. The Authority shall be entitled to refuse to approve all or any part of the Operation Proposals until the Contractor has made such amendments.

20.3 When the Contractor considers that it has prepared the Operation Proposals it shall give written notice to the Authority. Within 30 days of receipt of the written notice, the Authority shall either approve the Operation Proposals or shall provide the Contractor with a written record of the reasons why it is not satisfied with the Operation Proposals.

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, the Contractor shall amend the Operation Proposals in accordance with the

Authority's reasons as set out in the written record and shall then comply with the requirements of Clause 20.3 when seeking any new approval of the Operation Proposals save that the notice period shall be 14 days instead of the 30 days specified in Clause 20.3.

20.5 When the Authority approves the Operation Proposals, the Authority shall promptly issue to the Contractor a certificate certifying that the Operation Proposals are approved, subject to satisfactory completion of the tests in accordance with Clause 20.6.

20.6 Once the Authority has issued a certificate under Clause 20.5, the Operation Proposals shall be tested in accordance with the proposals for testing in the Operation Proposals. The Contractor shall give the Authority 14 days' notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within 7 days of such tests, the Authority shall either finally approve the Operation Proposals (by giving written notice to that effect) or shall provide the Contractor with a written record of the reasons why the Operation Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re-run the tests in accordance with the above provisions except that the notice period to the Authority shall be 2 days instead of the 14 days specified above.

20.7 Once approved by the Authority under Clauses 20.3 and 20.6, the Operation Proposals shall remain under review in accordance with Clause 35.3 (*Inspection and Monitoring*).

20.8 The Contractor is required to submit the following information to the Authority at least three months prior to the Estimated Opening Date:

- (a) the names of, and such other information as the Authority may require about, the proposed Director and the members of the senior management of the Prison; and
- (b) the names, and such other information as the Authority may require about all persons requiring certification or approval, as specified in Clauses 32 (*Prisoner Custody Officers*) and 33 (*Staff*).

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

21. CONTRACTUAL OPENING DATE

21. Upon the Contractual Opening Date the Contractor will provide the Authority with 50 Available Prisoner Places. In the event that the Contractor does not provide 50 Available Prisoner Places to the Authority on the Contractual Opening Date (and without prejudice to the Authority's rights

under Clause 25 (*Liquidated Damages*) and Clause 44 (*Default by Contractor*)) the Contractor shall provide 50 Available Prisoner Places as soon as possible thereafter.

22. PHASE-IN PERIOD

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

23. FULL OPERATION DATE

23. At all times on and from the Full Operation Date the Contractor shall provide to the Authority 400 Available Prisoner Places and on the date falling six months after the Full Operation Date the Contractor shall be capable of providing 40 Additional Prisoner Places. The Authority shall not be liable to make any payment in respect of more than 400 Available Prisoner Places (except to the extent of its obligations hereunder in respect of any Additional Prisoner 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 Opening Date or any date of the Phase-in Timetable or the Full Operation Date, the Contractor shall forthwith give written notice to the Authority (the *Delay Notice*) of the relevant circumstances.

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 Opening Date, the Full Operation Date and the dates on the Phase-in Timetable are to be

affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Relevant Event; and

- (e) in the case of a Relevant Event being claimed under paragraph (a) or (c) of the definition of Relevant Event the Contractor's estimate of the costs it is likely to incur directly as a result of such Relevant Event.

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

24.3 If the Authority determines (acting reasonably) that a Relevant Event is the cause of any delay to the Contractual Opening Date, the Full Operation Date or any date in the Phase-in Timetable, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Opening Date or the relevant date in the Phase-in Timetable and/or the Full Operation Date as it then reasonably estimates to be fair to take into account the effect of the Relevant Event (whereupon such other dates shall become the Contractual Opening Date, the Full Operation Date or the relevant date in the Phase-in Timetable for the purposes of this Contract). In the case of an event within paragraph (i) of the definition of Relevant Event, the extension shall be consistent with the relevant arbitral award and/or as determined by the Arbitrator (as appropriate).

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 30 days 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.

25. LIQUIDATED DAMAGES

25.1 To the extent that on or before the Actual Full Operation Date the Contractor fails on any day to provide the number of Available Prisoner Places specified in the Phase-in Timetable (including, for the avoidance of doubt, 50 Available Prisoner Places from the Contractual Opening Date and 400 Available Prisoner Places from the Full Operation Date), the Contractor shall be liable to pay liquidated damages to the Authority.

25.2 Liquidated damages shall be calculated at the daily rate set out in Schedule E 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 25.1 has not been provided and shall, subject to Clause 25.4, be payable monthly in arrears. The Contractor agrees that such rate represents a reasonable pre-estimate of the Authority's loss arising from delay.

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

25.4 The Authority may deduct the said sums from any monies due to the Contractor under this Contract or the Authority may recover the same from the Contractor as a debt, except to the extent that such sums have been recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor 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 or the Operating Sub-contractor, the Contractor's obligation hereunder to pay such sums shall be discharged.

26. INDEPENDENT ENGINEER AND 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. 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.

26.2 When the Contractor considers that the whole of the Works (with the exception of the Planting referred to in paragraph (b) under the heading "Planning, Landscaping and Planting" in the Preamble to Schedule A) will be, or has been, completed in accordance with Schedule A and will be, or has been, satisfactorily commissioned by passing all the tests referred to in Schedule A, 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 14 days and not more than 30 days from the date of the notice.

26.3 The Authority shall procure that the Independent Engineer shall within 21 days of the date of the delivery of the notice referred to in Clause 26.2 (or, if the Works will be completed at a later date, within 7 days of the date of completion specified in the notice) either issue a certificate (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 (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 and 26.3 shall apply except 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. 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 to 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 except in the case of the equipment referred to in Part 2 of Schedule B, 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, Clause 13 or Schedule M 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.

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 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 Approving Availability***). 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, 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, 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 10 days of service of a Non-Compliance Notice, the Contractor has not remedied the matter referred to in the Non-Compliance Notice, until such time as the Contractor has rectified the Prison Cell so that it complies 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 Cell for the purpose of ascertaining whether a Cell Certificate should be so reinstated.

28. TIMETABLE FOR CELL CERTIFICATION

28.1 A minimum of 30 days prior to any date when the Contractor considers it can provide the Authority with Available Prisoner Places as required by Clauses 21 (***Contractual Opening Date***), 22 (***Phase-in Period***) and 23 (***Full Operation Date***), it shall give written notice to the Authority of such opinion,

and the said 30 days shall be the notice period. The Contractor shall specify the number of Prison Cells and Available Prisoner Places that he considers he 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 the Prison Cells and the Prison 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, 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, 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 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 a Prisoner Place would have been treated as being an Available Prisoner Place, then for the sole purpose of Clauses 25 (***Liquidated Damages***) and 38 (***Price***), the Prisoner Place shall be treated as an Available Prisoner Place until such time as the Authority certifies the Prison Cell so as to make it an Available Prisoner Place within the meaning of Clause 29 (***Available Prisoner Places***) or the Authority provides the Contractor with a written record in accordance with Clause 28.3 so that the Prisoner Place ceases to be treated as an Available Prisoner Place.

28.5 Where a Prison Cell is refused Cell Certification by the Authority, and a written record of the reasons has been provided to the Contractor in accordance with Clause 28.3, the Contractor shall comply with the requirements of this Clause 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 shall be 14 days instead of 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 PRISONER PLACES

29.1 There shall be no Available Prisoner Places until:

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

- (b) the Authority's final approval of the Operation Proposals has been obtained in accordance with Clause 20.6; and
- (c) the Contractor has demonstrated to the satisfaction of the Authority that it is capable of providing properly trained and certified Staff for the Prison;
- (d) all the conditions required to be satisfied prior to the housing of Prisoners (for any period, whether overnight or otherwise) at the Prison in accordance with the Outline Clearance, the Outline Permission and the Approval (as they may be amended from time to time) are complied with in full (subject, for the avoidance of doubt, to Clause 12.4).

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

- (e) the Prison Cell in which the Prisoner Place is contained has been issued with a Cell Certificate pursuant to Clause 27.2 (or has had such Cell Certificate reinstated pursuant to Clause 27.3) and such Cell Certificate has not subsequently been withdrawn pursuant to Clause 27.3; and
- (f)
 - (i) the Prisoner Place has complied in all respects with the Standard Requirements throughout that day; or
 - (ii) the Contractor has notified any failure to comply in all respects with the Standard Requirements to the Authority immediately but the Authority has failed to require the Prisoner to be removed from the Prisoner Place,

provided that if the relevant place is unoccupied at the time of notification pursuant to (ii) above, that place shall (until the requirements of (e)(i) above are satisfied) only constitute an Available Prisoner Place for a period of twenty-four hours following such notification.

29.2 The Contractor shall on each day following the Actual Opening Date produce the Daily Report and deliver a copy thereof to the representative of the Authority.

29.3 No Single Prison Cell shall be used to accommodate more than one Prisoner, and no Double Prison Cell shall be used to accommodate more than two Prisoners, 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 plus the number of Prisoners sharing a Double Prison Cell with more than one other Prisoner is less than or equal to the Permitted Level (in which case Clause 29.4 would apply).

29.4 Where two Prisoners share a Single Prison Cell or three Prisoners share a Double Prison Cell otherwise than as expressly permitted in Clause 29.3 or permitted pursuant to Clause 4.8, the amount payable by the Authority for the services of the Contractor hereunder shall, without prejudice to the Authority's rights under Clauses 48 (*Default by Contractor*) and 50 (*Termination for Default*), be reduced in the following manner:

Where:

- (a) the number of Prisoners sharing Prison Cells ~~(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 Availability Fee, the Indexed Availability 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.

29.5 No Single Prison Cell shall be used to accommodate more than two Prisoners, and no Double Prison Cell shall be used to accommodate more than three Prisoners, under any circumstances ~~other than, in each case, Prison Cells designated for multiple occupancy in the healthcare centre of the Prison.~~

29.6 The Contractor agrees that it will not refuse to accept a Prisoner for an Available Prisoner Place where such Prisoner has been sent to the Prison by any Court; and that it will not refuse to accept a Prisoner for an Available Prisoner Place where it receives a request to do so from the Authority unless the Contractor has reasonable cause to believe that complying with the Authority's request would prejudice the Contractor's ability to maintain security and control within the Prison. The Authority agrees not to introduce any Category A Prisoners to the Prison if to do so can be reasonably avoided and, if it cannot be reasonably avoided, the Authority undertakes (i) to remove any such Category A Prisoners from the Prison at the earliest possible opportunity; and (ii) 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 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 young offenders and are not introduced to the Prison for more than three prisoner days in any six month period). To the extent that provision of any such extra resources is by way of payment, the level of the relevant payment shall be ascertained by reference to the principles set out in Clause 39.4. Notwithstanding any other provision of this Clause, a

Prisoner Place shall not be an Available Prisoner Place if the Contractor refuses to accept a Prisoner to occupy such Prisoner Place, unless in requesting that the Prisoner occupy such 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 Prisoner Place shall continue to be an Available Prisoner Place (subject to the requirements of Clause 29.1); if the Authority is acting in accordance with such guidelines, the Prisoner Place shall not be an Available Prisoner Place until the earlier to occur of the following:

- (a) save in respect of the Phase-in Period, 400 or more Prisoners have occupied the Prison at any one time after the date of the Contractor's refusal; or
- (b) three months have passed since the date of the Contractor's refusal.

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

PART V - OPERATION

30. CONDUCT OF OPERATION

30.1 The Contractor is responsible for the operation and maintenance of the Prison, in accordance with the terms and specifications of the Contract, and in accordance with the Authority's powers under the Criminal Justice Act 1991.

30.2 The Contractor shall at all times operate the Prison in accordance with all relevant provisions of Legislation including but not limited to the Prison Act 1952, the Criminal Justice Act 1991, the Prison Rules 1964 and the ~~Young Offender Institution Rules 1988~~.

30.3 Without prejudice to Clause 30.2 the Contractor shall operate the Prison in accordance with the terms of Part 1 of Schedule D.

31. THE DIRECTOR

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

31.2 The Contractor shall submit a nomination for the position of Director 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 the proposed Director as the Authority may require in order to decide upon the appointment. The Authority will consult with the Contractor with respect to any such nominee and if a Contractor's nominee is rejected by the Authority, the Authority shall provide reasons for the rejection, and the Contractor shall nominate a new candidate for the Authority's approval or rejection in the same manner as the earlier nomination.

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

31.4 The Contractor shall ensure that any person required to exercise the powers of the Director, by reason of the Director's absence, or to replace the existing Director or for whatsoever reason, will be subject to the same terms of approval and appointment as specified in this Clause.

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 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.

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 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 3 months prior to Estimated Opening Date and, in any event, before such uniforms are taken into use. Such uniform and the Contractor's and Operating Sub-contractor's required standards of dress for the staff shall be subject to approval by the Authority before being implemented. Any change to the uniforms or standards shall be subject to the Authority's approval (such approval or refusal thereof 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 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 The Contractor shall provide all staff with the operating and procedural instructions prepared in accordance with Clause 20 (***Preparation for operation of the Prison***) which are relevant to them, and all staff shall be provided with any revised or amended operating and procedural instructions which are relevant to them which may be issued during the term of the Contract.

33.5 The Contractor shall ensure that all staff are under an obligation of confidence owed not only to the Contractor but also to the Authority not to disclose any information acquired during the course of that employment otherwise than in the proper discharge of their duties or as authorised by the Authority, and shall provide in the terms of the Sub-contracts that the Sub-contractors will undertake in the same terms to the Authority as the provisions of this Clause 33.5.

33.6 If, in the opinion of the Authority, (i) any member of staff is guilty of misconduct, or incapable of efficiently performing his duties or (ii) 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 their 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. The Contractor and the Authority shall, following the suspension of any 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 at 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 (***Original Notice***) by the Authority, the Authority shall be entitled, by giving notice (a ***Second Notice***) in writing to the Contractor (within 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 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 33.6 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.

33.7 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.

33.8 The Contractor shall maintain sufficient staff to perform the Custodial Service, including the provision of cover for annual and sick leave or other absence and other emergencies.

33.9 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.

33.10 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*), 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 and has given the requisite approval or certification.

33.11 The Contractor shall ensure that members of staff (including Prisoner Custody Officers, the Director and other senior management of the Prison or their delegated representatives) with sufficient authority to take decisions necessary for the proper operation of the Prison, shall be available 24 hours a day on every day throughout the Contract Term in respect of the Custodial Service.

33.12 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 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 any changes thereto) shall be subject to the approval of the Authority.

33.13 The Contractor shall be entirely responsible for all aspects, including costs, of the contracts of employment of its employees.

33.14 Subject as expressly provided herein, the Contractor shall be liable for any costs and payment of redundancy awards to its employees (except those referred to in Clauses 39A.9(b) and 39A.12(b) arising by operation of Clause 39A, or in the case of voluntary termination under Clause 46, as to which the provisions of Schedule H 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.

33.15 During the period of eighteen months preceding the Expiry Date or after notice has been given to terminate the Contract, and in each case within

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) by reason of TUPE Regulations;
- (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;
- (d) their length of service and the cost of their redundancy entitlement.

33.16 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 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.

33.17 From the earlier of the date eighteen 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 (including in accordance with the provisions of Clause 39A) 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.

34. THE CONTROLLER

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

34.2 The Controller shall be allowed unrestricted access to the Prison at any hour of day, and 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 he reasonably can to facilitate the exercise by the Controller of his functions, whether such functions be those conferred on him by statute or by the Authority.

35. MONITORING AND INSPECTION

35.1 The Contractor shall give or procure access to the Prison and to any training or catering or other facilities of the Contractor or any Sub-contractor where such facilities are used in connection with the provision of Custodial Service (other than the Works) (the Prison and all such facilities being referred to as the ***Facilities***) to, and will otherwise co-operate with, Her Majesty's Inspectorate of Prisons, the Prison Ombudsman, the Board of Visitors, and any other statutory, regulatory or other properly interested body, including relevant international bodies.

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

35.3 The Authority may require periodic reviews of the Contractor's operating procedures, 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 (***Changes to Services Required***), the provisions of Clause 39 (***Variation of Price***) shall apply.

35.4 Copies of each Daily Report shall be provided by the Contractor to a representative of the Authority by 9 am on the day following the day to which such Daily Report refers. Full details of the Daily Report shall be input into the Prison's computer network within one hour of the Prisoners' lock-up and the details accessed after that time shall constitute the Daily Report in respect of the day preceding that lock-up. 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 is correct. If any of the matters contained in any Daily Report are found to be incorrect, the provisions of paragraph 10 of Schedule E 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 Prisoner Escort Service to the Prison, but subject at all times to the maintenance of the security and control of the Prison.

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

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

37. VISITORS

37. 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 (subject to the provisions in the Preamble to Schedule A) pay to the Contractor the Contract Price which shall be calculated by reference to the relevant formula at paragraph 9 of Schedule E, expressed in pounds sterling per day, subject to any variations of Contract Price as provided for in Clause 9 (*Change to Services Required*), Clause 39 (*Variation of Price*) and Clause 39A (*Benchmarking*) (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 and 39.2, no payment of the Contract Price shall become due to the Contractor until after the date when 50 Available Prisoner Places have been provided to the Authority by the Contractor.

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 50 Available Prisoner Places to the Authority.

38.4 Subject to the provisions in the Preamble to Schedule A payment will be due in accordance with Schedule E 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 a rate of LIBOR from time to time plus 1% on the unpaid amount from the due date until the date of payment thereof.

39. VARIATION OF PRICE

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

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 and 9.3 shall apply, save that any reference to a Notice of Change shall be deemed to include Prison Legislation for the sole purpose of this paragraph (ii).

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(b) 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;
- (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 (but for the avoidance of doubt, not Clause 9.6) shall apply in respect of such notification as though it were a Notice of Change under Clause 9.1. 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 (***Changes to Services Required***) or (except as provided otherwise) this Clause 39 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 7.74% per annum; and any variation to the Contract Price pursuant to Clause 9 (***Changes to Services Required***) and this Clause 39 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 40.4 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 shall be reflected by an appropriate change in the amount of the Fixed Availability Fee (taking into account the repayment schedule of such financing);
- (c) any changes in the costs of the Contractor or the Sub-contractors other than in respect of the matters referred to in (a) and (b) above shall be reflected by an appropriate change in the amount of the Indexed Availability 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; and
- (d) if the Authority requires a reduction in the number of Available Prisoner 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 coverage ratio reasonably forecast immediately prior to the date of the variation being maintained);

- (ii) the Contractor's obligations to comply with the financial covenants contemplated by the Credit Agreement as 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 defined in the Credit Agreement) as is 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;
- (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 any of 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 directly or 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.

For the avoidance of doubt, the provisions of this Clause 39.4 shall not apply to any variation in price in accordance with the provisions of Clause 39A.

39.5 Except in the circumstances where the other provisions of this Clause 39 are applicable, where as a direct result of any Significant Changes occurring since the date hereof (or, if there has been any variation of the Contract Price under this Clause 39.5, 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. Such notice may only be served on the fifth, tenth and fifteenth anniversaries of the date hereof or within one month thereafter and may only be served in respect of the fifteenth anniversary of the date hereof by either party if the Authority has confirmed in writing that it will not invoke its rights under Clause 39A (**Benchmarking**). 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 Expert, 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 Expert as they wish, following which the Expert 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 weeks of the date of the Final Recommendation, each party shall notify the Expert 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 Expert or the Final Recommendation under Clause 39.5.

BENCHMARKING

In this Clause 39A:

the ***Benchmarking Assumptions*** are as follows:

- (i) that RPI inflation will at all times following the Date of Benchmarking be equal to the average of:
 - (a) RPI inflation for the twelve month period preceding the Date of Benchmarking; and

- (b) HM Treasury's published forecast for RPI inflation for the twelve month period after the Date of Benchmarking;
- (ii) that cost inflation in respect of wage and salary costs will be RPI inflation plus 1.5% per annum;
- (iii) that cost inflation in respect of non-wage and non-salary costs will be RPI inflation;
- (iv) that the number of Available Prisoner Places, Additional Prisoner Places and Performance Measures in respect of each period following the Date of Benchmarking will be the same as the average number of Available Prisoner Places, Additional Prisoner Places or Performance Measures (as the case may be) for the period from the Actual Full Operation Date to the Date of Benchmarking;
- (v) that the tax rates and tax regime in effect on the Date of Benchmarking will continue in effect until the Expiry Date (regardless of any proposals to change such rates or regime as at the Date of Benchmarking);
- (vi) that the debt pursuant to the Financing Agreements and any debt of the Contractor due to the Shareholders and/or their affiliates will be serviced and repaid in accordance with the terms relating thereto and that (to the extent funds are forecast as being available) the Contractor will comply with all other terms relating to such debt;
- (vii) that (to the extent funds are forecast as being available) distributions are made to the Shareholders such that all available cash is distributed subject to the terms of the Financing Agreements and the provisions of the Companies Acts (as in force on the Date of Benchmarking);
- (viii) that interest rates after the Date of Benchmarking will at all times remain at the levels in effect under the terms of the Hedging Agreements as at the Date of Benchmarking or, in respect of amounts outstanding under the Financing Agreements which are unhedged, at the six month LIBOR as at the Date of Benchmarking;
- (ix) that the Contractor carries on no business other than that of operating the Prison;
- (x) that no variation of the Contract Price occurs after the Termination Date (except as provided by Schedule E);

- (xi) that the Contract, and the Operating Sub-contract (or any replacement thereof in effect prior to the Date of Benchmarking), continues on the terms that are in effect as at the fourteenth anniversary of the Actual Full Operation Date without any subsequent amendment or variation thereto;
- (xii) that the Operating Sub-contractor is operating the Prison; and
- (xiii) that the Contract ends on the Expiry Date;

Date of Benchmarking means the fifteenth anniversary of the Actual Opening Date;

Equity Transfer Value means, subject to any adjustment downwards pursuant to Clause 39A.1 the lesser of the Maximum Equity Value and the present value of the Revised Extracted Cash Flows forecast to arise from the Date of Benchmarking calculated by discounting each amount from the middle of the period to which it relates to the Date of Benchmarking at 13.84% (real).

Maximum Equity Value means [REDACTED];

Relevant Period means the period from the fifteenth anniversary of the Actual Opening Date to the Expiry Date.

Relevant Securities means all issued share capital of the Contractor and any debt owed by the Contractor to its Shareholders (and/or their affiliates);

Revised Extracted Cash Flows means the periodic cash flows from the Date of Benchmarking to the Expiry Date extracted from the Revised Project Cash Flows showing (as net per period sums) amounts invested by the Shareholders in the Contractor and amounts received or forecast as being received by the Shareholders from the Contractor which will comprise the following:

- (i) the share capital of the Contractor that is paid up;
- (ii) subordinated or shareholder debt advanced to the Contractor;
- (iii) dividends paid or to be paid by the Contractor (after any deduction required to be made by the Contractor); and
- (iv) interest and repayments paid by the Contractor in respect of subordinated debt (after any deduction required to be made by the Contractor);

The Revised Extracted Cash Flows shall not in any period exceed the Extracted Cash Flows (as defined in Schedule H) as contained in the Finance Plan.

Revised Project Cash Flows means cash flows (prepared on the basis specified in Clause 49.6) showing the actual periodic cash flows of the Contractor and the Operating Sub-contractor from the date of signature of the Contract to the Date of Benchmarking and the forecast periodic cash flows of the Contractor from the Date of Benchmarking to the Expiry Date, in each case taking into account all receipts and expenditure and taxes payable or forecast as payable by the Contractor in respect of the financing, operation and maintenance of the Prison and all dividends and other amounts paid or forecast as to be paid by the Contractor to the Contractor's Shareholders during each period and determined (in the case of forecast periodic cash flows) in accordance with the Benchmarking Assumptions.

39A.1 On or after the fourteenth anniversary of the Actual Opening Date (but prior to the fifteenth anniversary of the Actual Opening Date) the Authority may undertake a review of the Custodial Service to compare the I_1 , I_2 and V (as defined in Schedule E) components of the Contract Price for the Relevant Period with the likely market cost of purchasing the Custodial Service for that period (other than the element of the Custodial Service that relates to the provision of utilities) (the **Benchmarked Service**). This comparison will be made, where possible, by considering the relative value for money provided or to be provided by the Contractor (having regard only to the level of I_1 , I_2 and V (as defined in Schedule E) for the Relevant Period) when compared to prices charged and the costs incurred (by reference to accounts) by other private sector operators under prevailing market conditions for the provision of the operating element (other than the provision of utilities) of comparable custodial services (whether under design, construction, management and financing (**DCMF**) or similar contracts, operating contracts or otherwise). In conducting its review of such custodial services the Authority shall (if such services then exist) draw up a list of comparable custodial services (whether provided under DCMF contracts, operating contracts or otherwise) for privately managed prisons in the UK. If the Authority decides to undertake such a review it will notify the Contractor of its decision and the Contractor and the Authority shall consult to ascertain the Equity Transfer Value.

The Contractor shall, without unreasonable delay, provide the Authority with any information the Authority requires (acting reasonably) in relation to the Relevant Securities and the Equity Transfer Value and any calculations made in connection therewith shall be set out in reasonable detail by the Contractor. The Contractor and the Authority shall seek to agree the Equity Transfer Value (on the assumption that the date for transfer of the Relevant Securities pursuant to this Clause is the Date of Benchmarking). If the Authority and the Contractor are unable to agree the Equity Transfer Value by the date falling 21 days after the date of notification above by the Authority under this Clause 39A.1, the Authority and the Contractor will appoint by agreement an investment banker to act as an expert for the purposes of this Clause. If the

parties are unable within 7 days to agree on the identity of the expert, either party may request the President of the Institute of Chartered Accountants in England and Wales to make an appointment. The investment banker appointed as an expert for the purposes of this Clause shall thereafter:

- (a) (if requested by the Authority or the Contractor but in any event within the terms of reference set out in Schedule Q) determine whether the basis of valuation set out in the definition of Equity Transfer Value is unworkable or inappropriate as a method of valuing the Relevant Securities given developments in the first 15 years of operation of the Prison and, if this is the case, set out the principles which should be adopted to determine the Equity Transfer Value; and
- (b) calculate the Equity Transfer Value (on the assumption that the date for transfer of the Relevant Securities is the Date of Benchmarking).

Any expert appointed for the purpose of establishing the Equity Transfer Value and, if requested, the basis for valuation of the Relevant Securities shall notify the Authority and the Contractor of the Equity Transfer Value and the basis for valuation within 30 days of his appointment provided that in no circumstances shall the expert's determination result in an Equity Transfer Value that exceeds the Maximum Equity Value.

39A.2 The Authority will disclose any list of comparable custodial services (as referred to in Clause 39A.1) to the Contractor who will have a right (within 30 days of receipt of the list) to make written representations to the Authority as to the suitability or otherwise of one or more of the services listed. The suitability of the services listed may be disputed by the Contractor in such written representations for any reason that the Contractor considers relevant, including:

- (a) that the relevant prison is not, or is only marginally, financially viable;
- (b) that the quality of the relevant comparable custodial service is materially below that required of the Contractor pursuant to the Contract;
- (c) that the relevant prison operator does not have the appropriate qualifications, experience or technical competence or the financial resources to operate the relevant custodial service or to provide the Service; and
- (d) that the relevant comparable custodial services are not comparable in material respects to the Benchmarked Service in terms of the category of prisoners received and/or scope of the service provided.

The Contractor shall (within the 30 day period referred to above) be entitled to make such other written representations as it sees fit to the Authority which the Contractor considers are relevant to the matters referred to in this Clause 39A.

For the avoidance of doubt, if no comparable services can be identified by the Authority in accordance with the above, the provisions of Clauses 39A.4 to 39A.14 below shall nonetheless apply.

39A.3 If the Authority considers that no such comparable services exist, the Authority shall consider (by reference to such factors as it deems relevant, including the cost of provision of custodial services by the public sector) whether the provision by the Contractor of the Benchmarked Service for the Relevant Period is likely to represent value for money. If it considers that it is not likely to do so, the Authority shall notify the Contractor (giving reasonable details as to the basis for its view). The Contractor shall have 30 days to make written representations on the matter to the Authority.

39A.4 The Authority shall consider any written representations made to it by the Contractor in relation to the matters referred to in Clauses 39A.2 and 39A.3 above.

39A.5 If, having considered the representations referred to in Clause 39A.4, it determines in good faith that a rebidding of the Operating Sub-contract for the Relevant Period in accordance with this Clause 39A would result in a reduced I_1 , I_2 and V (in aggregate for the Relevant Period) (as defined in Schedule E) component of the Contract Price, the Authority may enter into discussions with the Contractor to seek an adjustment to the Contract Price. In such circumstances, the Authority and the Contractor shall negotiate in good faith with a view to agreeing a reduction of the I_1 , I_2 and V (in aggregate in the Relevant Period) (as defined in Schedule E) elements of the Contract Price to reflect then market terms for the provision of the Benchmarked Service for the Relevant Period.

39A.6 If the Authority and the Contractor agree a variation of the Contract Price, such variation shall be implemented on the Date of Benchmarking (or forthwith on it being agreed, if later).

39A.7 If the Authority and the Contractor cannot agree on an appropriate reduction in the Contract Price by the date falling three months prior to the Date of Benchmarking or, if later, three months from the commencement of the negotiation referred to in Clause 39A.5, the Authority may, at any time thereafter, give notice to the Contractor of its intention to re-tender the Operating Sub-contract for the Relevant Period.

The Contractor will have the right, within 30 days of such notice, to offer the Authority (in writing) a reduction in the I_1 , I_2 and V element of the Contract Price for the Relevant Period. If such offer is not accepted by the Authority within 15 days, or if no such offer is made, the Authority may proceed with a retendering of the Operating Sub-contract.

In such circumstances, the Contractor (or its Operating Sub-contractor) shall be entitled to bid on equal terms with other parties to act as Operating Sub-contractor for the Relevant Period. The Authority may only re-tender the Operating Sub-contract once.

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

- (a) seek expressions of interest from potential bidders for the Operating Sub-contract and the Authority shall select the parties which it proposes should pre-qualify for the new Operating Sub-contract (the Authority will select parties in relation to which it would give its approval to a change of control under Clause 50.2); and
- (b) consult with the Banks to the Contractor in relation to the parties selected for pre-qualification who will have a right (and subject to the proviso to this Clause 39A.8(b)), to remove one or more of the parties put forward by the Authority from the list if they can demonstrate to the satisfaction of the Authority, that:
 - (i) there is a concern that the relevant bidder would not be sufficiently financially robust to perform its obligations under the new Operating Sub-contract (taking into account any shareholder support proposed by that bidder) such that it would be imprudent to award the Operating Sub-contract to that bidder; or
 - (ii) the relevant bidder does not have the appropriate qualifications, experience, technical competence or performance record in the operation of custodial services (taking into account any shareholder support proposed by it).

In addition (and subject to the proviso to this Clause 39A.8(b)), a party will be deleted from the list if a Bank notifies the Authority that there is no prospect of the relevant Bank obtaining a credit approval in relation to the introduction of that party as Operating Sub-contractor of the Prison; provided that no bidder shall be deleted from this list on any basis in this Clause 39A.8(b) if that bidder (a ***Self-Financing Bidder***) can demonstrate to the Agent's satisfaction that it could at no extra cost to the Authority procure a full refinancing of all existing external debt of the Contractor as at the date of its appointment as the new Operating Sub-contractor and of all obligations arising in connection with any hedging arrangements including evidence that it has sufficient financial resources adequately to compensate the Banks for any break costs associated with closing out the swaps.

39A.9 Bids will then be invited by the Authority for the Operating Sub-contract for its remaining term. Bids will be required to be made on the

basis of the I₁, I₂ and V (as defined in Schedule E) elements of the Contract Price only and shall also include a proposed fee for the Prisoner Escort Service to be provided in accordance with Clause 36.2. Bids will be sought from the shortlisted bidders on the basis that the new Operating Sub-contractor will be required to:

- (a) enter into such agreements as may be required with the Contractor and the Banks (including without limitation certain credit support documents which may exist under a direct or similar agreement or guarantees) or to procure that its parent or ultimate shareholders do so on terms that are at least equivalent taking into account the creditworthiness of such shareholders to those in place with the original Operating Sub-contractor and with the intent of releasing the original Operating Sub-contractor from its obligations under the Financing Agreements (and, in the case of a Self-Financing Bidder, the Contractor);
- (b) at the option of the existing Contractor or Operating Sub-contractor, take on any employees of the Contractor/Operating Sub-contractor associated with the Operating Sub-contract, including any associated obligations as contemplated under TUPE Regulations (provided the relevant contracts of employment are on arm's length terms), or to bear any redundancy costs if such employees are not taken on; and
- (c) as a condition to the commencement of the new Operating Sub-contract purchase the Relevant Securities by payment of the Equity Transfer Value to the Shareholders and (in the case of a Self-Financing Bidder) procure the refinancing of all existing debt of the Contractor and the novation and/or closing out of any swaps to which the Contractor is party,

and such information as the bidders may reasonably require in relation to the Relevant Securities and the calculation of the Equity Transfer Value shall be made available to the bidders.

39A.10 The evaluation criteria for the assessment of bids for the Operating Sub-contract will be developed by the Authority which will consult with the Contractor and the Banks.

39A.11 Bids for the Operating Sub-contract will be submitted to the Authority's evaluation committee (which shall include one independent member) and the Authority will, prior to the date falling 18 months after the fifteenth anniversary of the Actual Opening Date, determine which of the bids submitted offers best overall value for money on the basis of the evaluation criteria (such criteria to include a requirement that the Authority is reasonably satisfied with the financial robustness of bidders' proposals and of the bidder's ability to deliver the services under the relevant Operating Sub-contract over

the remaining life of the Contract). Bids submitted shall be on the basis of the existing terms of the Contract (except to the extent variations are required by reason of the new Operating Sub-contract).

39A.12 The selected party for the Operating Sub-contract will be appointed as soon as practicable after the evaluation of bids by the Authority and, in any event, prior to the date falling 18 months after the fifteenth anniversary of the Actual Opening Date, taking account of any hand-over considerations and (other than in the case of a Self-Financing Bidder) the completion of any credit approvals required by the Banks, such appointment date being as close as possible to the Benchmarking Date. Where the existing Operating Sub-contractor is chosen as the new Operating Sub-contractor, it will continue to operate the Prison on the basis of the Contract save that the I_1 , I_2 and V (as defined in Schedule E) element of the Contract Price shall be adjusted to reflect the terms on which it has re-tendered for the Operating Sub-contractor if these represent better value to the Authority. At the time that the new Operating Sub-contract is awarded by the Authority:

- (a) the Contract Price will be adjusted to be the remaining F and U determined in accordance with this Contract together with a revised I_1 , I_2 and V (as defined in Schedule E) and the fee payable under Clause 36.2 for the Prisoner Escort Service shall be amended to be the revised fee proposed by the new Operating Sub-contractor;
- (b) arrangements shall (if required in accordance with Clause 39A.9 above) be made for the new Operating Sub-contractor (i) to assume the employment contracts of those Staff at the site required to be taken on by it pursuant to Clause 39A.9 and such Staff shall be transferred in accordance with TUPE Regulations; or (ii) if relevant, to make payment to cover any applicable redundancy costs;
- (c) the Contractor shall procure that on or prior to the date upon which the new Operating Sub-contract becomes effective and against payment of the Equity Transfer Value and the release of the original Operating Sub-contractor from its obligations under the Financing Agreements (and in the case of a Self-Financing Bidder, the Contractor) and this Agreement the Relevant Securities shall be transferred to the new Operating Sub-contractor in accordance with Clause 39A.9. (Any such transfer shall be with full title guarantee from the relevant transferor and any transfer documentary or similar taxes or charge shall be for the account of the new Operating Sub-contractor.)

If the Authority or the Contractor considers that the Equity Transfer Value should be adjusted to reflect events occurring during the period from the date of determination of the Equity Transfer Value to the date of transfer of the

Relevant Securities pursuant to this Clause, or to reflect the fact that the date for transfer of the Relevant Securities will not be the Date of Benchmarking, and if the parties are unable to agree the adjustment, then either party may instruct the expert to determine what adjustments are appropriate to reflect such matters. If no expert has previously been appointed for the purposes of this Clause 39A, then the expert shall be appointed in accordance with the provisions of Clause 39A.1. The Equity Transfer Value shall be adjusted on the expert making any determination pursuant to this Clause 39A.12. The Contractor shall provide to the Authority and/or to any prospective replacement Operating Sub-contractor such information or assistance as they may reasonably require in relation to events occurring during the period from the date of determination of the Equity Transfer Value to the date of transfer of the Relevant Securities.

39A.13 In the event that none of the bids received pursuant to Clause 39A.11 are satisfactory to the evaluation committee, the terms of the existing Contract shall continue until expiry.

39A.14(a) The costs of any expert appointed pursuant to this Clause 39A and any reasonable costs incurred by the Contractor in connection with a retendering under this Clause 39A (together, the **Benchmarking Costs**) shall be borne by the Contractor if there is ultimately a decrease in the Contract Price pursuant to the provisions of this Clause 39A, except if the Contractor made an offer to the Authority in writing (in accordance with Clause 39A.7) to provide the Benchmarked Service at a price lower than is achieved on a subsequent re-tendering pursuant to this Clause, in which case such costs will be borne by the Authority; and

(b) Except as provided in (a) above, the Benchmarking Costs shall be borne by the Authority.

39A.15 The Authority may amend the timeframe and/or the procedures set out in this Clause 39A to the extent necessary to accord with the procurement regulations prevailing at the relevant time whilst (to the extent practicable) reflecting the intention of the parties as set out in this Clause 39A.

39A.16 Neither the Contractor nor the Authority will take any action which could reasonably be expected to frustrate the intent or operation of this Clause.

40. ADDITIONAL PRISONER PLACES

40.1 In the event that the Authority requires Additional Prisoner Places, the Authority may, by written notice served at any time from the day falling six months after the Full Operational Date, require the Contractor to provide such number of Additional Prisoner Places as is specified in the notice to a maximum aggregate at any one time of 40 and for such period as is specified in

the notice (or specified in any notice amending such notice), except as otherwise provided in this Clause 40. The length of the notice period given to the Contractor pursuant to this Clause shall be such period as is reasonable in the circumstances, except in the case of emergencies, in which case the Authority may require provision of such Additional Prisoner Places with immediate effect, but will provide the Contractor with such assistance as is reasonably required in the circumstances (including, if appropriate, a temporary waiver of any relevant obligations of the Contractor pursuant to Part 1 of Schedule D). In the event that the Authority requires Additional Prisoner Places after the Full Operation Date but prior to the day falling six months after the Full Operational Date, the Authority and the Contractor shall consult in good faith to decide whether Additional Prisoner Places may prudently be provided at such time.

40.2 The Contractor agrees to provide up to 40 Additional Prisoner Places at any time 6 months after the Full Operation Date unless the Contractor has reasonable cause to believe that accepting a Prisoner for an Additional Prisoner Place would prejudice the Contractor's ability to maintain security and control within the Prison 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 for the Additional Prisoner Places required by the Authority for the period specified in the relevant notice served under Clause 40.1, on condition that each such Additional Prisoner Place satisfies the conditions contained in Clause 29.1. The Variable Payment shall be paid according to the table of prices contained in Schedule E.

41. IMPLEMENTATION/DEVELOPMENT PLANS AND PERFORMANCE MEASURES

41.1 At least six months prior to the Estimated Opening Date the Contractor shall provide a project implementation plan to operate the Prison which shall cover the period from Actual Opening Date to 31 March 2002. On or before 31 October 2001, the Contractor shall provide a strategic development plan to operate the Prison in respect of the three year period commencing on 1 April 2002. The Contractor shall be under a duty to meet the requirements and targets contained in the project implementation plan and strategic development plan for achieving continuing improvements to the Custodial Service.

41.2 At the end of the first three year strategic development plan, and every five years thereafter, the Contractor shall consult with the Authority and submit such further strategic development plans to the Authority for its approval as the Authority may reasonably require.

41.3 The project implementation plan and the strategic development plans referred to in Clauses 41.1 and 41.2 are to accord with the policies and vision statements adopted from time to time by the Authority, provided (and without prejudice to the provisions of Clause 9 (***Change to Services Required***)) that the Contractor shall only be obliged to implement such plans to the extent they would not increase the cost to the Contractor of providing the Custodial Service.

41.4 The Contractor shall operate systems to ensure the continuing quality of the Custodial Service and such systems shall (where applicable) be at a level not less than that indicated in the Operation Proposals.

41.5 The Contractor shall have no recourse to Clause 39 (***Variation of Price***) as a result of any obligation imposed by this Clause.

41.6 Without prejudice to the Authority's rights under Clauses 44 (***Default by Contractor***) and 45 (***Rectification and Termination for Default***), the amount payable by the Authority for the services of the Contractor hereunder shall be reduced in the event that Performance Measures arise such that the number of Performance Points accrued exceeds the Baseline Total during the relevant Performance Quarter. The amount of the reduction shall be calculated for each Performance Quarter in accordance with the relevant formula at paragraph 9 of Schedule E, 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] per incident in respect of a Prison Escape or [REDACTED] per incident in respect of an Escort Escape (in each case regardless of the number of Prisoners who have escaped), such amount to be indexed as the Variable Payment is indexed pursuant to Schedule E.

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 24 hours of its occurrence.

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 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. 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 5.8, 39.5, 49 (***Payment for Termination***) or 51 (***Corrupt Gifts and Payments***) except to the extent that such termination sum is greater than the Lender Liabilities.

PART VII - TERMINATION

44. DEFAULT BY CONTRACTOR

44. 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 Services 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;
 - (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:

- (w) 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) of this Contract, giving reasonable details of that failure and stating that such failure is a failure which (if it continues, or recurs persistently) may result in a termination of this Contract.
- (x) If, following the service of a First Notice, the failure specified therein has continued, or recurred persistently following the date falling 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) 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 month period following the date of service of the Final Notice, the Contract may be terminated.

- (y) No Final Notice may be served pursuant to this Clause unless a First Notice has been served in respect of the same failure within the twelve month period preceding the date of service of the Final Notice.
- (z) A First Notice may not be served in respect of any failure in respect of which a First Notice has already been served until a period of twelve 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 liquidated damages payable under Clause 25 to which Clause 44(f) applies) within 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 9 months after the Contractual Opening Date;
- (d) failure to provide 50 Available Prisoner Places on or before the date falling 3 months after the date upon which the Engineer's Declaration is obtained (unless resulting from a breach by the Authority of its obligations hereunder);
- (e) failure to provide all 400 Available Prisoner Places and any Additional Prisoner Places from six months after the Actual Full Operation Date for a continuous period exceeding 15 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 as soon as practicable;
- (f) failure to pay any liquidated damages in accordance with Clause 25 (***Liquidated Damages***) on or before the date falling 30 days after the due date (except where such failure results from a technical failure in the banking system);
- (g) if:
 - (i) a court makes an order that the Contractor be wound up; or

- (ii) any receiver or manager is appointed in respect of the Contractor (other than for the purpose of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the receiver is appointed by the Banks under the Financing Agreements); or
- (iii) a meeting of creditors of the Contractor passes or a meeting of any class of shareholders of the Contractor is convened for the purposes of considering, a resolution for the winding-up of the Contractor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the meeting is convened by the Banks under the Financing Agreements); or
- (iv) a petition for an administration order is presented and such petition is not withdrawn within 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 30 days of receiving notice of such petition;
- (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 28 days, or a judgment against the Contractor in excess of [REDACTED] remains unsatisfied for more than 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); 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).

45. RECTIFICATION AND TERMINATION FOR DEFAULT

45.1 Where an Event of Default has occurred by reason of any matter occurring which is referred to in Clauses 44(a)(i) or 44(e), the Authority shall (if the breach or the 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 15 days after the date of such Rectification Notice. For the avoidance of doubt, a Rectification Notice shall only be issued by a Named Representative of the Authority.

45.2 Where no proposal for rectification is received by the Authority within 15 days of the date of the Rectification Notice, but the Event of Default has been remedied within that 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 15 days of the date of the 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 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.

45.4 If an Event of Default occurs under Clauses 44(a)(i) or 44(e) 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 15 day period specified in Clause 45.2 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.

45.5 Where an Event of Default other than under Clauses 44(a)(i) or 44(e) has occurred or in the circumstances set out in Clause 45.4, 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 90 days after the date of the Termination

Notice or, in the circumstances set out in Clause 45.4, at least 120 days after the Rectification Notice. Subject to Clause 45.7, 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, 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, save that the Termination Notice must specify a Termination Date which is at least 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);
- (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 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) shall (without limitation) be a breach that is incapable of remedy for the purposes of Clause 45.7.

45.9 Where a replacement Operating Sub-contractor is appointed in accordance with Clause 7 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 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 any notice of revocation thereof pursuant to Clause 44 or this Clause 45, shall be served by a Named Representative of the Authority who shall be classified as a Grade 7 (or its equivalent) officer or any more senior grade (or in the event that such grading changes, would have been so classified prior to such change).

46. VOLUNTARY TERMINATION

46. The Authority shall have an option to terminate the Contract at will at any time from 5 years after the Contractual Opening Date. If upon the fifth anniversary of the Contractual Opening Date, or at any time thereafter, the Authority wishes to terminate the Contract it shall give 6 months notice to the Contractor whereupon compensation will be payable to the Contractor in accordance with Clause 49.2.

47. UNILATERAL TERMINATION

47. 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.

48. FORCE MAJEURE

48. In the event of a Force Majeure event arising during the term of the Contract which directly causes the Contractor or the Authority to be materially unable to comply with its obligations hereunder, the Contractor and the Authority may, if they so choose, agree such terms as are appropriate for the continued performance of the Contract (including, if such terms are agreed, any appropriate variation to the Contract Price, the Contractual Opening Date, the Full Operation Date and the Phase-in Timetable), and such terms shall be agreed in accordance with Clause 62 (*Authority to Commit and Variation*). If no such terms are agreed within 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 hereof by reason of Performance Measures occurring by reason of the continuance of an event of Force Majeure.

49. PAYMENT FOR TERMINATION

49.1 Where the Contract terminates as contemplated in Clause 45 (*Rectification and Termination for Default*) the Authority shall, provided that the Banks have complied with their 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 Schedule G in accordance with the provisions of Schedule G.

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 Schedule H.

49.3 In the event of termination under Clause 47 (*Unilateral Termination*) or Clause 48 (*Force Majeure*) the Authority shall pay to the Contractor the amount of the Lender Liabilities.

49.4 (Without prejudice to the express provisions of the Direct Agreement), this Clause 49 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 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 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 (the *Termination Payment*) shall be increased in the event that the Contractor shall incur any liability for Taxation in respect of any Termination Payment, so as to ensure that the net amount received by the Contractor (after account is taken of the Taxation consequences of the increased payment) is equal based on the following provisions of this Clause 49.5 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 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) 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 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 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; and
 - (vi) that account is taken so far as relevant (having regard to Clause 49.5(e)) of timing of differences.
- (e) The additional payment under Clause 49.5(a) 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, the Contractor shall provide and/or procure that the Operating Sub-contractor shall provide to the Authority such information concerning its respective financial position as shall be necessary to enable the relevant termination payment calculation to be carried out in accordance with Clause 49.2 and Schedule H (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). 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 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 due from it on termination of the Contract if such termination payment is calculated in accordance with Schedule G.
- (c) In relation to any action or inaction prior to the date falling 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) respectively has occurred will be conclusive in the absence of manifest error.

49.8 Amounts due under this Clause 49 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 means for this purpose 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 any change of control occurs, as set out in Clause 44(i). ***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 purpose of Clause 50.1 and Clause 50.2 above:

- (i) any change in beneficial or legal ownership of any shares that are listed on a stock exchange shall be disregarded; and
- (ii) 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 by the Contractor, any Sub-contractor or by anyone employed by them or acting on their behalf with or without their knowledge or consent, or the commission of any offence by the Contractor, any Sub-contractor or anyone employed by them or acting on their behalf (i) under the Prevention of Corruption Acts 1889 to 1916, (ii) under Legislation creating offences in respect of fraudulent acts, (iii) at common law, in connection with this or any other agreement shall entitle the Authority to act as follows:-

- (a) where the breach or commission of any offence is occasioned by the Contractor or an employee of the Contractor, and such person intended thereby to benefit the Contractor, the Authority shall be entitled to determine the Contract immediately and at the Authority's option either to recover from the Contractor the amount of any loss resulting from the breach and/or to recover from the Contractor the amount or value of any such gift, consideration or commission;
- (b) where the breach or commission of any offence is occasioned by the Operating Sub-contractor, the Construction Sub-contractor 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 30 days of notification to the Contractor of the breach or commission of an offence or such longer period as the Authority permits in writing;
- (c) where the breach or commission of any offence is occasioned by any person other than the Contractor, the Operating Sub-contractor or the Construction Sub-contractor 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 30 days of notification to the Contractor of the breach or commission of an offence the Contractor has procured that the employment of such person (and, in the case of an individual other than an individual employed by the Contractor, the Operating Sub-contractor or the Construction Sub-contractor, of that person's employer) in performing parts of the Services has been terminated and the Contractor has procured that all those parts of the Services as were performed by such person or persons are performed by another person in accordance with Clause 7 (***Sub-contracting***).

51.3 Any dispute relating to this Clause 51 (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, the Authority shall pay to the Contractor the amount of the Lender Liabilities.

52. TERMINATION SURVEY

52.1 Twelve months prior to the Expiry Date or within seven days of service of a Termination Notice after the Full Operation Date, whichever is the earlier, the Authority shall carry out a final dilapidation survey of the Prison. The provisions of Clauses 19.2 and 19.3 (and Clause 17 to the extent that such Clause is referred to in Clause 19.2) 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 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 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 above towards payment of any debt due under Clause 52.2. To the extent that, following completion of any repairs or other works as are referred to in this Clause 52, 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. 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.

54. CONSEQUENTIAL ARRANGEMENTS ON TERMINATION

54. 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 6 months from the date of termination, such period to be determined solely by the Authority, to ensure an orderly and efficient transition from the management of the Prison by the Contractor to the management of the Prison by the Authority or some other person. The Contractor shall use its best endeavours to ensure that any Sub-contractor engaged to perform obligations of the Contract complies with this Clause. The Authority shall reimburse to the Contractor and the Sub-contractors all reasonable costs and expenses incurred in satisfying the provisions of this Clause, such amount of reimbursement being subject to reduction in respect of any amounts outstanding from the Contractor or any Sub-contractor to the Authority.

PART VIII - MISCELLANEOUS

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

55.1 The Contractor will note and comply with the provisions of Section 88.

55.2 In the event that the Secretary of State shall appoint a Governor of the Prison by virtue of his powers under Section 88, the Contract shall continue in force, and all provisions of the Contract shall, without prejudice to the Authority's rights under Clauses 44 (*Default by Contractor*) or 45 (*Rectification and Termination for Default*), continue to operate, save that the functions that would otherwise be exercisable by the Director or the Controller shall be exercised by the Governor.

55.3 Any costs incurred by the Authority as a result of action being taken by virtue of Section 88 will be reimbursed to the Authority by the Contractor and the Authority shall be entitled to set off all such amounts due to it against any other amounts due to the Contractor from the Authority hereunder.

56. FACILITIES FOR AUTHORITY

56.1 From the date hereof, the Contractor shall provide suitable accommodation at the Site or (following the date of the Engineer's Declaration)

in the Prison as the Authority may require, at no additional cost, for the use of the Controller and his representatives, and any other representative of the Authority who has cause to visit the Site or the Prison. All such accommodation shall be adequately furnished, lighted, heated and ventilated, and shall include cloakroom and telephone facilities providing for communication to parties both within and outside the Prison, including at least two direct telephone lines (the ***Direct Lines***) linked to, and limited to calls within, the UK national telephone network which shall not be routed through any exchange or network gateway within the Prison or operated by the Contractor or any Sub-contractor. Accommodation for the Controller shall be deemed to be capable of being made secure by means of door locks or other such equipment.

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 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 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 30 days of written notification to the Contractor by the Authority of the commission or attempted commission of such act or such longer period as the Authority permits in writing; and
- (b) where the commission (or attempted commission) of such act is occasioned by any person other than the Contractor, the Operating Sub-contractor or the Construction Sub-contractor and whether or not any benefit to that person's employer was intended, the Authority shall be entitled to act as set out in (a) above unless within 30 days of written notification by the Authority to the Contractor of the commission or attempted commission of such act the Contractor has procured that the

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

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

56.3 In the event of termination of the Contract by the Authority pursuant to Clause 56.2, the Authority shall pay to the Contractor the amount of the Lender Liabilities.

56.4 Any dispute relating to Clause 56.2 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 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 guidelines mentioned in 57.2 above.

58. INFORMATION AND CONFIDENTIALITY

58.1 The Contractor will note and comply with the provisions of Section 91 of the Criminal Justice Act 1991 on the wrongful disclosure of information

acquired by persons who are or have been employed at a Prison (whether as a Prisoner Custody Officer or otherwise).

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

58.3 The Contractor shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all persons including 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 disclose the Contract or consent to the disclosure by the Construction Sub-contractor or the Operating Sub-contractor of, respectively, the Construction Sub-contract and the Operating Sub-contract or any provision thereof to any person other than a person engaged in the carrying out of the Contract or an adviser to such person whether (in either case) employed by the Contractor or a Sub-contractor or a Bank, except with the written consent of the Authority. Such disclosure shall be made in confidence and shall be limited to disclosure necessary for the purposes of the Contract, the Construction Sub-contract or the Operating Sub-contract respectively, or advice sought in relation thereto and/or the financing of the Prison and the Project. The Authority will not disclose and will ensure that its representatives are obliged not to disclose any of the Confidential Matters to any third party without the consent of the Contractor such consent being deemed to be given where such request is made by Parliament, its members or officers and in response to enquiries legitimately made by persons acting in the public interest.

58.5 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.

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

58.7 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.

58.8 The Contractor will note and facilitate the Authority's compliance with the Code Of Practice on Access to Government Information (1994). In the event that the Authority is required to provide information to a person as a result of a request made to it under the Code, the Authority shall adhere to the requirements of the Code in disclosing information relating to the Contract and the Contractor.

58.9 Notwithstanding any of the provisions of this Clause or of Clause 57 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 (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.

58.10 For the purpose of:

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

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Agreement.

59. INTELLECTUAL PROPERTY RIGHTS

59.1 In this Clause 59 and in Clause 59A:

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;

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 in Clause 59A.3;

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

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

For the purposes of Clauses 59 and 59A, all or any of the Contractor's Work Products, Work Products to which Clause 59.2 refers and IP/IT Contracts to which Clauses 59A.1 and 59A.2 refer shall continue to be the subject of Clauses 59 and 59A, except to the extent in relation to any Contractor's Work Product (or part thereof), any Work Product to which Clause 59.2 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** 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-transferrable 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 and 59.3 shall include the right to grant sub-licences free of charge for a period of 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 to agree, in good faith, commercial terms upon which such third party may acquire a licence in the terms of Clauses 59.2 or 59.3 as the case may be (excluding for this purpose Clause 59.4).

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

59A. THIRD PARTY 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 counterparty 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) to (d).

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 and 59A.3 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 if (i) a new Operating Sub-contractor is to be introduced from time to time in accordance with Clause 39A (**Benchmarking**), or (ii) on the expiry or earlier termination of the Contract or (iii) the replacement of the Contractor or any Sub-contractor pursuant to the Direct Agreement or this Agreement (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 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) shall 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.5(b) 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, 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 January 1, 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 January 1, 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, 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, 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.

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; and

- (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 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 30 days of the end of each of its financial half-years and within 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) on a basis consistently applied in accordance with generally accepted accounting principles in England and Wales and those financial statements shall give a true and fair view of the results of its operations for the period in question and the state of its affairs as at the date to which the financial statements are made up and shall disclose or reserve against all the liabilities (actual or contingent) of the Contractor;
- (c) at the request of the Authority, shall furnish the Authority with any and all information provided by it to 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;
- (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 6 months,

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

60.6 The Contractor shall maintain such other records 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 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 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.

60.9 Upon termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the Prison, or on operation of the provisions of Clause 39A, 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 in the manner set out in that Schedule N.

61. INDEPENDENT CONTRACTOR

61. 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, 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).

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 Opening Date is without prejudice to any of the Contractor's or the Authority's obligations hereunder in respect of Actual Opening Date, Contractual Opening Date, Full Operation Date and Actual Full Operation Date.

63. SERVICE OF NOTICES

63.1 Any notice or consent which the Authority is required to give to the Contractor under the terms of 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 The Contractor shall not disclose or allow access to any Personal Data provided by the Authority, or acquired by the Contractor during the course of executing its obligations under the Contract, other than to a person employed or engaged by the Contractor or a Sub-contractor.

65.2 Any disclosure or access to Personal Data allowed under Clause 65.1 shall be made in confidence and shall extend only so far as necessary for the purpose of the Contract.

65.3 The Contractor shall fully indemnify the Authority against the costs of dealing with any civil claims made in respect of information subject to the Data Protection Act 1984, which claims would not have arisen but for some act, omission or negligence on the part of the Contractor, its servants or agents.

65.4 Without affecting Clause 65.1, the Contractor shall bring into effect and maintain all reasonable organisational and technical measures appropriate to prevent any unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data (each event being a ***Data Protection Event***).

65.5 The reasonableness of the measures to which Clause 65.4 refers shall be determined having regard to the sensitivity of the Personal Data, the nature of the Personal Data and the harm that may result from any Data Protection Event.

65.6 The Contractor shall ensure that all Staff of the Contractor or any Sub-contractor having access to Personal Data shall be reliable and responsible persons who appreciate the confidentiality of the Personal Data and the need to guard against Data Protection Events.

65.7 In processing Personal Data in connection with the services, the Contractor shall act only on instructions from the Authority; the Contractor shall be deemed hereby to have received instructions from the Authority to undertake all processing of Personal Data reasonably required in connection with the Services.

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. 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. The failure of either party at any one time to enforce any provision of the Contract shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision, or be a waiver of the provision itself.

69. SEVERABILITY

69. In the event that any term, condition or provision contained herein shall be held to be invalid, unlawful or unenforceable to any extent, such term, Clause or provision shall, to that extent be omitted from this Contract and the rest of the Contract shall stand, without affecting the remaining clauses.

70. COUNTERPARTS

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

71. LEGISLATION OF THE CONTRACT AND JURISDICTION

71. The Contract shall be governed by and construed in accordance with the laws of England, and subject to Clause 72.1 the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

72. DISPUTE RESOLUTION

72.1 Except in the case of any dispute in respect of matters referred to in Clauses 5.14, 9 (***Changes 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), 39.2, 39.3 or (in respect of the amount of the Original Value only) Clause 39.5 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, the Contractor shall refer any dispute as to a decision or instruction (including any estimate given pursuant to Clause 24.3) issued by the Authority or the reasonableness of any action of the Independent Engineer, and either party shall (except as otherwise expressly provided) refer any dispute as to any other issue arising in relation to the Contract, to a person nominated from a panel of experts

established for such purpose who shall all be wholly independent of the Contractor and the Authority (the *Adjudicator*). The panel of experts shall, in respect of issues relating to the construction of the Prison, be comprised of five 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 the case of the panel for construction matters, its appointment shall take place within 28 days of the date hereof and the Authority and the Contractor shall appoint a replacement if any member of the relevant panel of experts resigns during the Contract Term. In the event that the Authority and the Contractor are unable to agree as to the identity of any member of either panel, such member will be selected by the President for the time being of the Chartered Institute of Arbitrators within 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 shall be selected on a strictly rotational basis from the panel of experts. Within seven days of appointment 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 28 days of the appointment (or such other period as the parties may agree after the reference, or 42 days from the date of reference if the party 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, 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 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, 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 Clause 72, 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.

72.3 In the case of:

- (a) any dispute in respect of matters referred to in Clause 5.14, Clause 9 (*Change to Services Required*), Clause 39.2, Clause 39.3, Clause 39.5 (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; or
- (c) both parties agreeing so to do;

either party may (within 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 10 years' standing (the *Arbitrator*). If the parties are unable within 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 28 days of concluding any hearings which may have been held in connection with the matter and in any event within 3 months or such other period as the parties may agree of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both parties. The costs of the arbitration will be in the discretion of the Arbitrator.

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

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***) on the one hand, or the Contractor and the Operating Sub-contractor under the Operating Sub-contract on the other (the ***Operating Sub-contract Dispute***) the Contractor may include as part of its submissions made to the Adjudicator pursuant to Clause 72.2 or to the Arbitrator, where the dispute is referred to arbitration pursuant to Clause 72.3, submissions made by the Construction Sub-contractor or by the Operating Sub-contractor as appropriate.

72.6 The Adjudicator or the Arbitrator, as appropriate, shall not have jurisdiction to determine the Construction Sub-contract Dispute or the Operating 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.

72.7 Any submissions made by the Construction Sub-contractor or the Operating 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 or the Operating 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 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 or the Operating Sub-contractor in participating in the resolution of any dispute under this Contract.

72.9 The Contractor shall not allow the Construction Sub-contractor or the Operating 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 or the Operating 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 or the Operating Sub-contractor as appropriate 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 or the Operating Sub-contractor as appropriate to advise in connection with the dispute.

73. PRECEDENCE OF TERMS

73. 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*).

[illegible]

SCHEDULE I

DAILY REPORT

	AVAILABILITY			EXCEEDING PERMITTED LEVEL		
Location (HB Unit)	A Available Prisoner Places (Clause 29.1)	B Additional Prisoner Places (Clause 40)	C Total Available and Additional Prisoner Places (A + B)	D Total Double Prisoner Cells Trebled and Single Prisoner Cells Doubled (Clause 29.3)	E Permitted Level (Clause 1.1)	F Available Places exceeding Permitted Level (Clause 29.4)
1						
2						
3						
4						
5						
6						
7						
8						
Totals						
Comment:						
Signed (Director):				Name:		Date:

Signed (Controller):	Name:	Date:
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SCHEDULE K

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SCHEDULE L

Letter to Health and Safety Executive [ON LETTERHEAD OF CONTRACTOR]

Health and Safety Executive

No 1 Long Lane

London

SE1 4PG

[Date]

Dear Sirs

CONSTRUCTION (DESIGN & MANAGEMENT) REGULATIONS 1994

PROPOSED NEW PRISON AT PUCKLECHURCH

We, [Contractor] Limited, declare that we agree to act as the client for the purposes of the Regulations referred to above in connection with the construction of the prison at Pucklechurch (including any changes and/or additions to such construction), the address of which is as follows:

[Set out full address of construction site]

Documents may be served on [Contractor] Limited at the following address:

[Set out full address for service of documents]

Yours faithfully

Signed by [Name][Position]
for and on behalf of [Contractor] Limited

SCHEDULE M

PART 1

COMPLIANCE MONITORING

1. The following is a summary of the range of duties which the Independent Engineer and his representatives will carry out on behalf of the Authority:

- (a) The Independent Engineer will provide project compliance monitoring and will provide the Engineer's Declaration. This is to be achieved by:
 - (i) observing and monitoring a sufficient sample of mock-ups, fabrications, construction and installation works as to satisfy the Independent Engineer that works comply with both Schedule A and any subsequent (compliant) design development;
 - (ii) monitoring the progress of the Contractor's design development and auditing the compliance of his designs and specifications against Schedule A providing progress reports to the Authority;
 - (iii) carrying out procedural audits as required;
 - (iv) overseeing and auditing a sufficient sample of the Contractor's own quality assurance and project control systems and procedures to satisfy himself that the Works comply with Schedule A;
 - (v) issuing non-compliance notices and overseeing the resolution of these as set out in this Schedule;
 - (vi) monitoring (but not conducting) the commissioning of components of the Works. (The Independent Engineer will achieve this by monitoring the Works and auditing the records of the parties commissioning and witnessing the testing of such works);
 - (vii) during the commissioning stage, receiving the results of all tests on a daily basis and monitoring the records in order to ascertain that the commissioning is in accordance with parameters established in Schedule A.

For the avoidance of doubt, references to Schedule A in this Schedule M include references to Schedule A as amended by the Authority or with the Authority's approval pursuant to the Contract and/or this Schedule M Part 3 and 4.

- (b) The Independent Engineer will facilitate the Authority's review of changes under the change control procedures as set out in Part 3 of this Schedule M. The Independent Engineer has no authority to vary

Schedule A. The Named Representatives of the Authority alone may authorise such variations in accordance with Clause 9.

- (c) The Independent Engineer will facilitate the Authority's review of the Contractor's requests for changes under Clause 9 of the Contract, in accordance with the procedures contained within this Schedule.
 - (d) The Independent Engineer will monitor the progress of the Project with respect to the Contractor's programme and advise the Authority whether the Actual Opening Date is likely to be different from Contractual Opening Date.
 - (e) The Independent Engineer will monitor the efforts of the Contractor in seeking Planning Approval from the Local Planning Authority (*LPA*) including attendance, as individually requested by the Authority, at all key meetings held with the LPA. If the circumstances arise, the Independent Engineer will advise on whether the Contractor has exercised its best endeavours in obtaining Planning Approval.
2. The Contractor is required to provide information and documentation to the Independent Engineer to enable him to discharge his responsibilities and duties. This information includes but is not limited to the following:
- (a) copy of the master programme for the Works;
 - (b) copy of the weekly or similar detailed programmes showing when the Contractor intends to carry out key activities whether off or on site;
 - (c) a list of relevant meetings taking place and copies of minutes as required;
 - (d) copies of working drawings, schedules and specifications prepared for the Works as requested by the Independent Engineer and sufficient to demonstrate compliance against Schedule A;
 - (e) unhindered access to non commercial correspondence, designs, drawings, documents register, technical and audit reports, consents, certificates and specifications to a level necessary to allow the Independent Engineer to assess compliance;
 - (f) copies of all correspondence relating to planning matters;
 - (g) unhindered access to non-commercial documents concerning procurement schedules and orders placed; lists of main suppliers, main and specialist subcontractors working for the Construction Sub-contractor;
 - (h) unhindered access to all quality control and quality assurance records including procedures and method statement for the Works. The Independent Engineer may request extracts of Contractor's method statements from these files;

- (i) copies of all non-compliance reports generated by the Contractor and by the Construction Sub-contractor under the Construction Contract and clearance of the same;
- (j) copies of commissioning reports;
- (k) copies of as-built drawings, operating and maintenance manuals and the other documentation as set out in Part 3 of Schedule N together with any other documentation which the Construction Sub-contractor performing design and building works for the Contractor will produce to the Contractor when handing over the Prison and the Site to the Contractor;
- (l) copy of the Health and Safety Plan and access to safety reports;
- (m) copy of the Project Plan (which details how the Works shall be carried out) except the commercial section;
- (n) copy of the building snagging list prior to handover of the Prison to the Contractor;
- (o) copies of the minutes of monthly meetings between the Construction Sub-contractor and its principal sub-contractors;
- (p) copies of monthly progress reports prepared by or on behalf of the Contractor concerned with the Contract.

Documents to which unhindered access will be provided by the Construction Sub-contractor and its principal sub-contractors will be located at [REDACTED] prior to commencement on site and thereafter at the Prison Site Offices.

3. The Independent Engineer will hold weekly meetings at which he will discuss compliance matters with the Contractor and/or Construction Sub-contractor. He may wish to attend meetings between the Contractor and the Construction Sub-contractor if appropriate (and this will be by agreement with the Contractor).

4. The Independent Engineer will be the first channel of communications with the Contractor on matters concerning design and construction and compliance monitoring. However, in accordance with Clause 26.3 of the Contract, the Engineer's Declaration will be signed by a director in the firm appointed as Independent Engineer.

5. The Contractor is responsible for delivering the Works, and the Authority does not give approval to his work. The Independent Engineer will promptly bring matters to the attention of both the Authority and the Contractor and the Construction Sub-contractor which may adversely affect the issue of the Engineer's Declaration. The non-compliance note appended with this Schedule shall be used by the Independent Engineer for this purpose. The Contractor will act on these comments in sufficient and reasonable time to allow the timely issue of the Engineer's Declaration.

PART 2

DEMONSTRATION OF COMPLIANCE DURING DESIGN DEVELOPMENT AND CONSTRUCTION

Compliant Design Development

1. *Design Development* is the development by the Construction Sub-contractor of the design of the Works within the scope and intent of the documents contained within Schedule A and including any necessity to meet planning, building control, fire, health and safety or other statutory requirements or approvals to ensure the works can be built as designed in order to finalise the design. It will also include development of the design to allow subsequent construction of the Works to be safely and practicably executed.

Non-Compliant Design Development

2. Any change to Schedule A which does not constitute Design Development will be considered to be a Contractor's change and shall be dealt with in accordance with the Contract and Part 3 of this Schedule M (*Change Control Procedure*).

Means of Demonstrating Compliance

3. Drawing revisions will be marked up to show changes or otherwise noted as they are issued. The Contractor shall forward to the Independent Engineer:

- (i) any significant changes within Design Development (but not minor changes to the drawings made to work-up the design to greater detail);
- (ii) written applications for changes to Schedule A which require the Authority's approval to proceed. These shall be dealt with in accordance with Part 3 of this Schedule M (*Change Control Procedure*).

In each case the Contractor and the Construction Sub-contractor will prepare a report for the Independent Engineer describing the nature of the change, explaining why it is thus proposed and if appropriate requesting the Authority's approval to proceed in accordance with Part 3 of this Schedule M (*Change Control Procedure*). The notice of change proforma appended to this Schedule M shall be used by the Contractor for this purpose.

In the event that the Independent Engineer does not accept the classification of the design change made by the Contractor and the Construction Sub-contractor he shall inform the Contractor and the Construction Sub-contractor within a period of 7 days and shall treat the submission made by the Contractor and the Construction Sub-contractor as one within Design Development or as a change to Schedule A to be dealt with in accordance with Part 3 of this Schedule M (*Change Control Procedure*) as he considers appropriate. In the event that the

Independent Engineer considers that any aspect of a design change submitted to him by the Contractor and the Construction Sub-contractor in accordance with this paragraph 3 or which comes to his attention during any audit of the Contractor and the Construction Sub-contractor's design documentation is not within Design Development, then the Independent Engineer will notify the Authority, Contractor and the Construction Sub-contractor within 7 days accordingly. This may include the issue of a non-compliance report. The Contractor (and in turn the Construction Sub-contractor) will respond and clear all reports with the Authority in accordance with Part 3 of this Schedule M (*Change Control Procedure*).

The Contractor, the Independent Engineer and the Construction Sub-contractor will meet each month or more frequently if agreed to review the status of project compliance as shown in the schedule kept for this purpose, with a view to resolving any outstanding compliance matters to prevent delay or future interpretation problems. The Independent Engineer will respond to the Contractor within 14 days on all matters submitted as Design Development and subsequently classified as Design Development

Audit Trail

4. As part of this procedure the Contractor will and shall procure that the Construction Sub-contractor will set up a formal audit trail keeping records of all compliance requests together with the accompanying documentation (including the highlighted drawings), which will clearly demonstrate that the working drawings comply with Schedule A.

Test of Reasonableness

5. If there is a disagreement between the Contractor and the Independent Engineer in relation to the issue of a non-compliance notice, the Independent Engineer will test the proposed change against the joint criteria of equivalent or improved level of custodial service, and also the specified operational performance and durability of the Prison and the Site. Should the disagreement persist, the Independent Engineer will provide detailed reasons for his concerns. This may require further information to be supplied by the Contractor and the Construction Sub-contractor.

6. The procedure set out in Parts 2 and 3 of this Schedule M will be extended to cover all subsequent stages of the Works up to the Independent Engineer's Declaration. This will include Design Development at any time including that presented by sub-contractors once the Construction Sub-contractor has put the Works out to tender.

Nothing done by the Independent Engineer in accordance with Clause 26 of the Contract or this Schedule M shall in any respect relieve or absolve the Contractor from its responsibility for the Works under or in accordance with the Contract.

PART 3

Change Control Procedure

Introduction

1. Part 3 of this Schedule M sets out the procedure for changes to Schedule A proposed by the Contractor for the purpose of ensuring that the Independent Engineer has an up-to-date Schedule A against which he can monitor compliance on an ongoing basis and issue the Engineer's Declaration in accordance with Clause 26.3 of the Contract.
2. A change to Schedule A proposed by the Contractor or the Construction Sub-contractor shall be referred to in Part 3 of this Schedule M as a ***Contractor's Change***. For the avoidance of doubt, a Contractor's Change shall include:
 - 2.1 any proposed amendment to any of the documents in Schedule A;
 - 2.2 a change to the location or composition of a secure line for any room, compartment of a building, building, or area (including the overall prison perimeter), or a change to the communications systems (including cell call and other alarms, fire alarms and smoke detectors, CCTV and movement sensors).

All references to Schedule A are to Schedule A as amended from time to time either by the Authority or with the Authority's approval pursuant to Clause 9.

Procedure

3. Where the Contractor wishes to propose a Contractor's Change, the Contractor shall make a written application to the Authority using the notice of change proforma Form A appended to this Schedule M. The written application shall contain the following information relating to the Contractor's Change:
 - 3.1 the reasons why the Contractor considers that the Contractor's Change is necessary or desirable;
 - 3.2 where the Contractor's Change will give rise to an adjustment in the Contract Price because it arises out of a change to Prison Legislation, the information required pursuant to Clause 39.2 (or the Contractor's best estimate thereof at the time of submitting the application);
 - 3.3 where the Contractor's Change will delay completion of the Works the Contractor's reasonable estimate of the likely length of the delay; and
 - 3.4 such other information as is reasonably required by the Independent Engineer or the Authority for a sufficient understanding of the Contractor's Change proposed.
 - 3.5 Notwithstanding that the written application referred to in this paragraph is a written application to the Authority, the Contractor shall direct the

written application to the Independent Engineer for his attention. Receipt of the written application by the Independent Engineer shall constitute receipt of the written application by the Authority.

4. The Authority shall within 14 days, or in the case of multiple applications within a reasonable period of receiving the Contractor's written application provide a written response to the Contractor which shall either:
 - 4.1 approve the Contractor's Change;
 - 4.2 request more information regarding the Change; or
 - 4.3 reject the proposed Change and provide reasons for its rejection.
5. Where the Authority accepts the Contractor's Change, Schedule A shall be amended accordingly and the Contractor shall implement the Contractor's Change within the Works.
6. Where the Authority requires more information regarding the Contractor's Change, the Authority's request for further information shall always be limited to what is reasonable to enable it to understand the design and intent of the Contractor's Change or where paragraph 3.2 or 3.3 above applies, the cost or time consequences of the Contractor's Change. Upon receipt of the further information the Authority shall respond to the Contractor's Change in accordance with paragraph 4 above.
7. The Contractor shall not incorporate any proposed Contractor's Change into the Works unless and until it receives the approval of the Authority in accordance with paragraph 4 above. If the Contractor does incorporate the Contractor's Change into the Works without the said approval, it shall be done at the Contractor's own risk and on the understanding that, if approval is not subsequently given, the Independent Engineer may be unable to issue the Engineer's Declaration in accordance with Clause 26.3 of the Contract.

Part 4

Change Control Procedure Post Engineer's Declaration

1. Part 4 of this Schedule M sets out the procedure for agreeing and implementing changes to Schedule A proposed by the Contractor after issue of the Engineer's Declaration.
2. A change to Schedule A proposed by the Contractor shall be referred to in Part 4 of this Schedule M as a *Contractor's Change*. For the avoidance of doubt, a *Contractor's Change* shall include:
 - 2.1 any proposed amendment to any of the documents in Schedule A;
 - 2.2 a change to the location or construction fabric on a secure line for any room, compartment of a building, building, or area (including the overall prison perimeter), or a change to the security and communications systems (including cell call and other alarms, smoke detectors, CCTV, locking, access control, movement sensors and associated control equipment).

All references to Schedule A are to Schedule A as amended from time to time either by the Authority or with the Authority's approval pursuant to Clause 9 of the Contract.

Procedure

3. Where the Contractor wishes to propose a Contractor's Change, the Contractor shall make a written application to the Authority using the notice of change proforma Form C appended to this Schedule . The written application shall contain the following information relating to the Contractor's Change:
 - 3.1 the reasons why the Contractor considers the Contractor's Change is necessary or desirable;
 - 3.2 where the Contractor's Change will give rise to the adjustment in the Contract price because it arises out of a change to Prison Legislation, the information required pursuant to Clause 39.2 (or the Contractor's best estimate thereof at the time of submitting the application);
 - 3.3 where the Contractor's Change will affect the operations of the prison, or the number of available prisoner places, the Contractor's best estimate of the likely effect, and for what period;
 - 3.4 such other information as is reasonably required by the Controller or the Authority for a sufficient understanding of the Contractor's Change proposed.
4. Notwithstanding that the written application referred to in this paragraph is a written application to the Authority, the Contractor shall direct the written application the Prison Service Controller for his attention.

Receipt of the written application by the Controller shall constitute receipt of the written application by the Authority.

5. The Authority shall within 15 working days, or in the case of multiple applications within a reasonable period of receiving the Contractor's written application, provide a written response to the Contractor which shall:
 - 5.1 approve the Contractor's Change, or
 - 5.2 request more information regarding the Change, or
 - 5.3 reject the proposed Change and provide reasons for its rejection.
6. Where the Authority accepts the Contractor's Change, Schedule A shall be amended accordingly and the Contractor shall implement the Contractor's Change within the Works.
7. Where the Authority requires more information regarding the Contractor's Change, the Authority's request for further information shall always be limited to what is reasonable to enable it to understand the design and intent of the Contractor's Change or where paragraph 3.2 or 3.3 above applies, the cost or other consequences of the Contractor's Change. Upon receipt of the further information the Authority shall respond to the Contractor's Change in accordance with paragraph 5 above.
8. The Contractor shall not incorporate any proposed Contractor's Change into the Works unless it receives the approval of the Authority in accordance with paragraph 6 above. If the Contractor does incorporate the Contractor's Change into the Works without the said approval, it shall be done at the Contractor's own risk and on the understanding that, if approval is not subsequently given, the Contractor will reinstate the Works to its prior condition at its own cost, within such period as is reasonably set by the Authority. Where the Contractor fails to effect the reinstatement, to the reasonable satisfaction of the Authority, within the reasonable time specified, the Authority shall be entitled to carry out such reinstatement 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 under this contract.
9. On completion of the works required for the Contractor's Change, the Contractor shall notify the Authority accordingly, and present such works as might be reasonably required to demonstrate compliance with the Contract. In addition to physical demonstration and/or inspection, this shall include but not necessarily be limited to testing and pre-commissioning documentation, and changes to relevant operational and maintenance procedures as might be affected.

10. On acceptance by the Authority of completion of each Contractor's Change (which shall not be unreasonably withheld) any changes to the Payment Mechanism which may arise will come into effect thereafter, or from such time as may be otherwise agreed by the Authority and Contractor in accordance with the Contract.
11. Following any such change, as-built documentation shall be suitably updated and distributed by the Contractor in accordance with Schedule N.

DCMF PUCKLECHURCH

CONTRACT COMPLIANCE – NOTICE OF CHANGE (FORM B)

1. NOTICE No: (AS FORM A)		2. DATE:	
3. DRAWING/SPECIFICATION REFERENCES:			
4. REASONS FOR CHANGE:	Tick as Appropriate	5. DOCUMENTS APPENDED	
Prison Legislation			
Authority Instruction			
Security Technology			
6. DETAILS OF CHANGE (Including details of relevant legislation):			
7. COST IMPACT:			
8. OTHER IMPACT (Including estimate of any changes to the programme)			
9. (To be completed by Contractor)			
Signed for Pucklechurch PS Date			
For Authority Use Only			
Received by			Date
Received by for HMPS			Date

HMYOI & RC PUCKLECHURCH

CONTRACT COMPLIANCE – NOTICE OF CHANGE (FORM C)

TO: CONTROLLER


1. NOTICE No:		2. DATE:	
3. REASONS FOR CHANGE:		Tick as Appropriate	4. DRAWING/SPECIFICATION REFERENCES
Practicability			
Operational need			
Maintenance			
Statutory need			
Security			
Health and Safety			
Prison Legislation #			
Authority Instruction #			
Security Technology #			
# Complete separate Form D		5. DOCUMENTS APPENDED	
6. DESCRIPTION OF CHANGE:			
7. DETAILED REASON FOR CHANGE:			
8. (To be completed at Contractor's discretion)			
Signed [REDACTED] Date			
9. (To be completed by Contractor)			
Signed for Pucklechurch CS Date			
FOR AUTHORITY USE ONLY			
Proposed change to Schedule A – approved/not approved			
Signed for HMPS Date			
Change to Schedule A – satisfactorily completed			
Signed For HMPS Date			

HMYOI & RC PUCKLECHURCH

CONTRACT COMPLIANCE – NOTICE OF CHANGE (FORM D)

1. NOTICE No: (AS FORM C)		2. DATE:	
3. DRAWING/SPECIFICATION REFERENCES:			
4. REASONS FOR CHANGE:	Tick as Appropriate	5. DOCUMENTS APPENDED	
Prison Legislation			
Authority Instruction			
Security Technology			
6. DETAILS OF CHANGE (Including details of relevant legislation):			
7. COST IMPACT:			
8. OTHER IMPACT (Including estimate of any loss of available prisoner places, and periods)			
9. (To be completed by Contractor)			
Signed for Pucklechurch CS Date			
For Authority Use Only			
Received by		Controller	Date
Received by		for HMPS	Date

NON-COMPLIANCE NOTICE

<p>1. TO PUCKLECHURCH CUSTODIAL SERVICES</p>	<p>2. NOTICE No: ISSUED BY: DATE :</p>				
<p><u>PART A</u></p> <p>3. DOCUMENT REFERENCE(S):</p>					
<table style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;">4. (a) DATE FIRST REPORTED:</td><td style="width: 50%; vertical-align: top;">TO: BY:</td></tr><tr><td colspan="2"><p>DESCRIPTION</p><p>.....</p><p>.....</p><p>.....</p><p>.....</p><p>.....</p></td></tr></table>		4. (a) DATE FIRST REPORTED:	TO: BY:	<p>DESCRIPTION</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	
4. (a) DATE FIRST REPORTED:	TO: BY:				
<p>DESCRIPTION</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>					
<p><u>PART B</u></p> <p>5. CORRECTIVE AND PREVENTATIVE ACTION PROPOSED BY CONTRACTOR:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>TO BE CARRIED OUT BY: SIGNED FOR PCS:</p> <p>DATE TO BE COMPLETED BY: DATE:</p>					
<p><u>PART C</u></p> <p>6. NO OBJECTION TO CONTRACTOR'S PROPOSAL, SUBJECT TO ENGINEER'S DECLARATION</p> <p style="text-align: center;"></p> <p>ON BEHALF OF HMPS DATE:</p>					

SCHEDULE N

MANAGEMENT AND CONTROL OF DOCUMENTATION

PART 1 :

CONTROL OF DOCUMENTATION DURING DESIGN AND CONSTRUCTION OF THE PRISON

The Documentation

1.1 During the design and construction of the Prison, certain documentation shall be produced by or for the Construction Sub-contractor. For the purpose of Part 1 of this Schedule, documentation shall be defined as any item or document which relates to the Prison (the *Documentation*) and shall, without limitation, include all such documents which relate to the design, construction and commissioning of the Prison, including, whether as hard copy or electronic data:

- drawings;
- specifications;
- reports;
- bills of quantities;
- standards;
- schedules;
- data sheets;
- presentation brochures;
- photographs;

and other information, including

- models; and
- samples.

Security And Confidentiality Of Documentation

2.1 The Documentation constitutes a security risk. The following procedures are designed to control and monitor the issue, use and return of the Documentation issued by the Construction Sub-contractor and his sub-contractors and suppliers to third parties both on and off Site and the security of Documentation both on and off Site.

2.2 The Contractor shall procure that the Documentation is managed and controlled by the Construction Sub-contractor and his sub-contractors and suppliers in the manner set out in this Schedule.

2.3 The Contractor shall use reasonable endeavours to ensure that Documentation shall only be issued for off-site review where it is absolutely necessary.

Documentation Security Officer

3.1 The Construction Sub-contractor shall appoint a named person as Documentation Security Officer (the ***Documentation Security Officer***) who shall be located on Site. The Documentation Security Officer will be responsible for the security of all Documentation. He will be the focal point for all matters relating to Documentation security and will ensure the awareness of obligations imposed by the Confidentiality Agreement (see Clause 6.2.1 below) on all parties issued with Documentation.

CONTROL OF DOCUMENTATION OFF SITE

Introduction

4.1 Documentation shall be issued to third parties off site by the Construction Sub-contractor for, inter alia, the following purposes:

- (a) building control approval by South Gloucestershire Council or its successor (the “Local Authority”);
- (b) discharge consents by the Environment Agency;
- (c) road adoption by the Director of Planning, Transportation and Environmental Services, South Gloucestershire Council;
- (d) supplier/sub-contractor procurement by the Construction Sub-contractor;
- (e) development of design and design co-ordination by his consultants, sub-contractors and suppliers; and
- (f) co-ordination with the Independent Engineer and the Bank’s technical representative.

Documentation shall also be produced off Site by the Construction Sub-contractor’s consultants and suppliers who have a responsibility for design.

Building Control Approval

5.1 The Construction Sub-contractor shall be dealing directly with the Local Authority for Building Control, Fire and Environmental Health approvals.

The following procedures will be adopted, subject to obtaining the consent of the Local Authority:

5.2 Plan Vetting Stage:

- 5.2.1 only named officers of the Local Authority will deal with the application;

- 5.2.2 documentation relating to Building Control Approval shall be kept in a lockable room either at the Local Authority offices or on site (the “Building Control Approval Room”).

This room will be suitable for the inspection of plans by Local Authority staff and other named consultees;

- 5.2.3 while the Building Control Approval Room is located at the Local Authority offices, the delivery and collection of Documentation to the Local Authority shall be made by hand and signed for by an approved signatory;
- 5.2.4 once Building Control Approval has been given, if the Building Control Approval Room continues to be located at the Local Authority offices, the Documentation will be returned by the Local Authority to the Construction Sub-contractor. Access to the plans will be made available to named Local Authority staff for any further scrutiny arising out of the construction of the Prison on Site;
- 5.2.5 the key to the Building Control Approval Room will be kept with registered holders and a log maintained for authorised access;
- 5.2.6 the Contractor will endeavour to obtain approval for similar arrangements to those set out in this Clause 5 for Building Control Approval for other third parties should the need arise.

5.3 Site Inspections:

5.3.1 Facilities on Site will be allowed to the named officers of the Local Authority when carrying out inspections.

5.3.2 All approved Documentation will be stored on Site in a lockable cabinet within a dedicated room. Keys will be kept with registered holders and a log maintained for authorised access.

Sub Contractor/Supplier Procurement

6.1 The Construction Sub-contractor will issue Documentation to tenderers for tendering purposes. Each tenderer’s scope of works will be fully assessed before tendering by the Construction Sub-contractor and only Documentation required for tender pricing will be released to that tenderer.

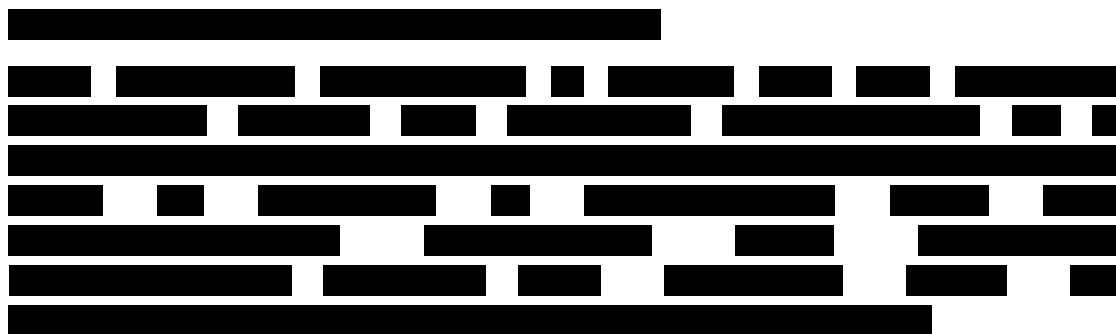
6.2 Security and Confidentiality Procedures:

6.2.1 Pucklechurch Custodial Services Limited and its principal sub-contractors will ensure that when an original Document is reproduced, sub-contract and supply tenderers will be briefed on the importance of all issues relating to confidentiality and security of Documentation prior to tendering. Each tenderer shall enter into a confidentiality agreement in the form set out in Appendix A to this Schedule (The “Confidentiality Agreement”) with the principal Sub-contractors prior to release by them of any Documentation to that tenderer.

6.2.2. Tenderers will be required to brief their own consultants, sub-contractors and suppliers regarding confidentiality and security who in turn will also be required to enter into a confidentiality agreement in a similar form to the Confidentiality Agreement with the tenderer concerned.

6.2.3 All Documentation will be issued by the Construction Sub-Contractor under cover of a Transmittal Note which shall identify the Documentation and its unique identification reference in the form set out in Appendix B (see Clause 6.2.4 below).

6.2.4 All Documentation issued will be stamped and given a unique identification reference as below:



DATE:

PURPOSE OF ISSUE:

ISSUED TO:

REFERENCE NO:

6.2.5 The Documentation issued for tender will be returned to the Construction Sub-contractor by unsuccessful tenderers or formally confirmed as having been destroyed. Returned Documentation will be recorded against that issued and kept available for audit inspections.

6.2.6 Receipt of Documentation issued by the Construction Sub-contractor to third parties will be required to be acknowledged in writing to the Construction Sub-contractor. A return slip will be incorporated within the Transmittal Note for this purpose. The Documentation Security Officer will investigate non-returns of acknowledgement slips.

6.2.7 The procedures set out in this Schedule and any others which may be developed relating to security and/or confidentiality, will be incorporated within the Construction Sub-contractor's overall Project Quality Plan as part of the Quality System and as such will be subject to periodic audit by the Construction Sub-contractor, the Contractor and the Independent Engineer.

Design Development and Documentation produced off Site

7.1 The Contractor shall procure that the Construction Sub-contractor imposes a contractual obligation on its sub-contractors and suppliers who have

design responsibility so that these sub-contractors operate a security and confidentiality system which is equivalent to the provisions set out in Clause 6. The sub-contractors' system shall be capable of audit by the Construction Sub-contractor.

7.2 The sub-contractors and suppliers with design responsibility will be required to appoint a named security officer to implement and oversee the security and confidentiality procedures required in accordance with Clause 7.1

CONTROL OF DOCUMENTATION ON SITE

Access & Egress

8.1 All personnel entering the Site will be directed to a designated and secure compound. A pass system will be in operation during normal working hours.

8.2 A system of checks will be implemented to monitor transfer of Documentation. Documentation being removed from the work area will require written authorisation. Unauthorised transfer will be reported to the Construction Sub-contractor Site Management and appropriate action to ensure security and confidentiality will be taken.

Site Office Security

9.1 The Construction Sub-contractor's site office complex will be secured outside normal working hours. All offices and entry points will be regularly patrolled by security guards.

9.2 A similar level of security will apply to any sub-contractor's Site offices situated remote from the Construction Sub-contractor's offices.

Document Security Procedures

10.1 All consultants, sub-contractors and suppliers with an office presence on site will be required to appoint a named security officer who will be responsible for implementing procedures for Documentation security on site with assistance from the Construction Sub-contractor Documentation Security Officer.

Site Photographs

11.1 The use of cameras and videos on Site will only be with the permission of the Contractor. The development of authorised photographs will be subject to security and confidentiality procedures and may be carried out only by laboratories approved by the Authority.

GENERAL

Movement of Documents

12.1 The movement of Documentation shall be either by hand or by Recorded Delivery and a detailed log shall be kept identifying document, number, person receiving, reason and confirmation of receipt.

Loss of Documents

13.1 Sub-contractors and suppliers shall report immediately to the Construction Sub-contractor's Documentation Security Officer the loss of any Documentation stating details of the loss and what measures are being adopted to secure its recovery.

Archiving

14.1 The Construction Sub-contractor shall continue to safeguard and secure Documentation after completion of the construction works. At completion of the Construction Works, the Contractor shall agree with the Authority in writing what Documentation shall be kept or destroyed and, if kept, the Construction Sub-contractor shall continue to keep it secure in a manner approved by the Authority.

PART 2:

CONTROL OF DOCUMENTS AFTER ACTUAL OPENING DATE

Introduction

1.1 During the course of the Contract the Contractor may enter into building, engineering and maintenance contracts for the Prison. Security requirements for Documentation will arise from the need for the Contractor to control risk at all times to prevent a breach or compromise of security as a direct result of the execution of building, engineering or maintenance works.

1.2 The conditions set out below apply to building, engineering and maintenance works which take place after the Actual Opening Date and shall be strictly observed by the Contractor, its employees, its sub-contractors and all others under its direction from the start to the completion of the building, engineering or maintenance works.

1.3 The Contractor is entitled to sub-contract building, engineering and maintenance contracts for the Prison to the Operating Sub-contractor or other suitably qualified sub-contractors. If the Contractor does so sub-contract, the Contractor shall include in its sub-contract similar but no less strict obligations regarding document security.

Security of Documents

2.1 All documents used in the implementation of building, engineering or maintenance contracts constitute a security risk. Documents which may be issued to sub-contractors by the Contractor shall remain at all time the property of the Contractor and on completion of the building, engineering or maintenance works shall be returned to the Contractor. Thereafter, the documents shall be kept securely by the Contractor or shall be certified by the Contractor as having been destroyed in a secure manner.

2.2 The security requirements are required in order to prevent information detrimental to the security of the Prison coming into the possession of unauthorised persons and at the same time to establish an audit trail of document movement as well as a consciousness of the need for security.

2.3 The Contractor shall procure that its sub-contractors shall comply with the following requirements regarding documents used in the execution of any building, engineering or maintenance contract.

2.4 The Contractor shall be responsible at all times for the security of all documents. In this context the term “Documents” shall mean any and every item of Documentation as described in clause 1 of Part 1 to this Schedule, whether in hard copy or as electronic data.

Requirements for Security of Documents

3.1 A named person, appointed by the Contractor to act as the Contractor's Security Manager (the ***Security Manager***), shall be provided at the Prison for the whole of the duration of the Contract and shall be responsible for security of Documents at the Prison. The person shall be accountable for the control of all Documents relating to building, engineering or maintenance works and in particular shall record the whereabouts of each individual document. The person shall set up a management system of security, control and monitoring of Documents and the Contractor shall demonstrate to the Authority the operation of the system. When the Authority is satisfied that the system is satisfactory, it shall confirm its approval in writing.

3.2 The Contractor shall notify all personnel handling Documents of the requirements and procedures for maintaining security. The Contractor shall notify all persons having an interest in any building, engineering or maintenance contract of the particular requirements imposed regarding Document security.

3.3 The movement of Documents shall be either by hand or by Recorded Delivery and a detailed log shall be kept identifying document number, person receiving, reason and confirmation of receipt.

3.4 The Security Manager shall be responsible for the issue of Documents to sub-contractors in any building, engineering or maintenance contract.

3.5 The Contractor shall be responsible for ensuring that Documents issued to others are returned to him.

3.6 The Security Manager shall arrange for the secure destruction and recording of any Documents which are no longer required, have been superseded or are extra to the Contractor's requirements.

3.7 The Contractor shall provide at the Prison secure, lockable computers, cabinets and cupboards used for storing Documents and these shall be locked at all times when not in use and secured at all times when unoccupied.

3.8 At the completion of the building, engineering or maintenance works, the Contractor shall obtain from all sub-contractors the returnable Documents issued to and created by other parties and shall remind them of the contractual obligations required of them as regards security.

3.9 The Contractor shall continue to safeguard and secure Documents after completion of building, engineering or maintenance works. At completion of the building, engineering or maintenance works, the Contractor shall agree with the Authority in writing what Documentation shall be kept or destroyed and, if kept, the Contractor shall continue to keep it secure in a manner agreed with the Authority. At the expiry of the Contract Term, the Contractor shall agree with the Authority in writing what Documents shall be delivered to the Authority and what Documents shall be destroyed in a safe manner.

PART 3:

DOCUMENT ISSUE TO THE AUTHORITY

The documents tabulated in Table 1 below shall be issued to the Authority by the Contractor. Documents designated for the Independent Engineer shall be issued within 7 days of the request of the Independent Engineer to the Contractor, or in sufficient time to allow the Independent Engineer to discharge its duties and responsibilities under the Contract, whichever is the lesser period.

All other documents shall be issued by the Contractor as soon as they become available, but not later than one month after the Actual Opening Date.

Where changes to the Schedule A Works are undertaken by the Contractor after issue of the Engineer's Declaration, as-built records will be updated by the Contractor and distributed;

- (a) to the Controller in paper copy, those documents required by him in Table 1,
- (b) to the Authority in electronic form, two copies of those documents listed in Part 4 to this Schedule,

unless otherwise mutually agreed between the Contractor and the Authority.

Updated records shall be issued, accompanied by a register of changes, no later than one month after completion of the works undertaken for each change.

**TABLE 1 – DOCUMENTATION NEEDS FOR THE AUTHORITY’S ON
SITE REPRESENTATIVES**

DOCUMENT DESCRIPTION	ISSUE TO	COPIES	SIZE	PURPOSE
[REDACTED]	[REDACTED] [REDACTED]	1	A	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	1	A	[REDACTED]
		1	A	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	1	A	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	1	A	[REDACTED]
[REDACTED]	[REDACTED]	1	A	[REDACTED]
		1	A	[REDACTED]
[REDACTED] [REDACTED]	[REDACTED]	1	A	[REDACTED]
		1	A	[REDACTED]
[REDACTED]	[REDACTED]	1	A	[REDACTED]
		1	A	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	1	A	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	1	A	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	1	A	[REDACTED]
		1	A	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	1	A	[REDACTED]
		1	A	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	1	A	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	1	A	[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	1	A	[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	1	A	[REDACTED]

Note: All above Table 1 drawings to be paper copies. The Authority’s representative will additionally have unfettered access to all Documentation held on site by the Contractor.

PART 4

AS BUILT DRAWINGS, MAINTENANCE AND OPERATING MANUALS

- (A) Not later than one month after the Actual Opening Date, the Contractor shall issue to the Authority's off-site representative 2 No. replicas of the Health and Safety File, as produced to satisfy current CDM Regulations.

These are to be in electronic form to suit the requirements of HM Prison Service for the archiving of Health and Safety Files, as defined in Appendix C to this Schedule N.

It is envisaged that the contents of the Health and Safety File will be as Tables 2, 3 and 4 following:-

TABLE 2[illegible]

TABLE 3

<div>██████████</div> <div>■ ██████████</div> <div>■ ██████████ ██████████</div> <div>■ ██████████ ██████████</div> <div>██████████</div> <div>■ ██████████</div> <div>██████████</div> <div>■ ██████████ ██████████</div> <div>██████████</div> <div>■ ██████████ ██████████</div> <div>██████████</div> <div>██████████ ██████████</div> <div>██████████</div> <div>■ ██████████</div> <div>■ ██████████ ██████████</div> <div>██████████</div>	<div>██████████</div>	<div>■</div>	<div>██████████</div>	<div>██████████</div>
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TABLE 4

<div>██████-██-██████-██</div> <div>██████</div>	<div>██████</div>	<div>█</div>	<div>██████</div>	<div>██████</div>
<div>██████</div>	<div>██████</div>	<div>█</div>	<div>██████</div>	<div>██████</div>
<div>██████████████</div> <div>██████████████████</div> <div>██████</div>	<div>██████</div>	<div>█</div>	<div>██████</div>	<div>██████</div>
<div>██████████████████</div> <div>██████</div>	<div>██████</div>	<div>█</div>	<div>██████</div>	<div>██████</div>
<div>██████████████████</div>	<div>██████</div>	<div>█</div>	<div>██████</div>	<div>██████</div>
<div>██████████████████</div> <div>██████████████████</div> <div>██████████████</div>	<div>██████</div>	<div>█</div>	<div>██████</div>	<div>██████</div>

- (B) Where such documents are not provided in accordance with Tables 2, 3 and 4 of this Schedule, copies of the following documents will be provided to the Authority within one month of the Actual Opening Date. This list shall be adapted as appropriate.

2 No. copies of each item are required in electronic form, in a similar format to the Health and Safety File.

1. Architects Drawings

Floor and roof plans (all levels)

Elevations

General Sections

Official representative detailed sections 1:20, 1:10 of walls, roof, openings, gutters etc.

External works, landscaping, etc.

Detailed plans of typical critical areas, cells, etc.

Drainage and services layout (external)

2. Documents and Approvals

Outline specification

Schedule of finishes and colours

List of main sub-contractors and suppliers with contact names and addresses, to include:

Concrete blocks

Bricks

Pre-cast concrete units

Lifts

Mechanical Installation

Heating Installation

Electrical Installation

Security and alarm installations, including guard tour

Landscaping/planting

Specialist finishes

Windows/rooflights/glazing

Doors

Ironmongery

Roofing and cladding

Electrical test certificate

Planning and Building Regulation approvals

Maintenance contracts proposed for:

Lifts

Heating

External landscaping

Fire alarm and emergency lighting

Security installations

BMS

Sewage pumping system

Fire alarm test certificate

Drain test certificate or letter of confirmation of test witnessed by
Construction Sub-contractor

Product guarantee and warranties (where available for original
suppliers)

List of practice names and addresses, telephone numbers and
partners/directors involved for:

Architects

Consulting Structural Engineer

Consulting Services Engineer

Consulting Public Health Engineer

Any “design & install” elements

3. Services Information

Operating and maintenance manuals for:

Heating

Plumbing

Lighting

Electrical distribution

Fire and security alarm installations

BMS

Sewage pumps and macerators

Manuals to include:

Full set of service drawings

List of public utilities' addresses; emergency and contact telephone numbers

Index and referencing of sections

Schedule of plant, detailing for all items:

Location, type and size

Manufacturer's name and address

Rating or duty

Serial number

Order number

Detailed description of operating procedures to enable starting up, running and shutting down each system. Description of programmer operations and method for adjusting/resetting timings and temperatures, both centrally and locally.

Explanation of alarm/failure indications and check list of appropriate actions (including emergency procedure and contacts).

List of recommended spares and lubricants (to include list of those spares actually provided at practical completion).

Copies of electrical and mechanical test certificates, e.g. chlorination certificate, pressure tests and commissioning reports.

Detailed step by step instructions on periodic tests required on plant, e.g. emergency stand-by generators, emergency lighting, fire/security systems.

A timetable for all routine servicing, testing and maintenance of all systems, setting out in clear tabular form all weekly, monthly, quarterly, etc., operations necessary to operate the systems in optimum condition.

4. Structural Engineering Drawings

General arrangement drawings of:

Foundations

Frame/load bearing walls

Floors

Roof

Retaining structures

Statement of design floor and roof loadings

Drawings of typical precast elements and their connexions

Trial pit and borehole records

Gender	Percentage
Men	45%
Women	35%

THE ATTACHED DOCUMENTS ARE TO BE RETURNED/DESTROYED
UPON INSTRUCTION FROM [REDACTED]

We enclose for your use the documents listed in Section A. It is a requirement that when requested by [REDACTED] (or at contract completion), all the listed documents be either returned to [REDACTED] or certified destroyed, using this document as a control.

Please therefore sign section B of this document and immediately return a copy to the security officer at the above address as confirmation of receipt of the listed documents. A further copy of this issue sheet should be retained by yourself.

When requested, please sign section C and immediately return it to the security officer at the above address. Care must be taken to tick the relevant boxes, to indicate which documents have been returned/destroyed.

Please note that you are responsible at all times for the security of these documents (and any other related documents) whilst they are in your possession or in the possession of any of your sub-contractors/agents (distributed in line with our confidentiality agreement signed by yourselves). You will be required when taking/issuing documents outside your office to log the details and to ensure their safe return.

You are to immediately inform [REDACTED] Document Control Officer should any of the documents become lost or stolen.

You are further reminded that the Confidentiality Agreement in existence between us is particularly relevant to these documents.

Section B

Recipient to immediately sign and return the original copy to the [REDACTED] [REDACTED] and retain a copy for subsequent use in section C.

I confirm receipt of the above documents:-

Signed _____ Name _____
(Recipient) (Print)

Date _____

Section C

Recipient to sign and return/destroy the above (initialled in section A) documents.

Signed__ (Recipient)

Name__ (Print)

Date _____

Date destroyed _____

APPENDIX C

HM PRISON SERVICE

ARCHIVING OF HEALTH AND SAFETY FILES

Introduction

CDM regulations require that a health and safety file be kept on buildings. This file is to be kept up to date with all work and alterations carried out on the building throughout its life. The file is started during construction of the building by the planning supervisor. The original paper file produced is to be kept by the HOWS at the Establishment and is to be kept up to date by the HOWS. A duplicate file is to be made on CD-ROM which is to be kept at Prison Service HQ.

Format of Health and Safety File on CD-ROM

The Health and Safety file on CD-ROM is to contain copies of all the information held in the paper Health & Safety file as issued to the HOWS. Also the “as Built” and “as installed” drawings relating to the building must be appended to the CD.

CONTENTS OF CD-ROM		
Item	Description	Format
■		
■		

Scanning

All files should be scanned in CCITT TIFF Group 4 monolithic - LSB format at 300 dpi. All images should be deskewed, cropped to page size boundary and despeckled if appropriate. Images should read text at normal orientation.

Acrobat Format Files

The TIFF files should be converted into single page PDF (Acrobat v3 format) for each manual/book/binder supplied. Where page count is over 100 then they may be broken down into smaller files, one per chapter or similar division. All files should be optimised and with no downsampling of the images done.

Acrobat files should be set up as follows:

1. Document Information Fields

The title should contain the document number or code reference, e.g. **HMP 101/234**, as instructed by the Project Manager.

The subject field should contain the document description:



The Author field should contain the publisher details e.g. **Name of Planning Supervisor**

The keywords field should contain abstract words about the file e.g. **Health & Safety manual HMP xxxxxxxx**

Key words should be no more than 10, each separated by a space.

2. Document Open Setting

This should be set to full single first page with bookmarks displayed.

3. Thumbnails

These should be created for all pages.

4. OCR Capture

All text pages (not DWG's or other graphic only pages) should be OCR full text searchable and converted as "Image + Hidden text".

5. File Names

These should be set as an 8 character sequential number e.g. 00000023.PDF.

Details of the next batch file number will be supplied by HM Prison Service with each order, refer to the Project Manager.

6. Bookmarks

Bookmarks should be set in each file relating to chapter, file tabs or other similar headings. They should be nested if appropriate.

7. Indexing

If the files are to be supplied as "self contained" archive set on a single CD-ROM then all files on the CD should be indexed using Acrobat Catalogue v3 and the index files written onto the CD with other Files as follows:

Directory:	Index	contains Acrobat index
	files Files	contains PDF files
	Dwgs	contains PDF and tiff images of any drawings
	Acrobat	contains v3 Acrobat reader and search

AutoCAD engine
contains DWG files

8. Drawings

Where large format drawings i.e. over A3 size, are supplied within a manual then these should be scanned and converted into “non OCR-captured”, not bookmark PDF files and placed in a separate DWGS directory (see above) on the CD-ROM. All other settings should be the same.

Any drawings supplied as AutoCAD DWG files are to be saved into their own separate AutoCAD directory.

CD-ROM's

2 number CD-ROM's are to be produced for each Health and Safety manual. One copy is to be given to the CAD manager Construction Unit, Abell House. The other is to be sent to off-site storage.

SCHEDULE O

SCHEDULE P
FORM OF INVOICE

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED] | [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED] [REDACTED] |

Pucklechurch Custodial Services Limited
Month/Year: _____

Date	Availability Fee ████████	Available Prisoner Places above Permitted Level ██████████	Available Prisoner Places at full rate	Additional Prisoner Places Fee	Additional Prisoner Places ████████	Payable Total
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3.						
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Total						
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SCHEDULE Q

TERMS OF REFERENCE OF THE EXPERT APPOINTED TO DETERMINE THE EQUITY TRANSFER VALUE PURSUANT TO CLAUSE 39A.1(A)



The parties agree that the terms of reference of the expert who may be appointed pursuant to Clause 39A.1 in relation to the matters specified in Clause 39A.1(a) will be to devise a new valuation methodology to determine the Equity Transfer Value, should developments in the first 15 years of operation of the Prison have rendered the original calculation unworkable or inappropriate as a method of valuing the Relevant Securities at the Date of Benchmarking. Such circumstances may include but shall not be limited to:

- (a) a financial restructuring of the Contract or of the Contractor;
- (b) an expansion of the Prison or other event involving the raising of additional capital;
- (c) a merger with or takeover by another party;
- (d) a material change in the activities of the Contractor;
- (e) a sale of any shareholder debt of the Contractor to parties other than shareholders or their affiliates;
- (f) any fundamental change to the operating environment of the Contractor.

The expert's right to alter the discount rate applied to projected shareholder cashflows will be restricted to circumstances where the expert can demonstrate that the Contractor has taken some action which has given rise to a change in the cost of capital and the expert shall not have the right to invoke a change in the discount rate by referring to prevailing market conditions at the Date of Benchmarking.

In the absence of circumstances analogous to those described above, the original methodology set out in the Contract for determining the Equity Transfer Value and the financial assumptions applied therein shall not be challenged.

SIGNED by)
for and on behalf of) 
PUCKLECHURCH CUSTODIAL)
SERVICES LIMITED)
in the presence of:) 

SIGNED by)
for and on behalf of) 
HM PRINCIPAL SECRETARY OF)
STATE FOR THE HOME)
DEPARTMENT) 
in the presence of: