

liquidated damages to the Authority in accordance with **Clause 26 (*Liquidated Damages*)**.

25A.5 The Contractor shall be entitled to provide Available Prisoner Places in excess of the number specified in the Revised Phase-in Timetable as postponed in accordance with **Clause 25A3.2 (*Postponement*)** provided that:

- (a) such Available Prisoner Places must be provided at intervals of a minimum of five (5) Days and written notice of the relevant date and number of Available Prisoner Places must be provided to the Authority at least seven (7) Days in advance of the relevant date; and
- (b) no more than one hundred (100) Available Prisoner Places may be provided at any one time;

save that where between one hundred and twenty five (125) and two hundred (200) Available Prisoner Places have been provided within a fourteen (14) Day period, the Contractor may only provide up to fifty (50) Available Prisoner Places on each of the two (2) following occasions, such occasions to be at intervals of a minimum of seven (7) Days apart. For the avoidance of doubt, the restrictions contained in this **Clause 25A.5 (*Postponement*)** shall not apply where the provisions of **Clause 25A.3.1 (*Postponement*)** apply pursuant to which the Contractor is deemed to have reverted to the Phase-in Timetable.

25B **Extension Of Time - Increased Capacity**

25B.1 If and whenever it becomes reasonably apparent to the Contractor that the progress of its obligations in respect of:

- (a) the Houseblock Works;
- (b) **Clause 28 (*Cell Certification*)**; or
- (c) **Clause 29A (*Houseblock Regime Approval*)**,

are being or are likely to be delayed, such that the Contractor will not meet its obligations under the Contract which are to be met on or before the Contractual Houseblock Opening Date or on or before any date of the Increased Capacity Phase in Timetable or the Contractual Increased Capacity Date, the Contractor shall forthwith give written notice to the Authority (the "***Increased Capacity Delay Notice***") of the relevant circumstances.

25B.2 The Increased Capacity Delay Notice shall:

- (a) identify the cause or causes of the delay;

- (b) state whether and to what extent the delay is caused by a Houseblock Relevant Event;
- (c) provide details of the nature of the Houseblock Relevant Event and its duration (or the Contractor's reasonable estimate of its likely continued duration); and
- (d) identify clearly which of the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date and the dates in the Increased Capacity 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 Houseblock Relevant Event.

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

- 25B.3 If in the reasonable opinion of the Authority or the Contractor upon receipt or service of any Increased Capacity Delay Notice and any further weekly notices a Houseblock Relevant Event is the cause of any delay to the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date or any date in the Increased Capacity Phase in Timetable, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Houseblock Opening Date, the relevant date in the Increased Capacity Phase in Period Timetable and/or the Contractual Increased Capacity Date as the Authority then reasonably estimates to be fair to take into account the effect of the Houseblock Relevant Event (whereupon such other dates shall become the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date or the relevant date in the Increased Capacity Phase in Timetable for the purposes of this Contract). If the Houseblock Relevant Event in question is an event specified in paragraph (f) of the definition of Houseblock Relevant Event, and that event has become a Houseblock Relevant Event as a consequence of the negligence of the Contractor or Sub-contractor, then the extensions of time that the parties shall provide for the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date and/or, as the case may be, the relevant date in the Increased Capacity Phase in Timetable shall be one half of the extensions that the parties would have provided for had the event not been caused as a consequence of such negligence.

25B.4 When in accordance with **Clause 25B.3 (*Extension of Time - Increased Capacity*)** a Houseblock Relevant Event is found to have caused a delay and such Houseblock Relevant Event is one of the events referred to in paragraph (b) of the definition of Houseblock Relevant Event, the Authority shall promptly reimburse to the Contractor any expenses reasonably suffered by the Contractor as a result of the delay caused by such Houseblock Relevant Event, where such expenses are properly evidenced in writing.

25B.5 The parties recognise that the consequences of the occurrence of a Houseblock Relevant Event are that there may be delays to the Houseblock Works. The parties further acknowledge that it is in their interests to achieve Available Prisoner Places in accordance with the Increased Capacity Phase in Timetable prior to any adjustment pursuant to this **Clause 25B (*Extension of Time - Increased Capacity*)**. Accordingly, if a Houseblock Relevant Event does arise which is likely to result in any delay, the parties shall consult in good faith to establish whether they might adjust the terms and procedures outlined in this Contract (including, without limitation, as to rate of construction of the Houseblock and timing of the commencement of payments by the Authority hereunder). The parties shall not be under any obligation to make any such adjustment and, to the extent that no agreement is reached between the parties, the other provisions of this Contract shall apply.

25C **Extension Of Time – Phase 2 Increased Capacity**

25C.1 If and whenever it becomes reasonably apparent to the Contractor that the progress of its obligations in respect of:

- (a) the Phase 2 Works;
- (b) **Clause 28 (*Cell Certification*)**; or
- (c) **Clause 29B (*New Houseblock Regime Approval*)**,

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 New Houseblock Opening Date or on or before any date of the Phase 2 Increased Capacity Phase in Timetable or the Contractual Phase 2 Increased Capacity Date, the Contractor shall forthwith give written notice to the Authority (the "**Phase 2 Increased Capacity Delay Notice**") of the relevant circumstances.

25C.2 The Phase 2 Increased Capacity Delay Notice shall:

- (a) identify the cause or causes of the delay;
- (b) state whether and to what extent the delay is caused by a Phase 2 Relevant Event;

- (c) provide details of the nature of the Phase 2 Relevant Event and its duration (or the Contractor's reasonable estimate of its likely continued duration); and
- (d) identify clearly which of the Contractual New Houseblock Opening Date, the Contractual Phase 2 Increased Capacity Date and the dates in the Phase 2 Increased Capacity 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 Phase 2 Relevant Event.

If the Contractor serves a Phase 2 Increased Capacity Delay Notice while a Phase 2 Relevant Event is continuing, the Contractor shall provide the Authority periodically (and at least on a weekly basis) with details of the Phase 2 Relevant Event and the Contractor's reasonable estimate of its impact on the Project or the provision of the New Houseblock. The Contractor shall afford the Authority such access to the Site and papers of the Contractor as the Authority may reasonably consider necessary and appropriate for the purposes of establishing the accuracy of any Phase 2 Increased Capacity Delay Notice.

25C.3 If in the reasonable opinion of the Authority or the Contractor upon receipt or service of any Phase 2 Increased Capacity Delay Notice and any further weekly notices a Phase 2 Relevant Event is the cause of any delay to the Contractual New Houseblock Opening Date, the Contractual Phase 2 Increased Capacity Date or any date in the Phase 2 Increased Capacity 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 New Houseblock Opening Date, the relevant date in the Phase 2 Increased Capacity Phase in Period Timetable and/or the Contractual Phase 2 Increased Capacity Date as the Authority then reasonably estimates to be fair to take into account the effect of the Phase 2 Relevant Event (whereupon such other dates shall become the Contractual New Houseblock Opening Date, the Contractual Phase 2 Increased Capacity Date or the relevant date in the Phase 2 Increased Capacity Phase in Timetable for the purposes of this Contract). If the Phase 2 Relevant Event in question is an event specified in paragraph (f) of the definition of Phase 2 Relevant Event, and that event has become a Phase 2 Relevant Event as a consequence of the negligence of the Contractor or Sub-contractor, then the extensions of time that the parties shall provide for in respect of the Contractual New Houseblock Opening Date, the Contractual Phase 2 Increased Capacity Date and/or, as the case may be, the relevant date in the Phase 2 Increased Capacity Phase in Timetable, shall be one half of the extensions that the parties would have provided for had the event not been caused as a consequence of such negligence.

25C.4 When in accordance with **Clause 25C.3 (*Extension of Time – Phase 2 Increased Capacity*)** a Phase 2 Relevant Event is found to have caused a delay

and such Phase 2 Relevant Event is one of the events referred to in paragraph (b) of the definition of Phase 2 Relevant Event, the Authority shall promptly reimburse to the Contractor any expenses reasonably suffered by the Contractor as a result of the delay caused by such Phase 2 Relevant Event, where such expenses are properly evidenced in writing.

- 25C.5 The parties recognise that the consequences of the occurrence of a Phase 2 Relevant Event are that there may be delays to the Phase 2 Works. The parties further acknowledge that it is in their interests to achieve Available Prisoner Places in accordance with the Phase 2 Increased Capacity Phase in Timetable prior to any adjustment pursuant to this **Clause 25C (*Extension of Time – Phase 2 Increased Capacity*)**. Accordingly, if a Phase 2 Relevant Event does arise which is likely to result in any delay, the parties shall consult in good faith to establish whether they might adjust the terms and procedures outlined in this Contract (including, without limitation, as to rate of construction of the New Houseblock and timing of the commencement of payments by the Authority hereunder). The parties shall not be under any obligation to make any such adjustment and, to the extent that no agreement is reached between the parties, the other provisions of this Contract shall apply.

26. **Liquidated Damages**

- 26.1 To the extent that:

- (a) 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, fifty (50) Available Prisoner Places from the Contractual Opening Date and eight hundred (800) Available Prisoner Places from the Full Operation Date); or
- (b) the provisions of **Clause 22.2 (*Contractual Opening Date*)** apply and the Contractor fails on any Day to provide the number of Available Prisoner Places specified in the Revised Phase-in Timetable,

the Contractor shall be liable to pay liquidated damages to the Authority.

- 26.2 Liquidated damages shall be calculated at the daily rate specified in Schedule E (***Payment Mechanism***) (such rates representing a reasonable pre-estimate of costs to the Authority), for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms of this Contract and set out in **Clause 26.1 (*Liquidated Damages*)** has not been provided and shall, subject to **Clause 26.4 (*Liquidated Damages*)**, be payable monthly in arrears.

26.3 **Clause redacted**

26.4 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 from the Construction Sub-contractor or any other person.

26A. **Liquidated Damages - Increased Capacity**

26A.1 To the extent that on or before the Actual Increased Capacity Date the Contractor fails on any Day to provide the number of Available Prisoner Places specified in the Increased Capacity Phase in Period Timetable (including, for the avoidance of doubt, twelve (12) Available Prisoner Places from the Contractual Houseblock Opening Date and three hundred and thirty two (332) Available Prisoner Places from the Actual Increased Capacity Date), the Contractor shall be liable to pay liquidated damages to the Authority.

26A.2 Liquidated damages shall be calculated at the daily rate specified in Schedule E (***Payment Mechanism***) (such rates representing a reasonable pre estimate of costs to the Authority), for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms of this Contract and set out in **Clause 26A.1 (*Liquidated Damages - Increased Capacity*)** has not been provided and shall, subject to **Clause 26A.4 (*Liquidated Damages - Increased Capacity*)**, be payable monthly in arrears.

26A.3 **Clause redacted**

26A.4 The Authority may deduct the said sums from any monies due to the Contractor under this Contract (provided that to the extent payments of the Houseblock Works Fee are outstanding at the time the Contractor's liability under **Clause 26A.1 (*Liquidated Damages - Increased Capacity*)** arises, the Authority's right to deduct such sums shall be limited to deductions to the outstanding part of the Houseblock Works Fee) or the Authority may recover the same from the Contractor as a debt, except to the extent that such sums have been recovered from the Houseblock Construction Sub-contractor or any other person.

26B. **Liquidated Damages – Phase 2 Increased Capacity**

26B.1 To the extent that on or before the Actual Phase 2 Increased Capacity Date the Contractor fails on any Day to provide the number of Available Prisoner Places specified in the Phase 2 Increased Capacity Phase in Period Timetable (including, for the avoidance of doubt, twelve (12) Available Prisoner Places from the Contractual Houseblock Opening Date and three hundred and eighty seven (387) Available Prisoner Places from the Actual Phase 2 Increased Capacity Date), the Contractor shall be liable to pay liquidated damages to the Authority.

26B.2 Liquidated damages shall be calculated at the daily rate specified in Schedule E (***Payment Mechanism***) (such rates representing a reasonable pre estimate of costs to the Authority), for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms of this Contract and set out in **Clause 26B.1 (*Liquidated Damages – Phase 2 Increased Capacity*)** has not been provided and shall, subject to **Clause 26B.4 (*Liquidated Damages – Phase 2 Increased Capacity*)**, be payable monthly in arrears.

26B.3 **Clause redacted**

26B.4 The Authority may deduct the said sums from any monies due to the Contractor under this Contract (provided that to the extent payments of the Phase 2 Works Fee are outstanding at the time the Contractor's liability under **Clause 26B.1 (*Liquidated Damages – Phase 2 Increased Capacity*)** arises, the Authority's right to deduct such sums shall be limited to deductions to the outstanding part of the Phase 2 Works Fee) or the Authority may recover the same from the Contractor as a debt, except to the extent that such sums have been recovered from the Houseblock Construction Sub-contractor or any other person.

27. **Engineer's Declaration**

27.1 When the Contractor considers that the whole of the Works will be, or has been, completed in accordance with **Part 1 of Schedule A (*Design and Construction Specification*)** and has been satisfactorily commissioned so that they comply in all respects with **Part 1 of Schedule A (*Design and Construction Specification*)**, the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer. In the event that at the time such notice is given, the Contractor considers that the Works will be completed at a later date, the Contractor must specify such date, which may not be more than twenty one (21) Days from the date of the notice.

27.2 The Authority shall procure that the Independent Engineer shall within twenty one (21) Days of the date of the delivery of the notice referred to in **Clause 27.1 (*Engineer's Declaration*)** (or, if later, within seven (7) Days of the date of completion specified in the notice) either issue a certificate declaring that in its opinion the Works have been completed in accordance with Schedule A (***Design and Construction Specification***) (the "***Engineer's Declaration***") or give notice to the Contractor in writing specifying all the matters which in the opinion of the Independent Engineer must 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 **Clauses 27.1 (*Engineer's Declaration*)** and **27.2 (*Engineer's Declaration*)** shall apply except that the notice period shall be fourteen (14) Days.

27.3 Where in this Contract anything is required to be to the satisfaction of the Independent Engineer, the same must be to its reasonable satisfaction and in forming any opinion or issuing any notice hereunder the Independent Engineer shall act independently, fairly and reasonably as between the Authority and the Contractor. In the event that the Independent Engineer fails to issue the Engineer's Declaration despite the actual completion of the Works in accordance with **Part 1 of Schedule A (*Design and Construction Specification*)**, or if the Independent Engineer fails to comply with any of its material obligations under its contract for services in respect of the Project (the "***Monitoring Contract***") and such failure causes loss to the Contractor, the Authority shall enforce its rights (if any) under the Monitoring Contract against the Independent Engineer so as to remedy any such failure in so far as such failure can be thus remedied. If such failure cannot be thus remedied and, in the reasonable opinion of the Authority, the Independent Engineer has not performed its obligations to the Authority in a satisfactory manner, the Authority will terminate the Independent Engineer's appointment in accordance with and subject to the terms of the Monitoring Contract and appoint a new Independent Engineer for the purposes of this Contract.

27.4 Nothing in this Contract shall be deemed to imply that the Authority makes any representation or warranty of whatsoever nature as to the value, design, construction, maintenance, operation or fitness for use of the Prison or any of the equipment referred to in **Schedule B (*Equipment*)** except in the case of the equipment referred in **Part 2 of Schedule B (*Equipment*)**, in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract as unavoidably require use of such equipment which is not fit for use for such period as such lack of fitness continues.

27A **Engineer's HBJ and Car Park Works Declaration**

27A.1 Subject to paragraph 2.3 of **Part 2 of Schedule A (*Design and Construction Specification - Houseblock Works*)**, when the Contractor considers that:

- (a) the HBJ Works will be, or have been, completed in accordance with **Part 2 of Schedule A (*Design and Construction Specification - Houseblock Works*)** and have been satisfactorily commissioned so that the HBJ Works comply in all respects with **Part 2 of Schedule A (*Design and Construction Specification - Houseblock Works*)**, the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer; and
- (b) the Car Park Works will be, or have been, completed in accordance with **Part 2 of Schedule A (*Design and***

In the event that at the time such notices are given, the Contractor considers that the HBJ Works and/or Car Park Works (as applicable) will be completed at a later date, the Contractor must specify such date, which may not be more than twenty one (21) Days from the date of the notice.

27A.2 The Authority shall procure that the Independent Engineer shall:

- (a) within twenty one (21) Days of the date of the delivery of the notice referred to in **Clause 27A.1(a) (*Engineer's HBJ and Car Park Works Declaration*)** (or, if the HBJ Works will be completed at a later date, within seven (7) Days of the date of completion specified in the notice) either issue a certificate declaring that in his opinion the HBJ Works have been completed in accordance with **Part 2 of Schedule A (*Design and Construction Specification - Houseblock Works*)** (the "***Engineer's Interim HBJ Declaration***") or give notice to the Contractor in writing specifying all the matters which in the opinion of the Independent Engineer must be satisfied before the Engineer's Interim HBJ 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 Interim HBJ Declaration and the requirements of **Clauses 27A.1 (*Engineer's HBJ and Car Park Works Declaration*)** and **27A.2 (*Engineer's HBJ and Car Park Works Declaration*)** shall apply except that the notice periods of twenty one (21) Days referred to in **Clauses 27A.1 (*Engineer's HBJ and Car Park Works Declaration*)** and **27A.2 (*Engineer's HBJ and Car Park Works Declaration*)** shall be fourteen (14) Days;
- (b) within twenty one (21) Days of the date of the delivery of the notice referred to in **Clause 27A.1(b) (*Engineer's Car Park Works Declaration*)** (or, if the Car Park Works will be completed at a later date, within seven (7) Days of the date of completion specified in the notice) either issue

- (c) at such time as the Engineer's Interim HBJ Declaration and the Engineer's Car Park Declaration have been issued in accordance with **Clauses 27A.2(a) (*Engineer's HBJ and Car Park Works Declaration*)** and **27A.2 (b) (*Engineer's HBJ and Car Park Works Declaration*)** issue a certificate declaring that in his opinion both the HBJ Works and the Car Park Works have been completed in accordance with **Part 2 of Schedule A (*Design and Construction Specification - Houseblock Works*)** (the "***Engineer's HBJ and Car Park Declaration***").

27A.3 Where in this Contract anything is required to be to the satisfaction of the Independent Engineer, the same must be to his reasonable satisfaction and in forming any opinion or issuing any notice hereunder the Independent Engineer shall act independently, fairly and reasonably as between the Authority and the Contractor. In the event that the Independent Engineer fails to issue any of the Engineer's HBJ Interim Declaration, the Engineer's HBJ and Car park Declaration or the Engineer's Completion Declaration despite the actual completion of the relevant part of the Houseblock Works in accordance with **Part 2 of Schedule A (*Design and Construction Specification - Houseblock Works*)**, or if the Independent Engineer fails to comply with any of its material obligations under its contract for services in respect of the Project (the "***Houseblock Works Monitoring Contract***") and such failure causes loss to the Contractor, the Authority shall enforce its rights (if any) under the Houseblock Works Monitoring Contract against the Independent Engineer so as to remedy any such failure in

so far as such failure can be thus remedied. If such failure cannot be thus remedied and, in the reasonable opinion of the Authority, the Independent Engineer has not performed its obligations to the Authority in a satisfactory manner, the Authority will terminate the Houseblock Works Monitoring Contract in accordance with and subject to the terms of the Houseblock Works Monitoring Contract and appoint a new Independent Engineer for the purposes of this Contract.

- 27A.4 Nothing in this Contract shall be deemed to imply that the Authority makes any representation or warranty of whatsoever nature as to the value, design, construction, maintenance, operation or fitness for use of the Houseblock or any of the equipment referred to in **Schedule B (Equipment)** except in the case of the equipment referred in **Part 2 of Schedule B (Equipment)**, in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract as unavoidably require use of such equipment which is not fit for use for such period as such lack of fitness continues.

27B Snagging Matters

- 27B.1 The Independent Engineer shall issue a certificate in accordance with **Clause 27A(C) (Engineer's HBJ and Car Park Works Declaration)** notwithstanding that there are any HBJ and Car Park Snagging Matters. Where there are HBJ and Car Park Snagging Matters, the Independent Engineer shall, within ten (10) Days of the issue of his certificate in accordance with **Clause 27A(c) (Engineer's HBJ and Car Park Works Declaration)**, issue a notice specifying the HBJ and Car Park Snagging Matters together with an estimate of the cost of rectifying such HBJ and Car Park Snagging Matters.
- 27B.2 Following the issue of a certificate in accordance with **Clause 27A (Engineer's HBJ and Car Park Works Declaration)** the Contractor shall, in consultation with the Authority and the Independent Engineer and in such manner as to cause as little disruption as reasonably practicable to the Custodial Services, rectify all HBJ and Car Park Snagging Matters within a reasonable period from the issue of the certificate in accordance with **Clause 27A (Engineer's HBJ and Car Park Works Declaration)** and in any event before the end of the HBJ and Car Park Works Defects Period.
- 27B.3 If, within the period referred to in **Clause 27B.2 (Snagging Matters)** the Contractor has failed to rectify the HBJ and Car Park Snagging Matters specified in such notice, the Authority may by itself or by the engagement of others carry out the works necessary to rectify the HBJ and Car Park Snagging Matters at the Contractor's cost. Such costs will be those costs that have been reasonably incurred by the Authority.

27B.4 The issue of the certificate of the Independent Engineer in accordance with **Clause 27A (*Engineer's HBJ and Car Park Works Declaration*)** shall in no way affect the other obligations of the Contractor under this Contract.

27C Engineer's Phase 2 Declaration

27C.1 When the Contractor considers that the whole of the Phase 2 Works will be, or have been, completed in accordance with Part 3 of Schedule A (Design and Construction Specification – Phase 2 Works) and have been satisfactorily commissioned so that the Phase 2 Works comply in all respects with Part 3 of Schedule A (Design and Construction Specification – Phase 2 Works), 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 notices are given, the Contractor considers that the Phase 2 Works will be completed at a later date, the Contractor must specify such date, which may not be more than twenty one (21) Days from the date of the notice.

27C.2 The Authority and the Contractor shall procure that the Independent Engineer shall within twenty one (21) Days of the date of the delivery of the notice referred to in **Clause 27C.1 (*Engineer's Phase 2 Declaration*)** (or, if the Phase 2 Works will be completed at a later date, within seven (7) Days of the date of completion specified in the notice) either issue a certificate declaring that in his opinion the Phase 2 Works have been completed in accordance with **Part 3 of Schedule A (*Design and Construction Specification – Phase 2 Works*)** (the "***Engineer's Phase 2 Declaration***") or give notice to the Contractor in writing specifying all the matters which in the opinion of the Independent Engineer must be satisfied before the Engineer's Phase 2 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 Phase 2 Declaration and the requirements of **Clauses 27C.1 (*Engineer's Phase 2 Declaration*)** and **27C.2 (*Engineer's Phase 2 Declaration*)** shall apply except that the notice periods of twenty one (21) Days referred to in **Clauses 27C.1 (*Engineer's Phase 2 Declaration*)** and **27C.2 (*Engineer's Phase 2 Declaration*)** shall be fourteen (14) Days.

27C.3 Where in this Contract anything is required to be to the satisfaction of the Independent Engineer, the same must be to his reasonable satisfaction and in forming any opinion or issuing any notice hereunder the Independent Engineer shall act independently, fairly and reasonably as between the Authority and the Contractor. In the event that the Independent Engineer fails to issue the Engineer's Phase 2 Declaration despite the actual completion of the relevant part of the Phase 2 Works in accordance with **Part 3 of Schedule A (*Design and Construction Specification – Phase 2 Works*)**, or if the Independent Engineer fails to comply with any of its material obligations under the Phase 2 Works Monitoring Contract and such failure causes loss to the Contractor, the

Authority and/or the Contractor shall enforce their respective rights (if any) under the Phase 2 Works Monitoring Contract against the Independent Engineer so as to remedy any such failure in so far as such failure can be thus remedied. If such failure cannot be thus remedied and, in the reasonable opinion of the Authority and/or the Contractor, the Independent Engineer has not performed its obligations to the Authority and/or the Contractor in a satisfactory manner, the Authority and the Contractor agree to terminate the Phase 2 Works Monitoring Contract in accordance with and subject to the terms of the Phase 2 Works Monitoring Contract and appoint a new Independent Engineer for the purposes of this Contract.

- 27C.4 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 New Houseblock or any of the equipment referred to in **Schedule B (Equipment)** except in the case of the Quantum System, 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.

27D **Phase 2 Snagging Matters**

- 27D.1 The Independent Engineer shall issue a certificate in accordance with **Clause 27C (Engineer's Phase 2 Declaration)** notwithstanding that there are any Phase 2 Snagging Matters. Where there are Phase 2 Snagging Matters, the Independent Engineer shall, within ten (10) Days of the issue of his certificate in accordance with **Clause 27C (Engineer's Phase 2 Declaration)**, issue a notice specifying the Phase 2 Snagging Matters together with an estimate of the cost of rectifying such Phase 2 Snagging Matters.
- 27D.2 Following the issue of a certificate in accordance with **Clause 27C (Engineer's Phase 2 Declaration)** the Contractor shall, in consultation with the Authority and the Independent Engineer and in such manner as to cause as little disruption as reasonably practicable to the Custodial Services, rectify all Phase 2 Snagging Matters within a reasonable period from the issue of the certificate in accordance with **Clause 27C (Engineer's Phase 2 Declaration)** and in any event before the end of the Phase 2 Works Defects Period.
- 27D.3 If, within the period referred to in **Clause 27D.2 (Snagging Matters)** the Contractor has failed to rectify the Phase 2 Snagging Matters specified in such notice, the Authority may by itself or by the engagement of others carry out the works necessary to rectify the Phase 2 Snagging Matters at the Contractor's cost. Such costs will be those costs that have been reasonably incurred by the Authority.

27D.4 The issue of the certificate of the Independent Engineer in accordance with **Clause 27C (Engineer's Phase 2 Declaration)** shall in no way affect the other obligations of the Contractor under this Contract.

28. **Cell Certification**

28.1 For the duration of this 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 the terms of:

- (a) **Part 1 of Schedule B (Equipment)** and **Schedule C (Maintenance Requirements)**; or
- (b) **Part 3 of Schedule B (Equipment)** and **Schedule C (Maintenance Requirements)** in respect of the Houseblock; or
- (c) items 1,2 and 3 of Table 4A of **Part 4 of Schedule B (Equipment)**, and items 1 to 10 (inclusive), 15-18 (inclusive), 28 and 47 of Table 4C of **Part 4 of Schedule B (Equipment)** and **Schedule C (Maintenance Requirements)** in respect of the New Houseblock

fair wear and tear excepted.

28.2 Prior to its first ever occupation by a Prisoner or first occupation by a Prisoner subsequent to any material refurbishment or rebuilding, each and every Prison Cell shall be inspected by the Authority (which expression shall for the purposes of this **Clause 28 (Cell Certification)** mean an officer of the Authority) to determine whether the Prison Cell complies with the terms of the relevant part (as indicated in Clause 28.1) of **Schedule B (Equipment)** and **Schedule C (Maintenance Requirements)**. When the Authority agrees that an inspected Prison Cell complies with the terms of the relevant part (as indicated in Clause 28.1) of **Schedule B (Equipment)** and **Schedule C (Maintenance Requirements)**, the Authority shall issue the Contractor with a Cell Certificate for the inspected Prison Cell, in accordance with **Clause 31 (Timetable for Approving Availability)**, **Clause 31A (Timetable for Approving Availability - Increased Capacity)** or **Clause 31B (Timetable for Approving Availability – Phase 2 Increased Capacity)** (as relevant).

28.3 Following the issue of any initial Cell Certificate in accordance with **Clause 28.2 (Cell Certification)**, the Authority shall carry out such further inspections during the term of the Contract as it thinks fit, in order to reassess the certification of any Prison Cell. In the event that the Authority is reasonably of the opinion during any such further inspection that a Prison Cell does not comply substantially with all of the requirements of the relevant part (as indicated in

29. **Regime Approval**

29.1 The Contractor shall ensure that, on or before the Estimated Opening Date the Prison has received Regime Approval.

29.2 To obtain Regime Approval for the Prison the Contractor must demonstrate to the Authority that it is capable of providing a service as set out in **Part 1 of Schedule D (*Operational Requirements*)** and that items (a) and (b) are in accordance with the terms of the Contract:

- (a) the provision of properly trained and certified staff for the Prison; and
- (b) the final approval of the Authority to the Contractor's procedures and plans has been obtained in accordance with **Clause 21.6 (*Preparation for Operation of the Prison*)**.

The Authority and such other persons as the Authority may specify, shall carry out such inspections as it considers necessary in accordance with **Clause 31 (*Timetable for Approving Availability*)**, in order to determine whether the Prison shall receive Regime Approval.

29A. **Houseblock Regime Approval**

29A.1 The Contractor shall ensure that, on or before the Contractual Houseblock Opening Date the Houseblock has received Houseblock Regime Approval.

29A.2 To obtain Houseblock Regime Approval for the Houseblock the Contractor must demonstrate to the Authority that it is capable of providing a service as set out in

Part 1 of Schedule D (Operational Requirements) and that items (a) and (b) are in accordance with the terms of the Contract:

- (a) the provision of properly trained and certified staff for the Houseblock; and
- (b) the final approval of the Authority to the Contractor's procedures and plans has been obtained in accordance with **Clause 21A.6 (Preparation for Operation of the Increased Capacity)**.

29A.3 The Authority and such other persons as the Authority may specify, shall carry out such inspections as it considers necessary in accordance with **Clause 31A (Timetable for Approving Availability - Increased Capacity)**, in order to determine whether the Houseblock shall receive Houseblock Regime Approval.

29B. New Houseblock Regime Approval

29B.1 The Contractor shall ensure that, on or before the Contractual New Houseblock Opening Date the New Houseblock has received New Houseblock Regime Approval.

29B.2 To obtain New Houseblock Regime Approval for the New Houseblock the Contractor must demonstrate to the Authority that it is capable of providing a service as set out in **Part 1 of Schedule D (Operational Requirements)** and that items (a) and (b) are in accordance with the terms of the Contract:

- (a) the provision of properly trained and certified staff for the New Houseblock; and
- (b) the final approval of the Authority to the Contractor's procedures and plans has been obtained in accordance with **Clause 21B.6 (Preparation for Operation of the Phase 2 Increased Capacity)**.

29B.3 The Authority and such other persons as the Authority may specify, shall carry out such inspections as it considers necessary in accordance with **Clause 31B (Timetable for Approving Availability – Phase 2 Increased Capacity)**, in order to determine whether the New Houseblock shall receive New Houseblock Regime Approval.

30. Available Prisoner Places

30.1 There shall be no Available Prisoner Places in the Existing Prison until:

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

- (b) Regime Approval has been obtained under **Clause 29 (Regime Approval)**.

30A.1 There shall be no Available Prisoner Places in respect of the Increased Capacity until:

- (a) the Engineer's HBJ and Car Park Declaration has been obtained; and
- (b) Houseblock Regime Approval has been obtained under **Clause 29A (Houseblock Regime Approval)**.

30B.1 There shall be no Available Prisoner Places in respect of the Phase 2 Increased Capacity until:

- (a) the Engineer's Phase 2 Declaration has been obtained; and
- (b) New Houseblock Regime Approval has been obtained under **Clause 29B (New Houseblock Regime Approval)**.

30C.1 Provided the conditions in Clause 30A.1 or 30B.1 (as applicable) have been satisfied, a Prisoner Place shall constitute an Available Prisoner Place for the purpose of this Contract on a particular Day, if:

- (a) the Prison Cell in which the Prisoner Place is contained has been issued with a Cell Certificate pursuant to **Clause 28.2 (Cell Certification)** which has not subsequently been withdrawn pursuant to **Clause 28.3 (Cell Certification)**; and
- (b)
 - (i) during that Day, it has complied with the Standard Requirements; or
 - (ii) the Contractor has notified the Authority of any failure to comply with the Standard Requirements of an Available Prisoner Place; or
 - (iii) the Contractor has notified the Authority (without delay) of an incident that would, ordinarily, raise doubts as to the availability of an Available Prisoner Place under paragraph (n) of the Standard Requirements

- (iv) but, in either case, the Authority has decided not to require the Prisoner to be removed from the Prison.

- 30.2 Failure by the Contractor to maintain either of the items (a) or (b) of **Clause 30C.1 (Available Prisoner Places)** on any particular Day during the term of the Contract with respect to a Prisoner Place shall entitle the Authority to treat that Prisoner Place as not being an Available Prisoner Place on that particular Day, until such time as the relevant item (a) or (b) is restored.
- 30.3 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.
- 30.4 No Prison Cell (other than the designated double cells in the New Houseblock or in the healthcare centre of the Prison or as allocated to each Prison Cell in accordance with agreed Cell Certificates) shall be used to accommodate more than one (1) Prisoner at any one time, except where the number of Prisoners sharing a Prison Cell with another Prisoner does not exceed the Permitted Level.
- 30.5 Where two (2) Prisoners share a Prison Cell otherwise than as expressly permitted in **Clause 30.4 (Available Prisoner Places)**, 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:

- (a) For so long as:

- (i) the number of Prisoners sharing Prison Cells (other than the designated double cells in the New Houseblock or in the healthcare centre of the Prison or as allocated to each Prison Cell in accordance with agreed Cell Certificates) is greater than the Permitted Level but less than one hundred and sixty (160) in excess of the Permitted Level; and
- (ii) the sharing of Prison Cells in the manner referred to in (i) above has been reported in two or more consecutive 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 one per cent. (1%) 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 third such consecutive Daily Report;

- (a) Where the number of Prisoners sharing Prison Cells (other than the designated double cells in the New Houseblock or in the healthcare centre of the Prison or as allocated to each Prison Cell in accordance with agreed Cell Certificates) is recorded as one hundred and sixty (160) or more in excess of the Permitted Level in any single Daily Report, then the Fixed Availability Fee, the Indexed Availability Fee and Indexed Costs Fee in respect of the Prisoner Places occupied by all such Prisoners shall each be reduced by five per cent. (5%) for each Day that the sharing referred to above is reported in the relevant Daily Report.
- (b) To the extent that any reduction is made in respect of any Prisoner Places in relation to any Day under (b) above, no reduction will be made in respect of that Day under (a). In both cases the calculation being made monthly and in accordance with paragraph 10 of Schedule E (***Payment Mechanism***).

- 30.6 No Prison Cell, other than Prison Cells designated for multiple occupancy in the healthcare centre of the Prison or in accordance with agreed Cell Certificates, shall be used to accommodate more than two (2) Prisoners under any circumstances.
- 30.7 The Contractor agrees that it will not refuse to accept a Prisoner for an Available Prisoner Place where such Prisoner has been sent to the Prison by any Court; and that it will not refuse to accept a Prisoner for an Available Prisoner Place where it receives a request to do so from the Authority unless the Contractor has reasonable cause to believe that complying with the Authority's request would prejudice the Contractor's ability to maintain security and control within the Prison. 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 Prisoner occupy such space, 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 30.1 (*Available Prisoner Places*)**); if the Authority is acting in accordance with such guidelines, the Prisoner Place will be deemed not to be an Available Prisoner Place until the earlier to occur of the following:

- (a) until the Actual Increased Capacity Date, eight hundred (800) or more Prisoners have occupied the Prison at any one time after the date of the Contractor's refusal;
- (b) from the Actual Increased Capacity Date until the Actual Phase 2 Increased Capacity Date, one thousand one hundred and thirty two (1132) or more Prisoners have occupied the Prison at any one time after the date of the Contractor's refusal;
- (c) from the Actual Phase 2 Increased Capacity Date, one thousand five hundred and nineteen (1519) or more Prisoners have occupied the Prison at any one time after the date of the Contractor's refusal; or
- (d) three (3) months have passed since the date of the Contractor's refusal.

30.8 The Contractor shall be under a duty to inform the Authority immediately if any event occurs which renders an Available Prisoner Place no longer an Available Prisoner Place, whether by reason of **Clause 30.2 (Available Prisoner Places)**, or by reason of any other cause.

31. **Timetable for Approving Availability**

31.1 A minimum of thirty (30) Days prior to any date when the Contractor considers it can provide the Authority with Available Prisoner Places as required by **Clauses 22 (Contractual Opening Date), 23 (Phase-in Period), 24 (Full Operation Date)** and it shall give written notice to the Authority of such opinion, and the said thirty (30) Days shall be the notice period. The Contractor shall specify the number of Prison Cells and Available Prisoner Places that he considers he can provide to the Authority at the expiry of the notice period. The Contractor may exercise its rights under this Clause irrespective of whether or not the Independent Engineer has issued the Engineer's Declaration in accordance with **Clause 27 (Engineer's Declaration)**.

31.2 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 and Regime Approval, in accordance with **Clauses 28 (Cell Certification) and 29 (Regime Approval)**.

31.3 The Authority shall issue each Prison Cell with a Cell Certificate and the Prison with Regime Approval within the notice period referred to in **Clause 31.1 (Timetable for Approving Availability)**, unless the Prison Cell or Prison does not comply with **Clauses 28 (Cell Certification) and 29 (Regime Approval)**, in

31.4 In the event that:

- (a) the Authority fails to certify a Prison Cell and/or grant Regime Approval to the Prison before the expiry of the notice period; and
- (b) the Authority fails to provide the Contractor with a written record under **Clause 31.3 (*Timetable for Approving Availability*)** 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 31.1 (*Timetable for Approving Availability*)** a Prisoner Place would have been treated as being an Available Prisoner Place, then for the sole purpose of **Clauses 26 (*Liquidated Damages*)** and **41 (*Pricing Mechanism*)**, the Prisoner Place shall be treated as an Available Prisoner Place (for the sole purpose of **Clauses 26 (*Liquidated Damages*)** and **41 (*Pricing Mechanism*)**) until such time as either the Authority certifies the Prison Cell and grants Regime Approval (as appropriate) so as to make it an Available Prisoner Place within the meaning of **Clause 30 (*Available Prisoner Places*)** or the Authority provides the Contractor with a written record in accordance with **Clause 31.3 (*Timetable for Approving Availability*)** so that the Prisoner Place ceases to be treated as an Available Prisoner Place.

31.5 Where a Prison Cell is refused Cell Certification or the Prison is refused Regime Approval by the Authority, and a written record of the reasons has been provided to the Contractor in accordance with **Clause 31.3 (*Timetable for Approving Availability*)**, the Contractor shall comply with the requirements of this Clause and **Clauses 28 (*Cell Certification*)** or **29 (*Regime Approval*)** (as appropriate) when seeking any new approval or certification for the Prison or a Prison Cell, save that the notice period shall be fourteen (14) Days instead of thirty (30) Days.

31A. **Timetable for Approving Availability - Increased Capacity**

31A.1 A minimum of thirty (30) Days prior to any date when the Contractor considers it can provide the Authority with Available Prisoner Places as required by **Clauses 23A (*Increased Capacity Phase-in Period*)** and **24A (*Actual Increased Capacity Date*)**, it shall give written notice to the Authority of such opinion, and the said thirty (30) Days shall be the notice period. The Contractor shall specify the number of Prison Cells and Available Prisoner Places that he considers he can provide to the Authority at the expiry of the notice period. The Contractor may exercise its rights under this Clause irrespective of whether or not the

Independent Engineer has issued the Engineer's HBJ and Car Park Declaration in accordance with **Clause 27A (Engineer's HBJ and Car Park Declaration)**.

31A.2 The Authority, and such other persons as the Authority may specify, whenever so notified, shall carry out inspections of the Houseblock, for the purpose of granting Cell Certificates and Houseblock Regime Approval, in accordance with **Clauses 28 (Cell Certification)** and **29A (Houseblock Regime Approval)**.

31A.3 The Authority shall issue each Prison Cell that forms part of the Increased Capacity with a Cell Certificate and the Houseblock with Houseblock Regime Approval within the notice period referred to in **Clause 31A.1 (Timetable for Approving Availability - Increased Capacity)**, unless the relevant Prison Cell or Houseblock does not comply with **Clauses 28 (Cell Certification)** and **29A (Houseblock Regime Approval)**, in which case the Authority shall provide the Contractor with a written record of the reasons why such Prison Cell or the Houseblock will not be so certified or approved.

31A.4 In the event that:

- (a) the Authority fails to certify a Prison Cell that forms part of the Increased Capacity and/or grant Houseblock Regime Approval to the Houseblock before the expiry of the notice period; and
- (b) the Authority fails to provide the Contractor with a written record under **Clause 31A.3 (Timetable for Approving Availability - Increased Capacity)** 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 31A.1 (Timetable for Approving Availability - Increased Capacity)** a Prisoner Place would have been treated as being an Available Prisoner Place, then for the sole purpose of **Clauses 26A (Liquidated Damages - Increased Capacity)** and **41 (Pricing Mechanism)**, the Prisoner Place shall be treated as an Available Prisoner Place (for the sole purpose of **Clauses 26A (Liquidated Damages - Increased Capacity)** and **41 (Pricing Mechanism)**) until such time as either the Authority certifies the relevant Prison Cell and grants Houseblock Regime Approval (as appropriate) so as to make it an Available Prisoner Place within the meaning of Clause 30 (**Available Prisoner Places**) or the Authority provides the Contractor with a written record in accordance with **Clause 31A.3 (Timetable for Approving Availability - Increased Capacity)** so that the Prisoner Place ceases to be treated as an Available Prisoner Place.

31A.5 Where a Prison Cell that forms part of the Increased Capacity is refused Cell Certification or the Houseblock is refused Houseblock Regime Approval by the

Authority, and a written record of the reasons has been provided to the Contractor in accordance with **Clause 31A.3 (*Timetable for Approving Availability - Increased Capacity*)**, the Contractor shall comply with the requirements of this Clause and **Clauses 28 (*Cell Certification*)** or **29A (*Houseblock Regime Approval*)** (as appropriate) when seeking any new approval or certification for the Houseblock or a Prison Cell that forms part of the Increased Capacity, save that the notice period shall be fourteen (14) Days instead of thirty (30) Days.

31B. Timetable for Approving Availability – Phase 2 Increased Capacity

31B.1 A minimum of thirty (30) Days prior to any date when the Contractor considers it can provide the Authority with Available Prisoner Places as required by **Clauses 23B (*Phase 2 Increased Capacity Phase-in Period*)** and **24B (*Actual Phase 2 Increased Capacity Date*)**, it shall give written notice to the Authority of such opinion, and the said thirty (30) Days shall be the notice period. The Contractor shall specify the number of Prison Cells and Available Prisoner Places that he considers he can provide to the Authority at the expiry of the notice period. The Contractor may exercise its rights under this Clause irrespective of whether or not the Independent Engineer has issued the Engineer's Phase 2 Declaration in accordance with **Clause 27C (*Engineer's Phase 2 Declaration*)**.

31B.2 The Authority, and such other persons as the Authority may specify, whenever so notified, shall carry out inspections of the New Houseblock, for the purpose of granting Cell Certificates and New Houseblock Regime Approval, in accordance with **Clauses 28 (*Cell Certification*)** and **29B (*New Houseblock Regime Approval*)**.

31B.3 The Authority shall issue each Prison Cell that forms part of the Phase 2 Increased Capacity with a Cell Certificate and the New Houseblock with New Houseblock Regime Approval within the notice period referred to in **Clause 31B.1 (*Timetable for Approving Availability – Phase 2 Increased Capacity*)**, unless the relevant Prison Cell or New Houseblock does not comply with **Clauses 28 (*Cell Certification*)** and **29B (*New Houseblock Regime Approval*)**, in which case the Authority shall provide the Contractor with a written record of the reasons why such Prison Cell or the New Houseblock will not be so certified or approved.

31B.4 In the event that:

- (a) the Authority fails to certify a Prison Cell that forms part of the Phase 2 Increased Capacity and/or grant New Houseblock Regime Approval to the New Houseblock before the expiry of the notice period; and

- (b) the Authority fails to provide the Contractor with a written record under **Clause 31B.3 (*Timetable for Approving Availability – Phase 2 Increased Capacity*)** 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 31B.1 (*Timetable for Approving Availability – Phase 2 Increased Capacity*)** a Prisoner Place would have been treated as being an Available Prisoner Place, then for the sole purpose of **Clauses 26B (*Liquidated Damages – Phase 2 Increased Capacity*)** and **41 (*Pricing Mechanism*)**, the Prisoner Place shall be treated as an Available Prisoner Place (for the sole purpose of **Clauses 26B (*Liquidated Damages – Phase 2 Increased Capacity*)** and **41 (*Pricing Mechanism*)**) until such time as either the Authority certifies the relevant Prison Cell and grants New Houseblock Regime Approval (as appropriate) so as to make it an Available Prisoner Place within the meaning of Clause 30 (***Available Prisoner Places***) or the Authority provides the Contractor with a written record in accordance with **Clause 31B.3 (*Timetable for Approving Availability – Phase 2 Increased Capacity*)** so that the Prisoner Place ceases to be treated as an Available Prisoner Place.

- 31B.5 Where a Prison Cell that forms part of the Phase 2 Increased Capacity is refused Cell Certification or the New Houseblock is refused New Houseblock Regime Approval by the Authority, and a written record of the reasons has been provided to the Contractor in accordance with **Clause 31B.3 (*Timetable for Approving Availability – Phase 2 Increased Capacity*)**, the Contractor shall comply with the requirements of this Clause and **Clauses 28 (*Cell Certification*)** or **29B (*New Houseblock Regime Approval*)** (as appropriate) when seeking any new approval or certification for the New Houseblock or a Prison Cell that forms part of the Phase 2 Increased Capacity, save that the notice period shall be fourteen (14) Days instead of thirty (30) Days.

PART V - OPERATION

32. Conduct of Operation

- 32.1 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 and by reason of the Secretary of State's powers under the Criminal Justice Act 1991.
- 32.2 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, without prejudice to the Contractor's rights under **Clause 42.2 (*Variation of Price*)**.

32.3 Without prejudice to **Clause 32.2 (*Conduct of Operation*)** the Contractor shall operate the Prison in accordance with the terms of **Part 1 of Schedule D (*Operational Requirements*)**.

33. **The Director**

33.1 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.

33.2 The Contractor shall submit a nomination for the position of Director to the Authority in accordance with **Clause 21 (*Preparation for Operation of the Prison*)**, 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.

33.3 During the term of this Contract the Director shall be appointed by the Contractor and the Contractor undertakes to the Authority to comply with Section 85(1)(a) of the Criminal Justice Act 1991. Any change to the person occupying the position of Director must be approved by the Authority before being effected.

33.4 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.

34. **Prisoner Custody Officers**

34.1 For the purpose of this **Clause 34 (*Prisoner Custody Officers*)**, and Clause 35 (***The Staff***) "***member of staff***" shall mean a person who is required to work or perform duties at the Prison during the period commencing on the Actual Opening Date and who is an employee of the Contractor, or an employee of any Sub-contractor, and "***staff***" shall have the like meaning.

34.2 All persons carrying on Custodial Duties in the Prison shall be certified 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

34.3 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.

34.4 The Contractor shall ensure that all Prisoner Custody Officers shall carry out their duties.

34.5 Where a Prisoner Custody Officer has not been engaged on work in the Prison for a period of more than 6 months, his certificate shall lapse.

35. **The Staff**

35.1 The Contractor shall be responsible for the recruitment and provision of suitable staff and all staff shall receive proper training in their functions and duties and such training is subject to approval by the Authority.

35.2 The Authority shall approve any and all uniforms worn by the staff of the Prison (including the Prisoner Custody Officers) before such uniforms are taken into use, and the Contractor's required standards of dress for the staff shall be approved by the Authority before being implemented. Any change to the uniforms or standards shall be subject to the Authority's approval, not to be unreasonably withheld.

35.3 All members of staff who are not required to be certified as Prisoner Custody Officers shall be approved 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.

35.4 The Contractor shall provide all staff with the operating and procedural instructions prepared in accordance with **Clause 21 (*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.

35.5 The Contractor shall ensure that all staff whether employed by it, by a Sub-contractor or self-employed, are under an obligation of confidence owed not only

- 35.6 The Contractor shall notify the Authority of any behaviour by any employee which comes to its attention and casts doubt on that employee's fitness to work within the Prison. If, in the reasonable opinion of the Authority, any member of staff is guilty of misconduct or it is not in the public interest for such a person to work in the Prison the Contractor shall refuse the admission of such person to the Prison and shall without delay on being required to do so remove such person from the Prison and will cause the work to be performed by such other person as may be deemed necessary, and the Authority will, in respect of any such member of staff who has been certified as a Prisoner Custody Officer, revoke such certification.
- 35.7 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 any 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.
- 35.8 The Contractor shall maintain sufficient staff to perform the obligations of the Contract, including the provision of cover for annual and sick leave or other absence and other emergencies.
- 35.9 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.
- 35.10 If, whilst operating the Prison, the 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 34 (Prisoner Custody Officers)** and **Clause 33 (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.
- 35.11 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 365 (or 366 in a leap year) Days a Year in respect of the performance of the Contract.

- 35.12 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 365 (or 366 in a leap year) Days a Year. The Authority shall be kept informed of the procedures by which this obligation will be performed, and shall agree all such procedures, and require such amendments as it thinks fit.
- 35.13 The Contractor shall be entirely responsible for all aspects, including costs, of the contracts of employment of his employees.
- 35.14 The Contractor shall be liable for any costs and payment of redundancy awards to his employees at the end of the Contract Term or (except in case of termination under **Clause 51 (Voluntary Termination)**) earlier termination of this Contract.

35A TUPE

- 35A.1 Unless otherwise agreed by both Parties, the Contractor and the Authority acknowledge that their intention is that the Staff shall be dealt with on the basis that the Transfer of Undertakings (Protection of the Employment) Regulations 2006 ("TUPE") (as amended or replaced) will apply at the expiry or the termination of the Contract. The Parties agree that if for any reason TUPE shall not apply or if TUPE shall have been repealed without being replaced, the Parties will as between themselves (but provided that the Authority shall procure that any successor to the Contractor in respect of the Prison (other than the Authority) shall be bound by the same agreement and intent) procure that the Staff are dealt with as if TUPE (in the form it then is, or if repealed, it was in when last in force) applied.
- 35A.2.1 During the period of eighteen months preceding the expiry of the Contract or at any other time as directed by the Authority or after the Authority has given notice to terminate the Contract, the Contractor shall (subject to its obligations under the Data Protection Act and guidance and/or codes of practice issued thereunder by the Information Commissioner):
- (a) use reasonable endeavours to fully and accurately disclose to the Authority the information listed in Part 1 of Schedule ZA relating to personnel who are engaged in providing the services under the Contract; and
 - (b) permit the Authority to use the information to inform any tenderer bidding for any services which are substantially the same type of services as provided by this Contract provided that, prior to doing so, any such tenderer shall have executed in writing a confidentiality undertaking in favour of the Contractor.

35A.2.2 During the period of six months preceding the expiry of the Contract, or after the Authority has given notice to terminate the Contract, the Contractor shall provide all reasonable assistance and facilities to the Authority, or any prospective employer of the said personnel as the Authority may determine, to include the communication with and meeting of those personnel whom the Contractor reasonably believes may be involved in any TUPE transfer and their trade union or other employee representatives when and where the Authority may reasonably determine, solely for the purpose of facilitating the transfer of any Staff to the Authority or such a prospective employer under TUPE. The Contractor shall be consulted in good time on the content of any communications to its Staff proposed to be made. The Authority shall not require any assistance, facilities, communication or meeting which may reasonably be expected to materially interfere with the efficient operation of the Prison. The Authority will provide or will procure that the prospective employer will provide to the Contractor, in sufficient time before any TUPE transfer to enable the Contractor to consult with the appropriate representatives of the Staff who may transfer, all information about the measures which it envisages it will in connection with the transfer, take in relation to the Staff or, if it envisages that no measures will be taken, confirmation of that fact.

35A.3 During the period of three months preceding the expiry of the Contract or at any time as directed by the Authority after the Authority has given notice to terminate the Contract, the Contractor shall (subject to its obligations under the Data Protection Act and guidance and/or codes or practice issued thereunder by the Information Commissioners):

- (a) use reasonable endeavours to fully and accurately disclose to the Authority the information listed in Part 2 of Schedule ZA which relates to its employees who are engaged in providing the services under the Contract, and
- (b) permit the Authority to use the information to inform any prospective employer about its prospective employees provided that, prior to doing so, the prospective employer shall have executed in writing a confidentiality undertaking in favour of the Contractor.

35A.4.1 From the earlier of the date eighteen months prior to the expiry of the Contract and the date of being given notice of the Authority's intention to re-tender the services being performed under the Contract (and the Operating Sub-Contract) and the date the notice terminating the Contract (and the Operating Sub-Contract) for whatever reason has been given, the Contractor shall not (and shall ensure that the Operating Sub-Contractor shall not) without the prior written agreement of the Authority:

- (a) materially amend the rates of remuneration, hours to be worked, or holiday entitlement of any employee any part of the Services;
- (b) remove or replace any employee any part of the services under this Contract (and the Operating Sub-Contract) or engage or deploy any person other than those already providing services under the Contract (and the Operating Sub-Contract) to perform the Services;
- (c) make or propose any material changes to the terms or conditions of employment in respect of any employee performing any part of the Services;
- (d) give notice to or terminate the employment of any employee performing any part of the Services (save in respect of gross misconduct, in which event the Contractor shall inform the Authority forthwith).

35A.4.2 Agreement by the Authority in respect of Clause 35A.4.1 (a), (b), (c) and (d) above shall not be unreasonably withheld or delayed;

35A.4.3 The Contractor shall indemnify the Authority and keep the Authority fully indemnified against all losses incurred by the Authority arising from any change or proposed change to any of the terms and conditions of employment of any of the employees as set out in Clause 35A.4.1 other than those which have been agreed to or requested by the Authority. The maximum amount payable under this indemnity shall be subject to the limits set out in Clause 5.4 (Indemnity).

35A.5 All salaries and other emoluments (but excluding leave entitlement) including tax and national insurance payments, contributions to retirement benefit schemes, allowances expenses and bonus and commission payments relating to employees providing services under the Contract (and the Operating Sub-Contract) shall be discharged by the Contractor and all necessary apportionments shall be made. The Contractor shall indemnify the Authority against all losses arising from the Contractor's failure to so discharge. The maximum amount payable under this indemnity shall be subject to the limits set out in Clause 5.4 (Indemnity).

35A.6 Within 14 days prior to the Transfer Date the Contractor shall provide to the Authority and the New Contractor a complete and accurate list of all Transferring Employees expected to transfer on the Transfer Date and shall use its reasonable endeavours to provide the Authority with any changes to such list as soon as reasonably practicable.

- 35A.7 Within 14 days following the Transfer Date the Contractor shall provide to the Authority and the New Contractor in writing Final Pay Details of the Transferring Employees.
- 35A.8 From the date of being given notice of the Authority's intention to re-tender the Services being performed under the Contract (and the Operating Sub-Contract) or where notice terminating the Contract and Operating Sub-Contract has been given, the Contractor shall (and shall ensure that the Operating Sub-Contractor shall) promptly notify the Authority:
- (a) of the period of notice of termination of employment necessary to be given by the Contractor or the Operating Sub-contractor or received from any employee performing any part of the Services regardless of when such notice is to take effect;
 - (b) of the termination, for whatever reason of the employment of any employee performing any part of the Services; and
 - (c) of any other material change to any employee performing part of the Services and their terms or conditions of employment the information set forth in Part 2 of Schedule ZA and the Relevant Personnel Documentation.
- 35A.9 The Contractor warrants that it shall satisfy and shall indemnify the Authority against all losses arising from its failure to satisfy all of its obligations up to the Transfer Date in respect of all salaries and other emoluments, tax and national insurance payments, contributions to retirement benefit schemes and bonus arrangements in respect of each Transferring Employee provided that (i) where the same are due to be paid before the Transfer Date in respect of the period after the Transfer Date, the same shall be paid by the Contractor who shall forthwith on demand be indemnified in respect thereof by the Authority and (ii) where the Transferring Employees are to be paid after the Transfer Date in respect of the period up to and including the Transfer Date the Authority forthwith on demand shall be indemnified by the Contractor in respect of this payment. The maximum amount payable under this indemnity shall be subject to the limits set out in Clause 5.4 (Indemnity).
- 35A.10 In respect of the termination or expiry of the Contract, the Contractor shall indemnify and keep the Authority indemnified in respect of all and any losses whatsoever suffered or incurred by the Authority or the New Contractor by reason of any proceeding claim or demand arising out of or in connection with:
- (a) any claim against the Authority or the New Contractor by any Transferring Employee included on the list provided in

accordance with Clause 35A.6 so far as it relates to any act or omission of the Contractor prior to the Transfer Date;

- (b) any claim against the Authority or the New Contractor by any Transferring Employee whose name is not included on the list (as updated pursuant to Clause 35A.6) provided by the Contractor pursuant to Clause 35A.6;
- (c) any claim against the Authority or New Contractor by any person who is not a Transferring Employee that they were employed by the Contractor and/or the Operating Sub-contractor and any subcontractor of the Contractor and/or the Operating Sub-contractor immediately prior to the Transfer Date in the provision of the Services and that accordingly their employment has transferred to the New Contractor provided that the New Contractor terminates their employment within 10 days of becoming aware of the person's claim and;
- (d) any claim or proceeding by any Trade Union appropriate representative as defined within Regulation 11A of TUPE or any employee representative brought against the Authority in respect of any employee employed in the provision of the Services under Regulation 11 of TUPE save where the claim or proceeding is attributable to the default of the Authority or the New Contractor.

The maximum amount payable under this indemnity shall be subject to the limits set out in Clause 5.4 (Indemnity).

35A.11 The Contractor shall on the expiry or termination of the Contract:

- (a) [not used]
- (b) subject to its obligations under the Data Protection Act 1998 and guidance and/or codes of practice issued thereunder by the Information Commissioner, provide the Authority with a copy of the employment records of the Transferring Employees in respect of matters set out in parts 1 and 2 of Schedule ZA so far as relevant and not excessive to the new employment relationship.

35A.12 The Contractor shall on the expiry or termination of the Contract (as the case may be):

- (a) warrant to the Authority that the information provided pursuant to Clause 35A.2.1(a), 35A.3(a), 35A.8(c) and 35A.11(b) is accurate and complete in all material respects;
- (b) [not used]

Provided that such warranties are given subject to matters disclosed in writing to the Authority and provided further that:

- (i) no claim shall be made under such warranties unless the amount of the claim exceeds [REDACTED] (indexed at a rate of 3% per annum) and, when aggregated with the amount of any other claims (exceeding [REDACTED] indexed at a rate of 3% per annum) made under such warranties, exceeds [REDACTED] (indexed at a rate of 3% per annum);
- (ii) the liability of the Contractor in respect of such warranties shall be limited as provided in Clause 5;
- (iii) all liability of the Contractor in respect of such warranties shall cease 6 months after the expiry or termination of the Contract as the case may be.

35A.13 For the purposes of this Clause 35A:

"Final Pay Details" means in respect of each of the Transferring Employees the following data for the final month: cumulative pay for tax and pension purposes, cumulative tax paid, tax code, voluntary deductions from pay, bank/building society account details for payroll purposes;

"Transfer Date" means the date of termination or expiry of the Contract;

"Transferring Employees" means the employees of the Contractor and/or the Operating Sub-contractor who are at the Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of the Contract pursuant to TUPE or the Acquired Rights Directive EEC 2001/23, as amended or otherwise to the New Contractors;

"Relevant Personnel Documentation" means all written contracts of employment or written particulars thereof, staff manuals or handbooks and agreements (including collective agreements) that relate to the Transferring Employees' terms and conditions of employment and benefits; and

"New Contractor" means the person nominated by the Authority to undertake the services substantially the same as the Services after the expiry or termination of the Contract.

36. **The Controller**

- 36.1 The Contractor will note and comply with the provisions of Section 85 of the Criminal Justice Act 1991.
- 36.2 The Controller shall be allowed unrestricted access to the Prison at any hour of the Day, and shall be provided with accommodation in accordance with **Clause 60 (*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 the Authority.
- 36.3 The Authority will, so far as it is able, procure the performance by the Controller of his statutory duties.

37. **Monitoring and Inspection**

- 37.1 The Contractor shall give or procure access to the Prison and to any training or catering or other facilities of the Contractor or the Operating Sub-contractor and shall use all reasonable endeavours to procure access is given to any such facilities of any other Sub-contractor where such facilities are used in connection with the provision of Custodial Services (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 Independent Monitoring Board, and any other statutory, regulatory or other properly interested body, including relevant international bodies.
- 37.2 The Contractor shall be required to permit or use all reasonable endeavours to 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.
- 37.3 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 of the Prison or unreasonably to interfere with the operation of the Prison (having regard to the nature of the relevant review). The Authority may require the Contractor to make reasonable 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 10 (*Changes to Services Required*)**, the provisions of **Clause 42 (*Variation of Price*)** shall apply.

37.4 Copies of each Daily Report shall be provided 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 available on the Prison's computer network within one (1) 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 11 of **Schedule E (*Payment Mechanism*)** shall apply.

38. **Escort Arrangements**

38.1 The Contractor is under a duty to co-operate with any other person providing a Prisoner Escort Service to the Prison.

38.2 Unless the Authority otherwise notifies the Contractor in writing, the Contractor will provide Prisoner Escort Services in accordance with **Part 3 of Schedule D (*Operational Requirements*)**, for which the Contractor will be entitled to a Yearly fee (payable monthly in arrears) calculated in accordance with paragraph 8 of **Schedule E (*Payment Mechanism*)**.

38.3 The Contractor shall, if the Authority so requires, itself provide a Prisoner Escort Service other than as provided in **Clause 38.2 (*Escort Arrangements*)**, subject to **Clause 10 (*Change to Services Required*)**.

39. **Visitors**

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

40. **Price**

40.1 The Contract Price shall be calculated by reference to the relevant formula at paragraph 10 of **Schedule E (*Payment Mechanism*)**, expressed in pounds sterling per Day, subject to any variations as provided for in Clause 42 (***Variation of Price***).

40.2 If the Engineer's Declaration is not issued prior to 17 March 1998, the payment to be made pursuant to **Clause 45.2 (*Payment*)** shall be reduced by [REDACTED].

40.3 If any payment is reduced by operation of **Clause 40.2 (*Price*)** and the Engineer's Declaration is issued on or after 17 March 1998, then the next

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41. **Pricing Mechanism**

- 41.1 There shall be a Fixed Availability Fee as appears at **Schedule E (*Payment Mechanism*)**, which shall be expressed as a fee per Available Prisoner Place per Day and shall not be subject to indexation;
- 41.2 There shall be an Indexed Availability Fee and an Indexed Costs Fee, which shall both be varied in accordance with the mechanism contained in **Schedule E (*Payment Mechanism*)**. Each shall be expressed as a fee per Available Prisoner Place per Day, as appears at **Schedule E (*Payment Mechanism*)**;
- 41.3 The Fixed Availability Fee, the Indexed Availability Fee and the Indexed Costs Fee shall be payable with respect to each Available Prisoner Place, regardless of whether the said place is occupied, but subject to any reduction pursuant to the terms of this Contract and in accordance with **Schedule E (*Payment Mechanism*)**.

42. **Variation of Price**

- 42.1 The Contract Price is fixed and is not subject to revision except as provided in **Clause 10 (*Changes to Services Required*)** or this **Clause 42 (*Variation of Price*)**.
- 42.2 Where any proposed Exceptional Legislation might or does directly alter the costs incurred by the Contractor in fulfilling its obligations under the Contract, the Contractor may apply to the Authority for a review of the Contract Price on the following conditions:
- (a) as soon as reasonably practicable prior to the passing of such Exceptional Legislation, the Contractor shall have notified the Authority that the effect of such Exceptional Legislation, if passed, would be significantly to increase its costs and shall provide all the information referred to in **Clause 10.6(b) (*Change to Services Required*)** as the Authority requires as evidence of the Contractor's claim that such Exceptional Legislation will, if enacted, directly cause an increase in the costs of the Contractor;
 - (b) if such Exceptional Legislation is passed (whether or not in an amended form) the Contractor shall provide all such further information (including in relation to the Contractor's costs) as the Authority may require;

- (c) if the Contractor applies to the Authority for a variation of price under this sub-Clause, the Authority shall be entitled to claim a reduction in the Contract Price in respect of any matters (whether related to the Exceptional Legislation or not, by reference to cost reductions affected in other prisons situated in the United Kingdom which could reasonably be effected in the Prison) which have or should have resulted or will result in a reduction in the costs of the Contractor.

42.3 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 the Agreed Proportion 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 10.6(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 the Agreed Proportion of the savings which result or will result from the said Security Technology Change.

and for the purposes of this Clause, the **Agreed Proportion** shall be:

- (i) where the Security Technology Change was substantially developed by the Contractor or the Operating Sub-contractor, fifty per cent. (50%); and
- (ii) where the Security Technology Change was substantially developed by any person other than the Contractor or the Operating Sub-contractor, seventy five per cent. (75%).

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 10.2 (*Change to Services Required*)** shall apply in respect of such notification as though it were a Notice of Change under **Clause 10.1 (*Change to Services Required*)**. To the extent that the Security Technology Change has been developed by the Contractor or the Operating Sub-contractor, the amount of the reduction in the Contract Price shall only come into effect after a sufficient period following the date the Contractor effects, or is obliged to effect, the Security Technology Change within the Prison to allow the Contractor to recover the Development Cost so that the amounts of the Contract Price will only alter pursuant to this clause once the difference between the amount the Contractor receives from the Authority and the amount it would have received if the reduction in Contract Price had come into immediate effect equals the amount of the Development Cost. For the purpose of this Clause, the ***Development Cost*** shall be the costs reasonably incurred by the Contractor or the Operating Sub-contractor in developing the Security Technology Change, such costs to be divided by the number of Prisons operated by the Contractor and the Operating Sub-contractor in the United Kingdom and to be fully evidenced in writing to the Authority.

- 42.4 Any variation to the Contract Price pursuant to **Clause 10 (*Changes to Services Required*)** 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); and any variation to the Contract Price pursuant to **Clause 10 (*Changes to Services Required*)** and this Clause 42 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 Additional Prisoner Place Payment and/or the Young Person Place Fee any other amounts previously agreed as being payable pursuant to **Clause 43.4 (*Additional Prisoner Places*)** to reflect the proportion of the Additional Prisoner Place 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 10.2 (*Change to Services Required*)** or **42.2**

- (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 Additional Prisoner Place Payment and/or the Young Person Place Fee and any other amounts previously agreed as being payable pursuant to **Clause 43.4 (Additional Prisoner Places)** and **Clause 43A (Young Person Place Fee)** to reflect the proportion of the Additional Prisoner Place Payment and/or the Young Person Place Fee and such other amounts which is not attributable to Wage Costs.

42.5 Except in the circumstances where the other provisions of this **Clause 42 (Variation of Price)** are applicable, where as a direct result of any Significant Changes occurring since the Date of Contract or, if there has been any variation of the Contract Price under this **Clause 42.5 (Variation of Price)** since the date of such variation, but not otherwise, the costs incurred by the Contractor in the operation of the Prison have altered by more than five per cent. 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, which notice may only be served on every fifth anniversary of the Date of Contract or within one month thereafter, applying for a review of the Contract Price in accordance with the following provisions:

- (a) the parties will attempt to agree a fair variation of the Contract Price which will provide the Contractor thereafter with the Level of Return;
- (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 Contractor will thereafter obtain the Level of Return;

- (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.

42.6 In respect of any price review or amount payable under this **Clause 42 (*Variation of Price*)**, **Clause 75 (*Dispute Resolution*)** shall apply.

43. **Additional Prisoner Places**

43.1 Subject to **Clause 43.2 (*Additional Prisoner Places*)**, the Contractor shall, following the Day falling six (6) months after the Full Operation Date, provide to the Authority Additional Prisoner Places in accordance with the following provisions:

- (a) up to fifty (50) Additional Prisoner Places shall be immediately available to the Authority at any time provided that the Authority shall liaise with the Director regarding the transfer to the Prison of those Prisoners who will occupy such Additional Prisoner Places. Subject to **Clause 43.2 (*Additional Prisoner Places*)**, a failure to liaise shall not prejudice the Authority's right to utilise such Additional Prisoner Places;
- (b) up to seventy (70) Additional Prisoner Places (in addition to those specified in **Clause 43.1(a) (*Additional***

- (c) the rights of the Authority under **Clauses 43.1(a) (Additional Prisoner Places)** and **43.1(b) (Additional Prisoner Places)** shall be independent and there shall be no requirement for any Additional Prisoner Places referred to in **Clause 43.1(a) (Additional Prisoner Places)** to be occupied in order that Additional Prisoner Places referred to in **Clause 43.1(b) (Additional Prisoner Places)** may be required nor shall there be any requirement for any Additional Prisoner Places referred to in **Clause 43.1(b) (Additional Prisoner Places)** to be occupied in order that Additional Prisoner Places referred to in **Clause 43.1(a) (Additional Prisoner Places)** may be required. For the avoidance of doubt, the number of Additional Prisoner Places provided at any time pursuant to this **Clause 43.1 (Additional Prisoner Places)** shall not exceed one hundred and twenty (120).

43.2 The Contractor shall not be obliged to provide an Additional Prisoner Place if it has reasonable cause to believe that accepting a Prisoner for that Additional Prisoner Place would prejudice the Contractor's ability to maintain security and control within the Prison.

43.3 The Contractor shall receive the Additional Prisoner Place Payment:

- (a) for each Additional Prisoner Place occupied by a Prisoner pursuant to **Clause 43.1(a) (Additional Prisoner Places)** for each whole or part of a Day of such occupation;

- (b) for each Additional Prisoner Place required by notice pursuant to **Clause 43.1(b) (*Additional Prisoner Places*)**, for each Day during the period stated in that notice (as such notice may, from time to time, be amended); and
- (c) for each Additional Prisoner Place provided pursuant to **Clause 43.5 (*Additional Prisoner Places*)**,
- (d) in each case, provided that each such Additional Prisoner Place satisfies the conditions contained in **Clause 30.1 (*Available Prisoner Places*)**. Subject to **Clause 42.4(a) (*Variation of Price*)** and **Clause 42.4(c) (*Variation of Price*)**, the Additional Prisoner Place Payment shall be paid in accordance with **Schedule E (*Payment Mechanism*)**.

43.4 Where the Authority requires between one hundred and twenty (120) Additional Prisoner Places and four hundred and seventy four (474) Additional Prisoner Places, the provisions of **Clauses 43.5 (*Additional Prisoner Places*)** to 43.7 (***Additional Prisoner Places***) (inclusive) shall apply.

43.5 Pursuant to **Clause 43.4 (*Additional Prisoner Places*)**, the Contractor shall provide:

43.5.1 twenty (20) Additional Prisoner Places on and from 1 May 2002;

43.5.2 sixty (60) Additional Prisoner Places on and from 23 June 2003;

43.5.3 fifty (50) Additional Prisoner Places on and from 25 October 2006;

43.5.4 twelve (12) Additional Prisoner Places on and from 5 May 2007 for a minimum term of twelve (12) months;

43.5.5 twelve (12) Additional Prisoner Places on and from 25 October 2007 for a minimum term of twelve (12) months;

43.5.6 thirty two (32) Additional Prisoner Places as follows:

43.5.6.1 fifteen (15) Additional Prisoner Places on and from 25 February 2008 for a minimum term of twelve (12) months; and

43.5.6.2 seventeen (17) Additional Prisoner Places on and from 29 February 2008 for a minimum term of twelve (12) months;

- 43.5.7 thirty (30) Additional Prisoner Places commencing on and from 1 May 2008 for a minimum term of twelve (12) months; and
- 43.5.8 one hundred and thirty eight (138) Additional Prisoner Places on and from 1 April 2011, or on such other date as agreed between the parties in writing, for a minimum term of two (2) Years. Such Additional Prisoner Places will be subject to a phase-in period timetable as agreed between the parties in writing.
- 43.6 Two (2) months' notice will be given by the Authority to the Contractor if the Authority wishes the Contractor to cease to provide the Additional Prisoner Places referred to in **Clauses 43.5.1 (Additional Prisoner Places)** and **43.5.2 (Additional Prisoner Places)**. The rate of payment for such Additional Prisoner Places shall be as specified in paragraph 6 of **Schedule E (Payment Mechanism)**. The Additional Prisoner Places are not subject to the indexation provisions of **Schedule E (Payment Mechanism)**.
- 43.7 Six (6) months' notice will be given by the Authority to the Contractor if the Authority wishes the Contractor to cease to provide the Additional Prisoner Places referred to in **Clauses 43.5.3 (Additional Prisoner Places)** to **43.5.9 (Additional Prisoner Places)** (inclusive). The rate of payment for such Additional Prisoner Places shall be as specified in paragraph 6 of **Schedule E (Payment Mechanism)**. The Additional Prisoner Place Payment shall be subject to the indexation provisions in paragraph 9 (c) of **Schedule E (Payment Mechanism)**.
- 43A. **Additional Young Person Places**
- 43A.1 The Contractor shall provide to the Authority sixty four (64) Additional Young Person Places for a minimum term of four (4) Years on and from 27 February 2007 in accordance with paragraph 7 of **Schedule E (Payment Mechanism)** until such time as notice is given to the Contractor in accordance with Clause 43A.2 to cease the provision of such Additional Young Person Places.
- 43A.2 Twelve (12) months notice will be given by the Authority to the Contractor if the Authority wishes the Contractor to cease to provide the Additional Young Person Places referred to in **Clause 43A.1 (Additional Young Person Places)**.
- 43A.3 The Contractor shall receive the Young Person Place Fee for the Additional Young Person Places referred to in **Clause 43A.1 (Additional Young Person Places)**. The rate of payment for such Additional Young Person Places shall be as specified in paragraph 7 of **Schedule E (Payment Mechanism)**. The Young Person Place Fee shall be subject to the indexation provisions in paragraph 9 (d) of **Schedule E (Payment Mechanism)**.

Development Plans and Performance Measures

- 44.5 The Contractor shall provide a strategic development plan to operate the Prison for the first five (5) Years from the Actual Opening Date at least six (6) months prior to the Actual Opening Date. The Contractor shall be under a duty to meet the requirements and targets contained in the said plan for achieving continuing improvements to the Custodial Service.
- 44.1A The Contractor shall provide an update to the current strategic development plan to operate the Prison, including the Houseblock, at least six (6) months prior to the Contractual Increased Capacity Date. The Contractor shall be under a duty to meet the requirements and targets contained in the updated said plan for achieving continuing improvements to the Custodial Service.
- 44.1B The Contractor shall provide an update to the current strategic development plan to operate the Prison, including the New Houseblock, at least six (6) months prior to the Contractual Phase 2 Increased Capacity Date. The Contractor shall be under a duty to meet the requirements and targets contained in the updated said plan for achieving continuing improvements to the Custodial Service.
- 44.6 At the end of the first five (5) Year plan, and every five (5) Years thereafter, the Contractor shall consult with the Authority and submit such further strategic development plans to the Authority for its approval. The said plans and the plan referred to in **Clause 44.1 (*Development Plans and Performance Measures*)** are to accord with the policies and vision statements adopted from time to time by the Authority, provided (and without prejudice to the provisions of Clause 10 (***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.
- 44.7 The Contractor shall operate systems to ensure the continuing quality of the Custodial Service.
- 44.8 The Contractor shall have no recourse to **Clause 42 (*Variation of Price*)** as a result of any obligation imposed by this Clause.
- 44.9 Without prejudice to the Authority's rights under **Clauses 48 (*Default by Contractor*)** and **50 (*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 for the relevant Quarter. The amount of the reduction shall be calculated for each Quarter in accordance with the relevant formula at paragraph 10 of **Schedule E (*Payment Mechanism*)**, and shall be deducted from the amount otherwise payable in respect of the first month of the Quarter following the

44.10 In the event of:

- (a) the escape of any Prisoner, which for the purposes of this **Clause 44.6(a) (*Development Plans and Performance Measures*)** shall mean when such Prisoner is outside the perimeter wall of the Prison and not in the custody of the Contractor or the Operating Sub-contractor (a "***Prison Escape***"), the Contractor shall be liable to make a payment to the Authority of [REDACTED] per Prisoner; or
- (b) a Prisoner being escorted outside the Prison, by the Contractor or Operating Sub-contractor, is no longer within the custody of the Contractor or the Operating Sub-contractor for any period exceeding fifteen (15) minutes (an "***Escort Escape***"), the Contractor shall be liable to make a payment to the Authority of [REDACTED] per Prisoner; or
- (c) a Prisoner being escorted outside the Prison, is no longer within the custody of the Contractor or the Operating Sub-contractor for any period up to and including fifteen (15) minutes (a "***Transitory Escape***"), the Contractor shall be liable to make a payment to the Authority of [REDACTED] per Prisoner.

44.11 If the investigation into any Escape shows that no fault was attributable to the Contractor, the Contractor will not be liable to make any payment to the Authority as set out in **Clause 44.6 (*Development Plans and Performance Measures*)**.

44.12 For the purposes of **Clause 44.6 (*Development Plans and Performance Measures*)**, the maximum amount deductible for one (1) incident will be [REDACTED]. The amount specified in this **Clause 44.8 (*Development Plans and Performance Measures*)** shall be varied on 1 December each Year by the percentage change in the level of the sum of the Indexed Availability Fee and the Indexed Costs Fee

- 44.13 The provisions of **Schedule W (*Excusing Causes*)** shall have effect in respect of any Excusing Causes.

45 **Payment**

- 45.1 No payment of the Contract Price shall become due to the Contractor until after the date when fifty (50) Available Prisoner Places have been provided to the Authority by the Contractor.
- 45.2 Payment of the Contract Price shall be claimed monthly and in arrears, by means of an invoice, together with such other documentation 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 of this Contract. The first such invoice and documentation shall be due on the last Day of the month in which the Contractor provides fifty (50) Available Prisoner Places to the Authority.
- 45.3 Payment will be due in accordance with Schedule E (***Payment Mechanism***) thirty (30) Days from the presentation by the Contractor of each valid monthly invoice, and such other documentation as may be reasonably required.
- 45.4 Interest shall accrue on any amounts due hereunder which are not paid on the due date at a rate of two per cent. (2%) over the base rate of National Westminster Bank plc from time to time.
- 45.5 The Authority shall pay to the Contractor in accordance with **Schedule R (*Houseblock Works Fee*)** the Houseblock Works Fee.
- 45.6 Following the provision of one hundred and thirty eight (138) Additional Prisoner Places, in accordance with **Clause 43.5.8 (*Additional Prisoner Places*)**, the Contractor shall invoice the Authority for the sum of [REDACTED] in accordance with **Part 2B2 of Schedule R (*Houseblock Works Fee*)**. The Authority shall pay the Contractor within twenty (20) Business Days of receipt by the Authority of such valid invoice.

- 45.7 The Authority shall pay to the Contractor in accordance with **Part 1A** of **Schedule R (Phase 2 Works Fee)** the Phase 2 Works Fee.
- 45.8 Overpayments for Services from Actual New Houseblock Opening Date
- 45.8.1 If, after the Actual New Houseblock Opening Date, a sum relating to the provision of the Services on or after the Actual New Houseblock Opening Date has been paid to the Contractor by the Authority and which the Authority is not required to pay for under this Contract then the Authority shall notify the Contractor in writing as soon as possible.
- 45.8.2 Any notice provided by the Authority under clause 45.8.1 shall be provided with all supporting information available to determine the level of overpayment and how such overpayment is thought to have occurred, such notice with supporting information being an **"Overpayment Notice"**.
- 45.8.3 Within twenty (20) Business Days following receipt by the Contractor of any Overpayment Notice, the Contractor shall respond by notifying the Authority in writing whether or not, acting reasonably, it agrees that all sums or any part of the sums detailed in the Overpayment Notice have been overpaid (any agreed amounts being an **"Overpayment"**) or not.
- 45.8.4 If pursuant to clause 45.8.3 the Contractor agrees an Overpayment has occurred then the Contractor shall be deemed to have provided its consent for the Authority to either:
- (a) exercise its right of set-off in relation to the Overpayment in accordance with clause 47; or
 - (b) issue to the Contractor a written notice that the Overpayment is due and payable and the Contractor shall pay such Overpayment to the Authority within 30 Business Days following receipt of such notice from the Authority.
- 45.8.5 If pursuant to clause 45.8.3 the Contractor does not agree that all or part of any sum set out in an Overpayment Notice has been overpaid by the Authority and the Parties are, within a further ten (10) Business Days after the Contractor has responded (pursuant to clause 45.8.3) to the Overpayment Notice, unable to agree (both acting reasonably, at all times), then, in relation to any disputed sum, such dispute shall be determined in accordance with Clause 75 (Dispute Resolution) and if it is determined that the disputed sum is an overpayment which the Authority was not required to pay for

45.8.6 The Parties agree that the provisions of this clause 45.8 shall not apply to the Houseblock Construction Sub-contractor and/or the Relevant Phase 2 Works Fee Elements (as defined in Schedule R of this Contract).

46 **Value Added Tax**

- 46.8 The Contract Price together with any other payments due from the Authority to the Contractor hereunder (including without limitation under Part VII of this Contract) 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.
- 46.9 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.
- 46.10 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 47 (Recovery of Sums Due)**.
- 46.11 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 final value of the Contract.
- 46.12 Any payment to the Contractor by the Authority pursuant to the provisions of **Clause 53 (Payment for Termination)** or **56.3 (Termination Survey)** shall be regarded as exclusive of Value Added Tax and the Authority shall pay to the Contractor in addition to the payment a sum equal to any Value Added Tax thereon.

47 **Recovery of Sums Due**

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:

- (a) the Authority agrees not to set-off any amounts due from the Contractor against its obligations to pay a termination sum under **Clauses 6.10 (Insurance), 42.5 (Variation of Price), 53 (Payment for Termination) or 55 (Payment for Termination)** except to the extent that such termination sum is greater than the Lender Liabilities; and
- (b) The Authority agrees to set-off amounts recoverable from or payable by the Contractor as a result of the Houseblock Works against amounts properly due and payable from the Authority under Schedule R (Houseblock Works Fee) only.
- (c) The Authority agrees to set-off amounts recoverable from or payable by the Contractor as a result of the Phase 2 Works against amounts properly due and payable from the Authority under **Part 1A of Schedule R (Phase 2 Works Fee)** only.

PART VII - TERMINATION

48 **Default by Contractor**

48.8 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 this Contract in accordance with its terms:

- (a) any failure by the Contractor to perform, keep, observe, meet or comply with any of the terms of the Contract (including, but not limited to, the obligations to construct the Prison in accordance with **Part 1 of Schedule A (Design and Construction Specification)** but not including any obligations of the Contractor relating to the Houseblock Works, for which the provisions of **Clause 48A (Houseblock Default)** shall apply, or the Phase 2 Works, for which the provisions of **Clause 48B (Phase 2 Default)** will apply (save where such obligations arise pursuant to **Clause 55.2 (Corrupt Gifts and Payments)**) to maintain the Houseblock and/or New

- (b) failure to obtain the Engineer's Declaration within nine (9) months after the Contractual Opening Date;
- (c) failure to provide fifty (50) Available Prisoner Places within six (6) months after the Contractual Opening Date or, if later, within three (3) months after the date upon which the Engineer's Declaration is obtained;
- (d) failure to pay any liquidated damages in accordance with **Clause 26 (*Liquidated Damages*)** within thirty (30) Days of the due date;
- (e) 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 Third Party Lenders 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

- (iv) a petition for an administration order is presented and such petition is not withdrawn within thirty (30) Days (except when it is presented by the Third Party Lenders 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 Third Party Lenders in exercise of their rights under the Financing Agreements as contemplated in the Direct Agreement) and any such petition is not, or such other steps are not discharged or withdrawn within thirty (30) Days; or
- (f) if distress or execution is levied against any of the Contractor's assets in respect of an amount in excess of [REDACTED] and is not paid or discharged within twenty eight (28) Days, or a judgment against the Contractor in respect of an amount in excess of one [REDACTED] remains unsatisfied for more than twenty eight (28) Days; or
- (g) if a change of control of the Contractor (as defined in **Clause 54 (*Change of Control*)** occurs without the consent of the Authority or as otherwise permitted in **Clause 54 (*Change of Control*)**.

48A. **Houseblock Default**

48A.1 Without prejudice to any other rights of the Authority to claim damages in respect of any breach of the Contract by the Contractor, each and any of the following events shall constitute a Houseblock Event of Default on the part of the Contractor entitling the Authority, if it so elects, to terminate the Houseblock Works:

- (a) a failure by the Contractor to perform, keep, observe, meet or comply with its obligations to perform

- (b) in respect of the Houseblock Works, the Contractor does not perform the Houseblock Works for a continuous period of forty five (45) Business Days or for a period of one hundred and thirty five (135) Business Days (whether continuous or not) at any time after the date of the Amending Agreement;
- (c) failure to obtain the Engineer's HBJ and Car Park Declaration and the Engineer's Completion Declaration on or before the Long Stop Date; and
- (d) failure to provide twelve (12) Available Prisoner Places in the Houseblock on or before the date falling six (6) months after the date upon which the Engineer's HBJ and Car Park Declaration is obtained.

48B. **Phase 2 Default**

48B.1 Without prejudice to any other rights of the Authority to claim damages in respect of any breach of the Contract by the Contractor, each and any of the following events shall constitute a Phase 2 Event of Default on the part of the Contractor entitling the Authority, if it so elects, to terminate the Phase 2 Works:

- (a) a failure by the Contractor to perform, keep, observe, meet or comply with its obligations to perform the Phase 2 Works in accordance with **Part 3 of Schedule A (*Design and Construction Specification – Phase 2 Works*)** where such failure has a material effect on the performance of the Services as a whole or such failure is an event which has occurred persistently or which, either by itself or in addition to other such failures, casts, in the Authority's reasonable opinion, serious doubt on the competence or suitability of the Contractor to provide the Services;

- (b) in respect of the Phase 2 Works, the Contractor does not perform the Phase 2 Works for a continuous period of forty five (45) Business Days or for a period of one hundred and thirty five (135) Business Days (whether continuous or not) at any time after the date of the Phase 2 Amending Agreement;
- (c) failure to obtain the Engineer's Phase 2 Declaration on or before the Phase 2 Long Stop Date; and
- (d) failure to provide twelve (12) Available Prisoner Places in the New Houseblock on or before the date falling six (6) months after the date upon which the Engineer's Phase 2 Declaration is obtained.

49 Rectification

- 49.8 Where an Event of Default has occurred by reason of any matter occurring which is referred to in **Clause 48.1(a) (Default by Contractor)** (but not if such matter is also referred to in any of **Clauses 48.1(b), (c), (d), (e), or (f) or (g)**), the Authority shall give notice to the Contractor in writing (a "**Rectification Notice**"), and require the Contractor to propose a programme of rectification. If no such proposal for rectification is received by the Authority within thirty (30) Days of the date of the Rectification Notice (or such longer period as is agreed by the Authority) the Authority may proceed to terminate the Contract in accordance with **Clause 50 (Termination for Default)**.
- 49.9 Where a proposal for rectification is received by the Authority within thirty (30) Days of the date of the Rectification Notice (or such longer period as is agreed by the Authority), and is approved by the Authority (such approval not to be unreasonably withheld) the Contractor shall remedy the default within sixty (60) Days of the date of the Authority's approval (or such longer period as is agreed by the Authority). At the expiry of the sixty (60) Days (or other period if agreed) if the Contractor has failed to rectify the default to the reasonable satisfaction of the Authority, the Authority may proceed to terminate the Contract in accordance with **Clause 50 (Termination for Default)**.
- 49.10 If the Authority using its reasonable judgment does not approve the proposal for rectification, the Authority may proceed to terminate the Contract in accordance with **Clause 50 (Termination for Default)**.

49A. Houseblock Works Termination

- 49A.1 Where a Houseblock Event of Default has occurred pursuant to **Clause 48A.1(a) (Houseblock Default)** (but not if such matter is also referred to in any of **Clauses 48A.1(b), (c) or (d) (Houseblock Default)**), the Authority shall give notice to the Contractor in writing (a "**Houseblock Works Rectification Notice**"), and require the Contractor to propose a programme of rectification. If no such proposal for rectification is received by the Authority within thirty (30) Days of the date of the Houseblock Works Rectification Notice (or such longer period as is agreed by the Authority) the Authority may proceed to terminate the Houseblock Works in accordance with **Clauses 49A.4 and 49A.5 (Houseblock Works Termination)**.
- 49A.2 Where a proposal for rectification is received by the Authority within thirty (30) Days of the date of the Houseblock Works Rectification Notice (or such longer period as is agreed by the Authority), and is approved by the Authority (such approval not to be unreasonably withheld) the Contractor shall remedy the Houseblock Default within sixty (60) Days of the date of the Authority's approval (or such longer period as is agreed by the Authority). At the expiry of the sixty (60) Days (or other period if agreed) if the Contractor has failed to rectify the default to the reasonable satisfaction of the Authority, the Authority may proceed to terminate the Houseblock Works in accordance with **Clauses 49A.4 and 49A.5 (Houseblock Works Termination)**.
- 49A.3 If the Authority using its reasonable judgment does not approve the proposal for rectification, the Authority may proceed to terminate the Houseblock Works in accordance with **Clauses 49A.4 and 49A.5 (Houseblock Works Termination)**.
- 49A.4 Where a Houseblock Event of Default has occurred and after the Contractor's rights (if any) under **Clause 49A (Houseblock Works Termination)** have expired, the Authority may proceed to terminate the Houseblock Works by giving notice in writing (the "**Houseblock Works Termination Notice**") to the Contractor. Such Houseblock Works Termination Notice shall take effect subject to the provisions of **Clause 53 (Payment for Termination)**.
- 49A.5 Unless all the defaults of the Contractor which caused the Authority to serve the relevant Houseblock Works Termination Notice (and any other material default of the Contractor since the date of such notice) have been remedied in full to the reasonable satisfaction of the Authority and the Authority is reasonably satisfied that such default or defaults are unlikely to reoccur, the Houseblock Works shall automatically terminate one hundred and twenty (120) Days after service of the Houseblock Works Termination Notice.
- 49B. **Houseblock Works Consequential Arrangements on Termination**
- 49B.1 On termination of the Houseblock Works pursuant to **Clause 49A (Houseblock Works Termination)**, the Contractor's obligations in respect of the Houseblock

Works and the provision of the Increased Capacity shall automatically cease (and any provisions relating to performance of the Houseblock Works and provision of the Increased Capacity shall be deemed removed from this Contract) save where the Authority elects to undertake to the Contractor by way of written notice that it will step into and assume responsibility for the Contractor's obligations hereunder in respect of the carrying out and completion of the Houseblock Works and meeting the requirements for providing the Increased Capacity. Any exercise by the Authority of its right to elect to complete the Houseblock Works shall be without prejudice to the Contractor's continued right and obligation to perform the Custodial Service at the Prison (which shall for the avoidance of doubt include the Houseblock in the event that the Engineer's HBJ and Car Park Declaration has been issued in respect thereof) in accordance with the provisions of this Contract.

49B.2 Where the Authority does so elect to complete the Houseblock Works:

49B.2.1 the Contractor shall be relieved of its obligations under the Contract in respect of the carrying out of the Houseblock Works and meeting the requirements for providing the Increased Capacity;

49B.2.2 the Contractor shall comply with:

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

49B.2.3 the provisions relating to the dates for delivery of the Increased Capacity shall be amended such that the Contractual Houseblock Opening Date, the Increased Capacity Phase-In Timetable and the Contractual Increased Capacity Date shall be such dates as the Authority shall determine from time to time, but shall otherwise remain in full force and effect; and

49B.2.4 the Authority shall give to the Contractor not less than sixty (60) Days written notice of the anticipated Actual Houseblock Opening Date.

49B.3 If the Authority makes an election pursuant to **Clause 49B.2 (*Houseblock Works consequential arrangements on Termination*)** and the performance by the Authority of the Contractor's obligations in respect of the Houseblock Works and the provision of the Increased Capacity interferes adversely with, or causes a failure of the performance of the Custodial Services and/or causes the occurrence of a Performance Measure and/or causes the Contractor to become liable to pay liquidated damages to the Authority pursuant to **Clause 26A (*Liquidated Damages - Increased Capacity*)** and provided that the effect of such adverse interference is claimed within ten (10) Business Days of the date on which the Contractor became aware (or ought reasonably to have become so aware) of such adverse interference, then (subject to **Clauses 49B.4 and 49B.5 (*Houseblock Works consequential arrangements on Termination*)**) to the extent such failure, occurrence of a Performance Measure or liability to pay liquidated damages arises as a result of such adverse interference:

49B.3.1 such failure by the Contractor to perform, and any poor performance of, any affected Custodial Service shall not constitute a breach of the provisions of this Contract by the Contractor;

49B.3.2 such interference shall be taken account of in measuring the performance of any affected Custodial Service in accordance with this Contract;

49B.3.3 any such Performance Measure shall be deemed not to have occurred; and

49B.3.4 any such liability to pay liquidated damages shall be deemed not to have arisen,

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

49B.4 Without prejudice to **Clause 6 (*Insurance*)**, the Contractor shall not be entitled to any payment which would not have been due under this Contract but for **Clause 49B.3 (*Houseblock Works consequential arrangements on Termination*)** to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained by the Contractor in accordance with this Contract (whether or not such insurance has in fact been effected, or if effected has been vitiated as a result of any act or omission of the Contractor, including but not limited to non-disclosure or under-insurance) or any other policy of insurance which the Contractor has taken out and maintained.

49B.5 The Contractor shall take all reasonable steps to mitigate the consequences of any adverse interference (as described in **Clause 49B.3 (*Houseblock Works consequential arrangements on Termination*)**) on the Contractors' ability to

perform its obligations under this Contract in respect of the Custodial Services. To the extent that the Contractor does not take such steps, the Contractor shall not be entitled to and shall not receive, the relief specified in **Clause 49B.3** (***Houseblock Works consequential arrangements on Termination***).

- 49B.6 Where the Authority elects not to complete the Houseblock Works, the Contractor shall comply with all instructions of the Authority to ensure that those parts of the Site upon which any part or parts of the Houseblock Works have been commenced and/or completed are left in a safe and secure condition, including the removal of any temporary buildings, tools, goods, plant, equipment and/or materials remaining on the Site in relation to which the Authority has not made payments and/or is not liable to make payment to the Contractor pursuant to this Contract. The Contractor shall itself and shall procure that any Sub-contractor engaged to perform any of the Contractor's obligations under this Contract complies with this **Clause 49B** (***Houseblock Works consequential arrangements on Termination***) and the Contractor shall be responsible for its own and any Sub-contractor's costs in complying with this **Clause 49B** (***Houseblock Works Consequential Arrangements on Termination***).

49C Phase 2 Works Termination

- 49C.1 Where a Phase 2 Event of Default has occurred pursuant to **Clause 48B.1(a)** (***Phase 2 Default***) (but not if such matter is also referred to in any of **Clauses 48B.1(b), (c) or (d)** (***Phase 2 Default***)), the Authority shall give notice to the Contractor in writing (a "***Phase 2 Works Rectification Notice***"), and require the Contractor to propose a programme of rectification. If no such proposal for rectification is received by the Authority within thirty (30) Days of the date of the Phase 2 Works Rectification Notice (or such longer period as is agreed by the Authority) the Authority may proceed to terminate the Phase 2 Works in accordance with **Clauses 49C.4 and 49C.5** (***Phase 2 Works Termination***).
- 49C.2 Where a proposal for rectification is received by the Authority within thirty (30) Days of the date of the Phase 2 Works Rectification Notice (or such longer period as is agreed by the Authority), and is approved by the Authority (such approval not to be unreasonably withheld) the Contractor shall remedy the Phase 2 Default within sixty (60) Days of the date of the Authority's approval (or such longer period as is agreed by the Authority). At the expiry of the sixty (60) Days (or other period if agreed) if the Contractor has failed to rectify the default to the reasonable satisfaction of the Authority, the Authority may proceed to terminate the Phase 2 Works in accordance with **Clauses 49C.4 and 49C.5** (***Phase 2 Works Termination***).

49C.3 If the Authority using its reasonable judgment does not approve the proposal for rectification, the Authority may proceed to terminate the Phase 2 Works in accordance with **Clauses 49C.4 and 49C.5 (*Phase 2 Works Termination*)**.

49C.4 Where a Phase 2 Event of Default has occurred and after the Contractor's rights (if any) under **Clause 49C (*Phase 2 Works Termination*)** have expired, the Authority may proceed to terminate the Phase 2 Works by giving notice in writing (the "***Phase 2 Works Termination Notice***") to the Contractor. Such Phase 2 Works Termination Notice shall take effect subject to the provisions of **Clause 53 (*Payment for Termination*)**.

49C.5 Unless all the defaults of the Contractor which caused the Authority to serve the relevant Phase 2 Works Termination Notice (and any other material default of the Contractor since the date of such notice) have been remedied in full to the reasonable satisfaction of the Authority and the Authority is reasonably satisfied that such default or defaults are unlikely to reoccur, the Phase 2 Works shall automatically terminate one hundred and twenty (120) Days after service of the Phase 2 Works Termination Notice.

49D. **Phase 2 Works Consequential Arrangements on Termination**

49D.1 On termination of the Phase 2 Works pursuant to **Clause 49C (*Phase 2 Works Termination*)**, the Contractor's obligations in respect of the Phase 2 Works and the provision of the Phase 2 Increased Capacity shall automatically cease (and any provisions relating to performance of the Phase 2 Works and provision of the Phase 2 Increased Capacity shall be deemed removed from this Contract) save where the Authority elects to undertake to the Contractor by way of written notice that it will step into and assume responsibility for the Contractor's obligations hereunder in respect of the carrying out and completion of the Phase 2 Works and meeting the requirements for providing the Phase 2 Increased Capacity. Any exercise by the Authority of its right to elect to complete the Phase 2 Works shall be without prejudice to the Contractor's continued right and obligation to perform the Custodial Service at the Prison (which shall for the avoidance of doubt include the New Houseblock in the event that the Engineer's Phase 2 Declaration has been issued in respect thereof) in accordance with the provisions of this Contract.

49D.2 Where the Authority does so elect to complete the Phase 2 Works:

49D.2.1 the Contractor shall be relieved of its obligations under the Contract in respect of the carrying out of the Phase 2 Works and meeting the requirements for providing the Phase 2 Increased Capacity;

49D.2.2 the Contractor shall comply with:

- (i) all reasonable instructions of the Authority to ensure an orderly and efficient transfer of the Phase 2 Works Area to the Authority; and
- (ii) the process specified by and requirements of the Authority for the introduction of a third party to complete the Phase 2 Works and provide the Phase 2 Increased Capacity, including any amendments to the terms of this Contract to ensure that the safe, secure and efficient running of the Prison in accordance with the terms of this Contract is not materially adversely affected;

49D.2.3 the provisions relating to the dates for delivery of the Phase 2 Increased Capacity shall be amended such that the Contractual New Houseblock Opening Date, the Phase 2 Increased Capacity Phase-In Timetable and the Contractual Phase 2 Increased Capacity Date shall be such dates as the Authority shall determine from time to time, but shall otherwise remain in full force and effect; and

49D.2.4 the Authority shall give to the Contractor not less than sixty (60) Days written notice of the anticipated Actual New Houseblock Opening Date.

49D.3 If the Authority makes an election pursuant to **Clause 49D.2 (*Phase 2 Works consequential arrangements on Termination*)** and the performance by the Authority of the Contractor's obligations in respect of the Phase 2 Works and the provision of the Increased Capacity interferes adversely with, or causes a failure of the performance of the Custodial Services and/or causes the occurrence of a Performance Measure and/or causes the Contractor to become liable to pay liquidated damages to the Authority pursuant to **Clause 26B (*Liquidated Damages – Phase 2 Increased Capacity*)** and provided that the effect of such adverse interference is claimed within ten (10) Business Days of the date on which the Contractor became aware (or ought reasonably to have become so aware) of such adverse interference, then (subject to **Clauses 49D.4 and 49D.5 (*Phase 2 Works consequential arrangements on Termination*)**) to the extent such failure, occurrence of a Performance Measure or liability to pay liquidated damages arises as a result of such adverse interference:

49D.3.1 such failure by the Contractor to perform, and any poor performance of, any affected Custodial Service shall not constitute a breach of the provisions of this Contract by the Contractor;

49D.3.2 such interference shall be taken account of in measuring the performance of any affected Custodial Service in accordance with this Contract;

49D.3.3 any such Performance Measure shall be deemed not to have occurred;
and

49D.3.4 any such liability to pay liquidated damages shall be deemed not to
have arisen,

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

49D.4 Without prejudice to **Clause 6 (Insurance)**, the Contractor shall not be entitled
to any payment which would not have been due under this Contract but for
**Clause 49D.3 (Phase 2 Works consequential arrangements on
Termination)** to the extent that the Contractor is or should be able to recover
under any policy of insurance required to be maintained by the Contractor in
accordance with this Contract (whether or not such insurance has in fact been
effected, or if effected has been vitiated as a result of any act or omission of the
Contractor, including but not limited to non-disclosure or under-insurance) or
any other policy of insurance which the Contractor has taken out and
maintained.

49D.5 The Contractor shall take all reasonable steps to mitigate the consequences of
any adverse interference (as described in **Clause 49D.3 (Phase 2 Works
consequential arrangements on Termination)**) on the Contractors' ability to
perform its obligations under this Contract in respect of the Custodial Services.
To the extent that the Contractor does not take such steps, the Contractor shall
not be entitled to and shall not receive, the relief specified in **Clause 49D.3
(Phase 2 Works consequential arrangements on Termination)**.

49D.6 Where the Authority elects not to complete the Phase 2 Works, the Contractor
shall comply with all instructions of the Authority to ensure that those parts of
the Site upon which any part or parts of the Phase 2 Works have been
commenced and/or completed are left in a safe and secure condition, including
the removal of any temporary buildings, tools, goods, plant, equipment and/or
materials remaining on the Site in relation to which the Authority has not made
payments and/or is not liable to make payment to the Contractor pursuant to
this Contract. The Contractor shall itself and shall procure that any Sub-
contractor engaged to perform any of the Contractor's obligations under this
Contract complies with this **Clause 49D (Phase 2 Works consequential
arrangements on Termination)** and the Contractor shall be responsible for its
own and any Sub-contractor's costs in complying with this **Clause 49D (Phase
2 Works Consequential Arrangements on Termination)**

50 Termination for Default

50.8 Where an Event of Default has occurred and after the Contractor's rights (if
any) under **Clause 49 (Rectification)** have expired, the Authority may

50.9 Subject to the terms of the Direct Agreement, unless all the defaults of the Contractor which caused the Authority to serve the relevant Termination Notice (and any other material default of the Contractor since the date of such notice) has been remedied in full to the reasonable satisfaction of the Authority and the Authority is reasonably satisfied that such default or defaults are unlikely to reoccur, the Contract shall automatically terminate one hundred and twenty (120) Days after service of the Termination Notice.

51 **Voluntary Termination**

The Authority shall have an option to terminate the Contract at will, to become operative five (5) Years after the Contractual Opening Date. If upon the fifth (5th) anniversary of the Contractual Opening Date, or at any time thereafter, the Authority wishes to terminate the Contract it shall give six (6) months notice to the Contractor whereupon compensation will be payable to the Contractor in accordance with **Clause 53.3 (*Payment for Termination*)**.

52 **Force Majeure**

In the event of a Force Majeure event arising during the term of the Contract which directly causes the Contractor to be materially unable to comply with its obligations hereunder, the Contractor and the Authority may, if they so choose, agree such terms as are appropriate for the continued performance of the Contract, and such terms shall be agreed in accordance with **Clause 66 (*Authority to Commit and Variation*)**. If no such terms are agreed within sixty (60) Days of the commencement of the said event, and such event is continuing or its consequence remains that the Contractor 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 53 (*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) nuclear, 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.

53 **Payment for Termination**

53.1 Where the Contract terminates as contemplated in **Clause 50** (***Termination for Default***) the Authority shall, provided that the Third Party Lenders 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), promptly pay to the Contractor the amounts as set out in **Part 1 of Schedule G** (***Payments on Termination for Default***) and:

- (a) if the Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the date of termination of the Houseblock Works, the amounts as set out in **Part 2 of Schedule G** (***Payments on Termination for Default***); or
- (b) if the Contract terminates during the period from the date of the Phase 2 Amending Agreement up to and including the earlier to occur of the Actual New Houseblock Opening Date and the date of termination of the Phase 2 Works, the amounts as set out in **Part 3 of Schedule G** (***Payments on Termination for Default***).

53.2 Where the Houseblock Works terminate as contemplated in **Clause 49A** (***Houseblock Works Termination***) the Authority shall promptly pay to the Contractor the amounts as set out in **Part 2 of Schedule G** (***Payments on Termination for Default***).

53.2A Where the Phase 2 Works terminate as contemplated in **Clause 49C** (***Phase 2 Works Termination***) the Authority shall promptly pay to the Contractor the amounts as set out in **Part 3 of Schedule G** (***Payments on Termination for Default***).

53.3 In the event of termination under **Clause 51** (***Voluntary Termination***) the Authority shall promptly pay to the Contractor the amounts as set out in Part 1 of Schedule H (***Payments on Voluntary Termination***); plus, if the Contract terminates during the period from:

- (a) the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the termination

- (b) the date of the Phase 2 Amending Agreement up to and including the earlier to occur of the Actual New Houseblock Opening Date and the termination of the Phase 2 Works, the amounts set out in Part 3 of Schedule H (Payments on Voluntary Termination).

53.4 In the event of termination under **Clause 52 (*Force Majeure*)** the Authority shall pay to the Contractor the amount of the Lender Liabilities plus, if the Contract terminates during the period from:

- (a) the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the termination of the Houseblock Works the amounts set out in Part 2 of Schedule H (Payments on Voluntary Termination); and
- (b) the date of the Phase 2 Amending Agreement up to and including the earlier to occur of the Actual New Houseblock Opening Date and the termination of the Phase 2 Works, the amounts set out in Part 3 of Schedule H (Payments on Voluntary Termination).

In the event of termination under Clause 52 (Force Majeure) where the event which led to such termination does not prevent the Authority from having full unhindered access and use of the Prison for any period of time, the Authority shall instead pay to the Contractor the greater of:

- (c) the amounts as set out in **Part 1 of Schedule H (*Payments on Voluntary Termination*)** less the cost of any reinstatement or repairs required to render the Prison in such a condition as is required under the Contract; and
- (d) the Lender Liabilities,

plus, if the Contract terminates during the period from:

- (e) the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the termination of the Houseblock Works, the amounts set out in **Part 2 of Schedule H (*Payments on Voluntary Termination*)**; and
- (f) the date of the Phase 2 Amending Agreement up to and including the earlier to occur of the Actual New Houseblock Opening Date and the termination of the

53.5 This **Clause 53 (*Payment for Termination*)** and **Clauses 6.10 (*Insurance*)**, **42.5 (*Variation of Price*)** and **55 (*Corrupt Gifts and Payments*)** contains the Contractor's sole contractual entitlement to payment in the event of proper termination of the Contract. Further, without prejudice to any rights accrued up to and including the date of termination and except as provided in **Clause 53.3 (*Payment for Termination*)**, no compensation shall be payable if the Contract terminates prior to the date of the Engineer's Declaration.

53.6

- (a) all sums payable by the Authority under either **Clause 53.1 (*Payment for Termination*)** or **53.2 (*Payment for Termination*)** or **53.3 (*Payment for Termination*)** (the "***Termination Payment***") shall be paid free and clear of all deductions or withholdings unless the deduction or withholding is required by law, in which event, or in the event that the Contractor shall incur any liability for Taxation in respect of any Termination Payment, the amount payable by the Authority shall be increased so as to ensure that the net amount received by the Contractor after deducting all such deductions or withholdings and/or such liability for Taxation will equal the full amount which would have been received by it had no such deduction or withholding been made and/or no such liability to Taxation been incurred.
- (b) in this **Clause 53.5 (*Payment for Termination*)** the expression "***Taxation***" means:-
 - (i) any liability to corporation tax of the United Kingdom;
 - (ii) the loss or use of any loss, relief, allowance, exemption, set-off or deduction in computing, or against, profits, income or gains of any description or from any source for the purposes of corporation tax of the United Kingdom, or any repayment of a compensation payment against corporation tax of the United Kingdom, save where such loss, relief, allowance etc. or compensation

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 HM Revenue and Customs relating to any liability for Taxation in respect of any Termination Payment. The Contractor shall not agree, accept or compromise any claim or issue or dispute relating to such liability without the prior written consent of the Authority which shall not be unreasonably withheld or delayed. If the Authority wishes to avoid, resist, appeal or defend any such claim, issue or dispute then, subject to the Contractor being indemnified and secured to its reasonable satisfaction against any costs or expenses or additional liability to Taxation to be incurred by it, the Contractor must allow the Authority to take over and prosecute such dispute by such means as it thinks fit and the Contractor will afford the Authority such reasonable assistance as it requires in connection therewith, provided that the Authority shall not have the right to prosecute any such dispute by way of appeal to or from the General Commissioners or Special Commissioners (or any judicial body replacing the same, howsoever established) or a higher tribunal unless it shall at its own expense have obtained reputable professional advice that such an appeal has a reasonable chance of success.

(d) the increased amount which is payable under **Clause 53.6(a) (*Payment for Termination*)** shall be determined upon the following assumptions and bases: -

- (i) the Project and the Contractor's interest under the Lease comprise the sole trade and business of the Contractor;
- (ii) the assets and equipment held, owned, hired, leased or otherwise used by the Contractor for the purposes of the Project comprise the

- (iii) that full account shall be taken of any unrelieved trading losses or other reliefs derived from the Project and the Contractor's interest under the Lease which can be set off against 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, which 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 full account is taken of any right of credit, repayment or set-off, or other relief deriving from the deduction or withholding of taxes within **Clause 53.6(a) (*Payment for Termination*)**, taking full account of timing differences in calculating the value of such right or relief; and
- (vi) that full account is taken of timing of differences.

AND PROVIDED THAT in relation to (v) above, if by virtue of clause 13(d) of the Direct Agreement an amount is payable by the Authority to the Agent which is deemed to be a payment to or on behalf of a sum received by or on behalf of the Contractor and which is greater than the amount which would otherwise be payable pursuant to this **Clause 53.6 (*Payment for Termination*)** such adjustments shall be made between the parties hereto (having regard, inter alia, to clause 13(e) of the Direct Agreement) as shall ensure that the Contractor is neither better off nor worse off (after tax and timing differences are taken into account) than it would have been if the amount otherwise payable had been paid.

- (e) the payment under **Clause 53.6(a) (*Payment for Termination*)** shall be made five (5) Business Days before the Contractor's liability in respect of the Termination Payment is due and payable. However, if and

54 **Change of Control**

- 54.1 The Contractor shall inform the Authority immediately of any change in the ownership of the Contractor. Change of ownership means any material change to the ownership of any shareholding in the Contractor, and a change in the ownership is material if it is a change of three per cent (3%) or more of the Contractor's issued share capital.
- 54.2 The Contractor shall obtain the Authority's approval prior to any change of control of the Contractor (other than where the Third Party Lenders 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 approval is not so obtained, as set out in **Clause 48.1(g) (*Default by Contractor*)**. Change of control means an event where any single person or group of persons acting in concert (within the meaning of The City Code on Take-Overs and Mergers) acquires control of the Contractor or any interest in the relevant share capital (as defined in Section 792 (1) of the Companies Act 2006) of the Contractor as a result of which that person or group of persons have an interest in more than fifty per cent. (50%) of the relevant share capital of the Contractor. Without limitation, the Authority will be deemed to be acting reasonably if it withholds or delays consent where the single person or group of persons acting in concert falls within any of the categories referred to in Clause 8.2(a)(iii) of the Direct Agreement.

55 **Corrupt Gifts and Payments**

- 55.1 Neither the Contractor nor any Sub-contractor, nor anyone employed by either of them or acting on behalf of either 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 contract for Her Majesty's Service or for showing or forbearing to show

- (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 him or on his behalf, or to his 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.

55.2 Any breach of **Clause 55.1 (*Corrupt Gifts and Payments*)** by the Contractor or 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 or any Sub-contractor or anyone employed by them or acting on their behalf under the Prevention of Corruption Acts 1889 to 1916 and/or under the Bribery Act in relation to this or any other contract 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 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 either the Operating Sub-contractor, the Construction Sub-contractor, or an employee of that Sub-contractor, 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 Sub-contractor are (with the consent of the Third Party Lenders in their absolute discretion) performed by the Contractor itself or another Sub-contractor to which the Third Party Lenders have (in their absolute discretion) consented in writing and the Authority has consented in accordance with **Clause 8 (*Sub-contracting*)** within thirty (30) Days of notification to the Contractor of the breach or commission of an offence or such longer period as the Authority permits in writing;

- (c) where the breach or commission of any offence is occasioned by the Houseblock Construction Sub-contractor or an employee of the Houseblock Construction Sub-contractor, and such person intended thereby to benefit the Houseblock Construction Sub-contractor, the Authority shall be entitled as set out in (a) above unless:
- (i) the Contractor terminates the Houseblock Construction Sub-contract and/or the Phase 2 Construction Sub-contract; and
 - (ii) procures that all those parts of the Services which were performed by the Houseblock Construction Sub-contractor are (with the consent of the Third Party Lenders in their absolute discretion) performed by the Contractor itself or another Sub-contractor to which the Third Party Lenders have (in their absolute discretion) consented in writing and the Authority has consented in accordance with **Clause 8 (*Sub-contracting*)** within thirty (30) Days of notification to the Contractor of the breach or commission of an offence or such longer period as the Authority permits in writing, save where the Authority, in its absolute discretion, elects to complete the Houseblock Works pursuant to **Clause 49B.2 (*Houseblock Works Consequential Arrangements on Termination*)** and/or the Phase 2 Works pursuant to **Clause 49D.2 (*Phase 2 Works Consequential Arrangements on Termination*)**;
- (d) where the breach or commission of any offence is occasioned by any person other than the Contractor, the Operating Sub-contractor, the Construction Sub-contractor or the Houseblock Construction Sub-contractor, and whether or not any benefit to that person's employer was intended, the Authority shall be entitled as set out in (a) above unless within thirty (30) Days of notification to the Contractor of the breach or commission of an offence the Contractor has procured that the employment of such person (and, in the case of an individual other than an individual employed by the Contractor, the Operating Sub-contractor or the

- 55.3 Any dispute relating to this **Clause 55 (Corrupt Gifts and Payments)** (other than in respect of **Clause 55.2(c) (Corrupt Gifts and Payments)**) may be referred by either party to dispute resolution in accordance with **Clause 75 (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.
- 55.4 In the event of termination of the Contract by the Authority pursuant to this **Clause 55 (Corrupt Gifts and Payments)**, the Authority shall pay to the Contractor the amount of the Lender Liabilities, and:
- (a) where the termination arises and if this Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Houseblock Opening Date and the date of termination of the Houseblock Works, the amounts calculated in accordance with **Part 2 of Schedule G**; and
 - (b) if this Contract terminates during the period from the date of the Phase 2 Amending Agreement up to and including the earlier to occur of the Actual New Houseblock Opening Date and the date of termination of the Phase 2 Works, the amounts calculated in accordance with **Part 3 of Schedule G**.
- 55.5 Any notice of termination under this clause 55 shall specify:
- (a) the nature of the breach or the commission of any offence;
 - (b) the identity of the party whom the Authority believes has committed the breach or commission of any offence; and
 - (c) the date on which this Contract shall terminate.

55A Prevention of Bribery

- 55A.1 The Contractor shall, if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity in relation to this Contract required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.

- 55A.2 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority following a request from the Authority for the same) to prevent the Contractor and any person employed by or acting on behalf of the Contractor from committing a Prohibited Act and shall enforce it where appropriate.
- 55A.3 If the Contractor is aware of any Prohibited Act by the Contractor, any Sub-contractor, or anyone employed by any of them or acting on behalf of any of them, the Contractor shall notify the Authority immediately and the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

56 Termination Survey

- 56.1 Twelve (12) months prior to the end of the Contract Term or upon service of a Termination Notice, whichever is the earlier, the Authority shall carry out a final dilapidation survey of the Prison. The provisions of **Clauses 20.2 (Dilapidation Survey)** and **20.3 (Dilapidation Survey)** shall apply to this Survey.
- 56.2 If upon the termination or conclusion of the Contract Term, the Contractor has failed to carry out any repairs to or maintenance of the Prison required as a result of the survey, the value of the repairs shall be off-set against any payment due to the Contractor hereunder, or alternatively shall become a debt due to the Authority from the Contractor.
- 56.3 Twelve (12) months prior to the end of the Contract Term 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 expiry of the Contract Term or the revocation of the Termination Notice in accordance with the Direct Agreement, such amounts being a reduction of the amount payable to the Contractor hereunder but shall be released to the Contractor if a Termination Notice is revoked or withdrawn under the Direct Agreement more than twelve (12) months prior to the expiry of the Contract Term. Upon or after termination of the Contract Term, the Authority shall be entitled to apply any amounts standing to the credit of such account towards payment of the debt due referred to in **Clause 56.2 (Termination Survey)**. To the extent that, following completion of any repairs or other works as are referred to in this **Clause 56 (Termination Survey)**, the amount standing to the credit of such account exceeds the amount of such debt due, such excess shall forthwith be paid by the Authority to the Contractor together with any interest accrued on amounts standing to the credit of such account from time to time.

57 Notice of Default Events

- 57.1 The Contractor shall notify the Authority immediately he 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.
- 57.2 The Contractor shall notify the Authority immediately he has knowledge of any event which constitutes a Houseblock Event of Default or an event which with the giving of notice and/or lapse of time and/or making of any determination would constitute a Houseblock Event of Default.
- 57.3 The Contractor shall notify the Authority immediately he has knowledge of any event which constitutes a Phase 2 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 a Phase 2 Event of Default.

58 Consequential Arrangements on Termination

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

59 Intervention by the Secretary of State under Section 88 of the Criminal Justice Act 1991 (Section 88)

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

- 59.2 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 48 (*Default by Contractor*)** or **50 (*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.
- 59.3 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.

60 Facilities for Authority

- 60.1 From the Date of Contract, the Contractor shall provide suitable accommodation at the Site or (following 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. Accommodation for the Controller shall be capable of being made secure by means of door locks or other such equipment.
- 60.2 The Contractor shall be responsible for the cleanliness, proper use and reasonable care of all such facilities provided.

61 Public Relations and Publicity

- 61.1 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.
- 61.2 Save where in accordance with the procedures referred to in **Clause 21.1(d) (*Preparation for Operation of the Prison*)** which have been approved by the Authority in accordance with **Clause 21.6 (*Preparation for Operation of the Prison*)**, the Contractor shall not by himself, his servants, agents or Sub-contractors communicate with any part of the media, either written or broadcast on any matter concerning the Contract without referring to and complying with the guidelines set out in the Media Handling Protocol. The Authority will provide appropriate training on

- 61.3 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 prior written approval in accordance with the Media Handling Protocol, provided nothing in this Clause shall prevent or restrict the Contractor, the Construction Sub-contractor or the Operating Sub-contractor from taking photographs or filming solely in order to provide the Services.

62 Confidential Information and Documents

- 62.1 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).
- 62.2 The Contractor will note and comply with the provisions of the Official Secrets Acts 1911 -1989.
- 62.3 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.
- 62.4 The Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract, except with the written consent of the Authority.
- 62.5 At the end of the Contract Term, or upon earlier termination, the Contractor shall ensure that all documents in his 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.
- 62.6 Notwithstanding any of the provisions of this clause or of **Clause 61 (Public Relations and Publicity)** nothing in this Contract shall apply to information which is revealed made available or published by either party:
- (a) to its professional advisers, the Third Party Lenders or their professional advisers provided they execute a

- (b) as required by law or any regulatory 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.

62.7

- (a) The parties agree that the provisions of this Contract shall, subject to **Clause 62.7(b) (*Confidential Information and Documents*)**, not be treated as Confidential Information and may be disclosed without restriction.
- (b) **Clause 62.7(a) (*Confidential Information and Documents*)** shall not apply to provisions of this Contract which are designated as Commercially Sensitive Information and listed in **Schedule S (*Commercially Sensitive Information*)** which shall, subject to **Clause 62.9 (*Confidential Information and Documents*)**, be kept confidential for the periods specified in **Schedule S (*Commercially Sensitive Information*)**.
- (c) The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Contract or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

62.8 **Clauses 62.7(b) (*Confidential Information and Documents*)** and **62.7(c) (*Confidential Information and Documents*)**, shall not apply to:

- (a) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under this Contract for the performance of those obligations;

- (b) any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this **Clause 62 (Confidential Information and Documents)**;
- (c) any disclosure to enable a determination to be made under Clause 75 (**Dispute Resolution**) or in connection with a dispute between the Contractor and any of its subcontractors;
- (d) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any provision of information to the parties' own professional advisers or insurance advisers or to the Banks or the Banks' professional advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under this Contract, or may wish to acquire shares in the Contractor in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (g) any registration or recording of the Planning Approvals and property registration required;
- (h) any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract; or

- (i) any disclosure for the purpose of:
 - (i) the examination and certification of the Authority's or the Contractor's accounts;
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,
 - (iii) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (iv) (without prejudice to the generality of **Clause 62.8 (b) (Confidential Information and Documents)** compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither **Clauses 62.8(i)(iv) (Confidential Information and Documents)** or **62.8(d) (Confidential Information and Documents)** shall permit disclosure of Confidential Information otherwise prohibited by **Clause 62.7(c) (Confidential Information and Documents)** where that information is exempt from disclosure under section 41 of the FOIA.

- 62.9 Where disclosure is permitted under **Clause 62.8 (Confidential Information and Documents)**, other than **Clauses 62.8(b), 62.8(d), 62.8(e) or 62.8(h) (Confidential Information and Documents)**, the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.
- 62.10 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.
- 62.11 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the

- 62.12 Where the Contractor in carrying out its obligations under the Contract is provided with information relating to prisoners, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that Prisoner and has obtained the prior written consent of the Authority.
- 62.13 The parties acknowledge that the National Audit Office has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 62.14 The provisions of this **Clause 62 (Confidential Information and Documents)** are without prejudice to the application of the Official Secrets Acts 1911 and 1989.
- 62.15 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in **Clauses 62.16 to 62.22 (Confidential Information and Documents)**.
- 62.16 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within seven (7) Days of receiving a Request for Information and the Contractor shall:
- (j) provide the Authority with a copy of all such information in the form that the Authority requires as soon as practicable and in any event within ten (10) Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
 - (k) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

- 62.17 Following notification under **Clause 62.16 (*Confidential Information and Documents*)**, and up until such time as the Contractor has provided the Authority with all the Information specified in **Clause 62.16 (*Confidential Information and Documents*)**, the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:
- (a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
 - (b) whether Information is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly or allow its Sub-contractors to respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 62.18 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure at least five (5) Years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.
- 62.19 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Days of receiving it.
- 62.20 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
- 62.21 In the event of a request from the Authority pursuant to **Clause 62.16 (*Confidential Information and Documents*)** the Contractor shall as soon as practicable and in any event within five (5) Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "***Appropriate Limit***") the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does

62.22 The Contractor acknowledges that (notwithstanding the provisions of **Clauses 62.7 (*Confidential Information and Documents*)** to **62.22 (*Confidential Information and Documents*)** the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:

- (a) in certain circumstances without consulting with the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account, provided always that where **Clause 62.22(i) (*Confidential Information and Documents*)** applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

63 Intellectual Property Rights

63.1 All rights in data, reports, drawings, specifications, software designs and/or other material produced by the Authority shall vest in and be the property of the Crown.

63.2 The Contractor hereby grants the Authority an irrevocable non-exclusive licence in perpetuity free of any charge to use the data, reports, drawings, specifications, plans, software designs, inventions, and/or other material solely for the purpose of maintaining and operating the Prison or procuring the same. Where the Contractor has the benefit of a licence whether express or implied from a third party (including any sub-contractor) to use rights in data, reports, drawings, specifications, plans, software designs, inventions or other material for the purpose of maintaining and operating the Prison, the Contractor shall ensure that it is a condition of that licence that the Authority shall be entitled to a non-exclusive irrevocable licence in perpetuity free of any charge to use the said data, report, drawings, specifications, plans, software designs, inventions or other material solely

- 63.3 The Contractor shall not sell, copy or use the intellectual property rights granted to him by this Clause if such sale, copying or use would compromise the security or safety of the Prison. If the Contractor wishes to grant a licence to use any of the data, reports, drawings, specifications, plans, software, designs, inventions or other material referred to in **Clause 63.2 (*Intellectual Property Rights*)** to a third party, it shall obtain the prior written consent of the Authority (not to be unreasonably withheld).
- 63.4 Where the Authority contributes substantially to the development of such material or rights as are specified in **Clause 63.2 (*Intellectual Property Rights*)**, the Authority is entitled to and shall receive ten per cent. (10%) of the gross sale price for the material or rights in the event that such material or rights are sold by the Contractor to any other party.
- 63.5 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 the Prisoner's labour shall vest in the Authority, and the product of the Prisoner's labour shall be those things resulting directly from the paid employment or engagement.
- 63.6 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 63.5 (*Intellectual Property Rights*)**, no Intellectual Property rights shall vest in the Authority or the Contractor in relation to the said work, invention or performance.

64 **Contractor's records**

- 64.1 The Contractor shall at all times:
- (a) maintain a full record of particulars of the costs of performing the obligations of the Contractor under the Contract, including those relating to design, build, maintenance and operation. Such records shall further include details of any commitments made by the

- (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.

64.2 For the duration of the Contract the Contractor:

- (a) shall furnish to the Authority:
 - (i) as soon as they become available (and in any event within ninety (90) Days of the end of each of its financial periods) copies of its audited financial statements for that half-Year or Year (as the case may be) which shall contain an income statement and a balance sheet and a cash flow statement; and
 - (ii) as soon as they become available (and in any event within thirty (30) Days of the end of each of its financial half-Years) 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 64.2(a) (*Contractor's Records*)** on a basis consistently applied in accordance with generally accepted accounting principles in England and Wales and those financial statements shall give a true and fair view of the results of its operations for the period in question and the state of its affairs as at the date to which the financial statements are made up and shall disclose or reserve against all the liabilities (actual or contingent) of the Contractor;
- (c) at the request of the Authority, shall furnish the Authority with any and all information provided by it to the Third Party Lenders during the term of the Contract.

64.3 The 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 require, save that such requirements shall be reasonable;

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

64.4 The Authority's right of access to records of account shall include cost audits for verification of cost expenditure, for the purpose of **Clause 42** (***Variation of Price***).

64.5 The Contractor shall maintain or produce the following:

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

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

64.6 The Contractor shall maintain such other records and make the same available to the Authority as the Authority may reasonably require.

64.7 The Contractor shall permit records referred to in this Clause to be examined by the Controller and other representatives of the Authority, and the Comptroller and Auditor General.

- 64.8 The records referred to in this Clause shall be retained for a period of at least five (5) Years after the Contractor's obligations under the Contract have come to an end. Records relating to the construction of the Prison will be retained and provided to the Authority as set out in **Schedule O (*Management and Control of Documentation*)**.
- 64.9 Upon the termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the prison, and without prejudice to the identity of any new Contractor, the Contractor shall comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating the Prison. Such information shall include information relating to the anticipated cost of a transfer of the Prison to a new Contractor.
- 64.10 The Contractor will control the documents referred to in **Schedule O (*Management and Control of Documentation*)** in the manner set out in that Schedule.

64A Internal and External Audits

- 64A.1 Subject to clause 64A.2, the Contractor shall procure that, in addition to the Operating Sub-contractor's obligations set out in clauses 30 and 50 of the Operating Sub-contract, the Operating Sub-contractor shall from the Actual New Houseblock Opening Date and only in relation to Services provided from such date:
- (a) maintain detailed records relating to the performance by the Operating Sub-contractor of the Operating Sub-contract in accordance with good industry practice and legislation;
 - (b) make available to the Authority access on reasonable notice to and promptly provide copies of such records referred to in clauses 50.1(a) 50A.1(a) of the Operating Sub-contract for all such purposes as the Authority shall require including, without prejudice to the generality of the foregoing, purposes associated with financial audits;
 - (c) co-operate in relation to both Authority internal and external audits which shall include audits by HM Inspectors of Prisons, the Independent Monitoring Board and the Prison and Probation Ombudsman, together with the Authority's own audit and assurance requirements (such audits and assurance requirements being the "Relevant Audits"); and
 - (d) (subject always to clause 64A.2(e)) discharge the obligations that the Operating Sub-contractor has whether under the Operating Sub-contract or otherwise to comply with the recommendations of the Relevant Audits always

within a timescale agreed with the Authority (acting reasonably), the obligation of the Operating Sub-contractor also being to provide regular progress reports.

64A.2 The Authority hereby agrees that:

- (a) the Authority shall provide the Contractor and the Operating Sub-contractor with the terms of references of any Relevant Audits not less than ten (10) Business Days prior to any Relevant Audit commencing;
- (b) interim draft reports relating to any Relevant Audit shall promptly be provided by the Authority to the Contractor and the Operating Sub-contractor at the Authority's discretion, acting reasonably at all times;
- (c) final reports relating to any Relevant Audit shall be provided by the Authority to the Contractor and the Operating Sub-contractor as soon as reasonably practicable and not more than five (5) Business Days after such report has become available to the Authority;
- (d) the Relevant Audits will not compromise the security of the Prison or unreasonably interfere with the operation of the Prison (having regard to the nature of the Relevant Audit);
- (e) the Contractor shall have no obligation to procure that the Operating Sub-contractor shall be obliged to comply with the recommendations of any Relevant Audit where such recommendations are contrary and/or in addition to the Operating Sub-contractor's obligations under the Operating Sub-contract save for in such instances where the Authority issues a Notice of Change in relation to such recommendations within forty (40) Business Days after the receipt of such recommendations by the Authority, the Contractor and the Operating Sub-contractor and the provisions of Clause 10 have been complied with by the Parties and if a Notice of Change has not been so issued, the Operating Sub-contractor has notified the Contractor and the Authority of the proposed required change in accordance with clause 13.5 of the Operating Sub-contract and the provisions of Clause 10 have been complied with.

64A.3 The Parties agree that, save as expressly set out in clauses 64A.1 and 64A.2, the provisions relating to Relevant Audits in clauses 64A.1 and 64A.2 do not apply to the Contractor or any Sub-contractor other than the Operating Sub-contractor.

65 **Independent Contractor**

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

Contractor nor any of its employees shall be entitled to any of the benefits provided by the Authority to its established or unestablished officers and staff.

66 Authority to Commit and Variation

- 66.1 There shall be Named Representatives of the Authority, whose names shall appear at **Part 1** of **Schedule J (*Named Representatives*)**, and in the event of any change to the Named Representatives the Authority shall give written notice of the change to the Contractor. A change in the Named Representatives does not constitute a variation of the Contract.
- 66.2 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.
- 66.3 Any variation of any provision of the Contract must be effected in writing issued by the Authority or its Named Representatives and no purported variation by any other means shall bind the Authority.
- 66.4 There shall be Named Representatives of the Contractor, whose names shall appear at **Part 2** of **Schedule J (*Named Representatives*)**, and in the event of any change to the Named Representatives the Contractor shall give written notice of the change to the Authority. A change in the Named Representatives does not constitute a variation of the Contract.

67 Service of Notices

- 67.1 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 his 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.
- 67.2 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.

68 Race and Sex Discrimination

- 68.1 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.
- 68.2 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.

68A Equality and Non-Discrimination

68A.1 On and from the date of the Phase 2 Amending Agreement, the Contractor shall:

- 68A.1.1 comply with any and all Legislation (including any codes of practice prepared and issued from time to time by the Commission for Equality and Human Rights or any other Relevant Authority) relating to discrimination (whether in relation to race, gender, age, disability, religious belief, sexual orientation or otherwise) and, in particular, monitor and promote the principle of equal treatment at all times; and
- 68A.1.2 co-operate fully with the Authority to exchange experiences and good practice.

68A.2 The Contractor shall promote equality and diversity and where it appears to the Contractor, in relation to and having regard to the particular work of the Contractor's Staff, that members of a racial group or persons with disabilities are under-represented among the Contractor's Staff or that there is a gender imbalance in the Contractor's Staff doing that work compared to their representation in the Contractor's Staff as a whole or in the population from which the Contractor's Staff are normally recruited, consider and, if and as appropriate in all of the circumstances, take such steps as may be reasonably necessary to promote racial, disability and/or gender equality (as the case may be) which may include:

- 68A.2.1 the placing and use of job advertisements to reach members of such groups and to encourage their applications;
- 68A.2.2 the use of employment agencies and careers offices;
- 68A.2.3 the promotion of recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such groups;

- 68A.2.4 the provision of appropriate training and the encouragement of members of the Contractor's Staff from such groups to apply for promotion or transfer to do work in which such groups are under-represented;
- 68A.2.5 the monitoring and collection of information on staff in relation to all equalities issues using the race, religion and nationality categories employed by the Office of National Statistics, the monitoring of employment functions in accordance with the Equality Duties, and the supply of such information to the Authority on an annual basis;
- 68A.2.6 the monitoring, collection and analysis of information relating to the equality needs of Prisoners in accordance with the Authority's requirements, and the supply of such information to the Authority on a monthly basis. The Authority shall at its sole discretion be entitled to make such information available to the public;
- 68A.2.7 having regard to the Authority's procedures for monitoring the equality needs of Prisoners as notified from time to time by the Authority to the Contractor.

68A.3 The Contractor shall:

68A.3.1 monitor the representation among the Contractor's Staff of:

- 68A.3.1.1 persons of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics (or any successor of it));
- 68A.3.1.2 persons with disabilities; and
- 68A.3.1.3 the balance of gender,

having regard to the Authority's procedures for monitoring representation among its own employees which are notified from time to time by the Authority to the Contractor.

68A.4 The Contractor acknowledges that the Authority is subject to those obligations and duties set out in clause 68A.1 (the "Equality Duties") and shall not (and shall

procure that its Sub-Contractors shall not) deliberately by its or their acts or omissions cause, contribute to or otherwise give rise to a breach by the Authority of the Equality Duties in relation to the Contract.

68A.5 The Contractor shall comply with reasonable requests for information, data or other assistance made by the Authority in pursuance of its Equality Duties, including to:

68A.5.1 enable the Authority to conduct reviews of the Contractor's performance in relation to compliance with this clause 68 (Equality and Diversity);

68A.5.2 facilitate the Authority in preparing any report or statement to the Commission for Equality and Human Rights or any other Relevant Authority;

68A.5.3 enable the Authority to comply with any direction of the Commission for Equality and Human Rights or any other Relevant Authority; and/or

68A.5.4 carry out and provide to the Authority risk assessments and Equality Impact Assessments in relation to the Equality Duties and the Contractor's compliance with this clause 68 (Equality and Diversity).

68A.6 The Contractor shall procure that the Operating Subcontractor complies with the obligations set out in clauses 68A.1 to 68A.5 (inclusive).

68A.7 The Contractor shall nominate, as soon as reasonably practicable following the date of the Phase 2 Amending Agreement, an individual who will be responsible for managing and promoting equality and diversity in respect of the Contractor's Staff and the Custodial Service and for the implementation of all equality and diversity arrangements and the monitoring and reporting of the Contractor's compliance with this clause 68A (Equality and Diversity).

68A.8 The Contractor shall from time to time and if reasonably requested provide information relating to:

68A.8.1 the racial make-up, proportion of persons with disabilities and the gender breakdown of the Contractor's Staff;

68A.8.2 details of any complaints and/or investigations in relation to equality and diversity and details of any action taken;

68A.8.3 any allegations of discrimination and/or harassment relating to race, gender, age, disability, religious belief, sexual orientation or otherwise;

- 68A.8.4 details of training provided by the Contractor to the Contractor's Staff in relation to equality and diversity;
 - 68A.8.5 details of recruitment during the period covered by the report;
 - 68A.8.6 details and copies of any equal opportunity impact assessments carried out by the Contractor; and
 - 68A.8.7 details of any claims, the outcome of any claims and any recommendations made by an employment tribunal.
- 68A.9 The Contractor shall twelve (12) Months after the date of the Phase 2 Amending Agreement and on each twelve (12) Month anniversary of such date, submit a report to the Authority demonstrating its compliance with clauses 68A.1 to 68A.6 (inclusive) and its proposals in respect of equality and diversity for the following twelve (12) Months.
- 68A.10 The Contractor shall provide the Authority with Equality Impact Assessments as and when they are completed.
- 68A.11 If, in the reasonable opinion of the Authority, the Contractor fails to comply with its obligations in clauses 68.1A to 68A.6 (inclusive), the Contractor shall co-operate fully with the Authority to understand and, as appropriate, rectify any breach.
- 68A.12 Where any investigation is undertaken by a Relevant Authority and/or proceedings are instituted in accordance with any matter relating to the Contractor's obligations set out in this clause 68 (Equality and Diversity), the Contractor shall (and shall ensure that its Sub-Contractors shall) if reasonably requested:
- 68A.12.1 provide any information requested in the timescale allotted;
 - 68A.12.2 attend and permit members of the Contractor's Staff to attend any meetings as required;
 - 68A.12.3 allow itself and any member of the Contractor's Staff to appear as witnesses in any ensuing proceedings; and
 - 68A.12.4 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation and/or proceedings.
 - 68A.12.5 If any Relevant Authority makes a finding of any unlawful discrimination (whether in relation to race, gender, age, disability, religious belief, sexual orientation or otherwise) against the Contractor or any of its Sub-Contractors the Contractor shall: