

DATED

1 AUGUST

2008

- (1) THE SECRETARY OF STATE FOR JUSTICE
- (2) AGECROFT PRISON MANAGEMENT LIMITED

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**AMENDING AGREEMENT**

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**in respect of the Conditions of Contract  
for the Design, Construction, Management  
and Financing of a Custodial Service at Agecroft,  
Salford  
dated 6 July 1998 and made between the same  
parties**

1 AUGUST

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR JUSTICE** (the "Authority"); and
- (2) **AGECROFT PRISON MANAGEMENT LIMITED** whose registered office is at Capital House, 25 Chapel Street, London NW1 5DH (company no. 3509050) (the "Contractor").

**BACKGROUND**

- (A) Pursuant to a contract dated 6 July 1998 between Her Majesty's Principal Secretary of State for the Home Department (1) and Agecroft Prison Management Limited (2) (the "Original Contract"), the Contractor agreed to carry out certain works and provide certain services relating to the provision of a custodial service to the Authority upon the terms and conditions contained in the Original Contract.
- (B) The parties hereto wish by this agreement (the "Amending Agreement") to amend the Original Contract to the extent of the amendments contained in this Amending Agreement.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

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

**2. DELIVERY OF WORKS AND SERVICES AND AMENDMENT**

The Contractor shall continue to perform its obligations throughout the remainder of the Contract Term provided that with effect from the date of this Amending Agreement, the Original Contract shall be amended so that, in substitution for its terms, the terms of the amended and restated contract in the form annexed to this Amending Agreement (the "Amended Contract") shall apply as between the Parties to the exclusion of the terms of the Original Contract, provided that any claims or liabilities of either Party, which have accrued before the date of this Amending Agreement, shall be established in accordance with the terms of the Original Contract as in force at the time of accrual of the relevant claim or liability.

**3. ENFORCEMENT BY THIRD PARTIES**

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

4. **SUCCESSORS/BENEFIT OF AGREEMENT**

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

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

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

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

5.3 Nothing in this **clause 5 (Entire Agreement/Reliance On Representations)** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

6. **GOVERNING LAW**

The formation, existence, construction, performance, validity and all aspects whatsoever of this Amending Agreement or of any term of this Amending Agreement will be governed by the law of England and Wales.

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

**SIGNED by**

**for and on behalf of H.M SECRETARY  
OF STATE FOR JUSTICE**

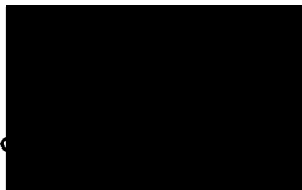
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**Authorised Signatory:**

**SIGNED by**

**for and on behalf AGECROFT PRISON  
MANAGEMENT LIMITED**

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**SIGNED by**

for and on behalf of **H.M SECRETARY  
OF STATE FOR JUSTICE**

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**Authorized Signatory:**

**SIGNED by**

for and on behalf **AGECROFT PRISON  
MANAGEMENT LIMITED**

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**Authorised Signatory:**



**CONFORMED COPY**

**6 July 1998**

**THE SECRETARY OF STATE FOR JUSTICE**

**AGECROFT PRISON MANAGEMENT LIMITED**

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

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**UNPRICED**

**(including the amendments to the contract contained in amendment  
letter AGE/1)**

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**THIS AGREEMENT** is made on 6 July 1998

**BETWEEN**

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

**AGECROFT PRISON MANAGEMENT LIMITED** whose registered office is at Capital House, 25 Chapel Street, London NW1 5DH (Company No. 3509050) (the "**Contractor**").

**NOW IT IS AGREED** as follows:

## **PART I - GENERAL**

### **1. DEFINITIONS**

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

**Access Payments** means the amounts payable (exclusive of VAT) by the Contractor to API pursuant to Clause 9.1 of the Access Agreement (as if in effect at the date hereof) provided that, for the purposes of this definition and the definition of Lender Liabilities only, the monthly Access Payments shall not exceed [REDACTED] as such amount may be amended pursuant to Clause 9.2 (**Change to Services Required**). For the avoidance of doubt, any reduction of the liabilities of the Contractor pursuant to the Access Agreement (by reason of a prepayment of the liabilities of the Contractor thereunder or otherwise) shall be taken into account in ascertaining the amount of the Access Payments from time to time;

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

**Actual Houseblock Opening Date** means the date on which the Contractor first provides thirty (30) Available Prisoner Places at the Houseblock;

**Actual Increased Capacity Date** means the date on which the Contractor first provides not less than two hundred and sixty four (264) Available Prisoner Places at the Houseblock;

**Actual Opening Date** means the date upon which the Contractor first provides no less than thirty (30) Available Prisoner Places;

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

**Additional Prisoner Place** means:

- (a) until the Actual Increased Capacity Date, an Available Prisoner Place (additional to the eight hundred (800) Available Prisoner Places) (and during the Increased Capacity Phase-In Period an Available Prisoner Place additional to the number of Available Prisoner Places to be provided pursuant to the Increased Capacity Phase-In Period Timetable); and
- (b) from the Actual Increased Capacity Date, an Available Prisoner Place additional to the one thousand and sixty four (1064) Available Prisoner Places;

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

**Amending Agreement** means the amending agreement entered into between the Authority and the Contractor dated 1 AUGUST 2008;

**API** means Agecroft Properties Inc. a corporation incorporated in the State of Tennessee, USA whose principal place of business is at 10 Burton Hills Boulevard, Nashville, Tennessee 37215, USA;

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

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

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

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

**Capital Expenditure** means any expenditure incurred which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time or any expenditure which is required once only or over a limited period of time (but not on an annual or periodic basis);

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

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

**CCA** means Corrections Corporation of America;

**CCA REIT** means CCA Prison Realty Trust;

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

**Claim for Tax** means:

- (a) any claim, assessment, demand, notice, determination or other document issued or action taken by or on behalf of any tax authority or any other person by virtue of which the Contractor or Operating Sub-contractor may have a stamp duty land tax liability as referred to in clause 11A.1 (**SDLT Liability**); and/or
- (b) any self- assessment made by the Contractor or Operating Sub-contractor in respect of any stamp duty land tax liability as referred to in clause 11A.1 (**SDLT Liability**) which it considers that it is or may become liable to pay;

**Completion Works** means the works listed in paragraph 2 on the plan entitled "Handover Summary Diagram" as the same is appended to Part 2 of Schedule A (**Specifications**);

**Confidential Matters** means any information which:

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

**Construction Direct Agreement** means the agreement dated on or about the date hereof between the Contractor, API, the Construction Sub-contractor and Tilbury Douglas plc;

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

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

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

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

**Contractual Houseblock Opening Date** means 30 November 2009 as the same may be altered pursuant to Clause 24A (**Extension of Time - Increased Capacity**);

**Contractual Increased Capacity Date** means 11 January 2010 as the same may be altered pursuant to Clause 24A (**Extension of Time - Increased Capacity**);

**Contractual Opening Date** means 20 January 2000 as the same may be altered pursuant to Clause 24 (**Extension of Time**);

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

**Crown** includes the Authority;

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

**Custodial Service** means all services to be provided by the Contractor under the Contract after the Actual Opening Date;

**Daily Report** means the daily report to be completed by the Contractor and made available to the Controller via the Prison's computer network within one hour of Prisoners' lock-up with details (inter alia) as to the number of Available Prisoner Places and Additional Prisoner Places during the day prior to lock-up and since the previous lock-up and presented in

hard form to a representative of the Authority as contemplated in Clause 35.4 (**Monitoring and Inspection**) substantially in the form of Schedule I (**Daily Report**);

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

**Debenture** has the meaning given it in the Direct Agreement;

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

**Development Agreement** means the agreement dated on or about the date hereof between the Contractor and API in respect of the design, execution, completion and financing of the Works;

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

**Direct Agreement** means the agreement dated on or about the date hereof between the Authority, the Contractor, CCA, API and CCA REIT;

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

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

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

**Easement** means the rights granted in the Deed of Easement dated 31st March 1990 made between (1) Nuclear Electric Plc and (2) National Power Plc as more particularly described in Entry 9 of the Charges Register of the property registered at H.M. Land Registry under title number GM719043;

**Engineer's Completion Works Certificate** has the meaning given to it in Part 2 of Schedule A (**Specifications**);

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

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

**Engineer's Houseblock Planting Certificate** has the meaning given to it in Part 2 of Schedule A (**Specifications**);

**Engineer's Planting Certificate** has the meaning given to it in Part 1 of Schedule A (**Specifications**);

**Equity Subscription and Loan Agreement** means the agreement entitled "Equity and Loan Subscription Agreement" dated on or about the date hereof between CCA (UK) Limited, Sodexho Alliance S.A., the Contractor and CCA;

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

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

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

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

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

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

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

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

**Fixed Charge** means the agreement dated on or about the date hereof between the Contractor and the Authority relating to the equipment referred to in Clause 14.1 (**Supply of Equipment**);



**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

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

**Full Operation Date** means 11 May 2000 as the same may be altered pursuant to Clause 74 (**Extension of Time**) Amendment No. 2

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

**Houseblock** means the new two hundred and sixty four (264) place houseblock building at the Prison and its associated facilities and infrastructure;

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

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

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

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

**Houseblock Planting** means the planting inside and outside of the perimeter wall of the Prison to be carried out by the Contractor in compliance with the Increased Capacity Permission;

**Houseblock Relevant Event** means:

- (a) a change of service is required by the Authority under Clause 9 (**Change to Services Required**) or Prison Legislation is enacted as contemplated in Clause 39 (**Variation of Price**) and

that change or Prison Legislation requires the Contractor to perform or procure building works upon the Houseblock Works Area or to change the nature or extent of, or to reprogramme, the Houseblock Works or to redesign or amend the nature or extent of the Custodial Service;

- (b) any failure or delay by the Authority to comply with any of its obligations under the Contract, or any delay by the Authority or any representative of the Authority in allowing the Contractor or the Houseblock Construction Sub-contractor to have access to the Houseblock Works Area or any obstruction by the Authority or any representative of the Authority insofar as such failure or delay is relevant to the Houseblock Works and/or the provision of the Increased Capacity;
- (c) strikes by any parties other than any of the employees of the Contractor or any of the Sub-contractors or suppliers to the Contractor or the Sub-contractors affecting the Houseblock Works;
- (d) civil commotion including any blockade or embargo relating to the cost of fuel (other than any civil commotion the primary intention of which is to disrupt the Houseblock Works or the opening of the Houseblock) or terrorism;
- (e) exceptionally adverse weather conditions (at least significantly exceeding the worst conditions that have occurred in the area of the Houseblock Works Area at the same time of year over the previous ten (10) years);
- (f) the compliance by the Contractor or the Houseblock Construction Sub-contractor with any court order injunctioning it from carrying out any of the Houseblock Works to the extent that such injunction is ordered on the grounds of a breach of the Restrictive Covenant;
- (g) the enforcement of any rights under the Easement or a failure to agree the manner in which the rights under the Easement will be accommodated during the carrying out of the Houseblock Works (despite the use of all reasonable endeavours by the Contractor and the Houseblock Construction Sub-contractor);
- (h) specified perils under the Houseblock Construction Sub-contract entered into between the Contractor and the Houseblock

Construction Sub-contractor, being (except where caused by the wilful or reckless default or breach of a relevant obligation under a Sub-contract by any of the Contractor and the Sub-contractors) fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom; or

- (i) failure by any utility company to carry out works to remove or divert the Underground Cable by 14 November 2008 (except where such failure arises directly or indirectly as a result of a wilful default or wilful act of the Contractor or any of its Sub-contractors);

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

**Houseblock Works Area** means during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Increased Capacity Date and the termination of the Houseblock Works, that area of land shown edged blue on the plan attached at Schedule U (*Houseblock Works Area*);

**Houseblock Works Fee** means [REDACTED]

exclusive of VAT;

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

**Increased Capacity** means an increase in the capacity of the Prison by two hundred and sixty four (264) Available Prison Places;

**Increased Capacity Permission** has the meaning given to it in Clause 12A.1 (*Planning Approval - Houseblock Works*);

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

**Increased Capacity Phase-In Period Timetable** means the timetable set out in paragraph 2B of Schedule E (*Payment Mechanism*) as the

same may be adjusted from time to time in accordance with Clause 26A (**Engineer's Houseblock Declaration**);

**Independent Engineer** means the person or firm appointed by the Authority to act as an independent engineer for the purposes of the Contract, being at the date hereof Mouchel Limited or any named representative thereof, or such other qualified, experienced and independent person or firm so appointed from time to time by the Authority following consultation with the Contractor;

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

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

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

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

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

**Irrecoverable VAT** means any amount paid or payable by or on behalf of the Contractor in respect of Value Added Tax to the extent that neither the Contractor nor any other member of any group of which the Contractor is a member has received or retained nor will receive and retain a credit (whether by way of setoff or repayment) for that amount as "input tax" (as that expression is defined in section 24(1) of the Value Added Tax Act 1994) provided that in calculating the amount of Irrecoverable VAT it shall be assumed that neither the Contractor nor any other member of a group of which the Contractor is a member has entered into any transactions other than those contemplated by this Contract and each of them has made accurate and timely VAT returns and, where appropriate, payments on the due date.

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

**Landlord** has the meaning assigned to it in the Lease;

**Lease** means the Lease dated 6 July 1998 entered into by the Authority, the Contractor and UK Detention Services Limited, as varied by a Deed of Surrender and Variation dated 11 November 2002 and made between the Authority, the Contractor, UK Detention Services Limited and Agecroft Properties (No.2) Limited;

**Legislation** means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978 and any exercise of the Royal Prerogative and any enforceable community right within the meaning of section 2 of the European Communities Act 1972;

**Lender Liabilities** means:

- (a) In relation to the period prior to Engineer's Declaration A-B + C where:

A is:

- (i) an amount equal to the aggregate of all sums paid or accrued and due prior to the Extended Termination Date by API or the Contractor to the Construction Sub-contractor in accordance with the agreed programme of expenditure set out in the Finance Plan and the payment schedule set out in Schedule 2 of the Construction Sub-Contract; and
- (ii) such additional amounts pursuant to any variation to the Works which has been approved by the Authority and funded by API or the Contractor prior to the Extended Termination Date and paid or accrued and due to the Construction Sub-Contractor in accordance with a payment programme approved by the Authority;

and B is:

- (iii) the amount by which 12.7% of the aggregate of (i) and (ii) above exceeds amounts actually paid to and received by the Contractor pursuant to clauses 3.1 and 3.2 of the Equity Subscription and Loan Agreement (but disregarding any amounts paid to

and received by the Contractor to the extent the relevant securities have been redeemed);

and C is:

(iv) an amount equal to the sum of the interest calculated at an annual rate equal to 7.25% accruing on the total amount calculated in respect of (i) and (ii) above for the period from the date of receipt of each such amount by the Construction Sub-contractor to the Termination Date provided that no interest shall be payable under this sub-clause for any period after 180 days from the date of the relevant Termination Notice;

(b) In relation to the period after Engineer's Declaration an amount equal to the present value of the Access Payments which would but for the termination of this Contract have fallen due for payment (whether or not the Access Agreement is executed) between the relevant Extended Termination Date and the Expiry Date of the DCMF Contract, each such payment to be discounted from the due date for payment to the Extended Termination Date at a rate of 8.12%;

less (in the case of (a) and (b) above) any amounts of Cash deposited or placed by or on behalf of the Contractor by way of security for obligations owed by the Contractor under the Access Agreement.

The amount of Lender Liabilities shall not be increased by reason of any amendment to the Access Agreement unless: (a) the Authority otherwise agrees in writing; or (b) such amendment reflects a change which results from a Notice of Change of the nature referred to in Clause 9.2 (***Change to Services Required***) of this Contract coming into effect;

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

Contractor may be changed as a result of circumstances that do not constitute a Significant Change;

**LIBOR** means, in respect of any month, the three (3) month London Interbank offer rate on the first business day of such month, as shown in the Financial Times;

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

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

**Monitoring Contract** means the contract dated 17 October 1997 and effective from 15 September 1997 between the Authority and the Independent Engineer setting out the terms of the Independent Engineer's appointment, as amended from time to time;

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

**Named Representatives of the Contractor** means those representatives of the Contractor whose names appear at Part 2 of Schedule J (**Named Representatives**);

**National Power Option** means the rights granted in Clause 14 of an agreement for the sale of part of the former Agecroft Power Station dated 29th March 1996 and made between (1) National Power Plc and (2) Her Majesty's Principal Secretary of State for the Home Department;

**Notice of Change** has the meaning given to it in Clause 9.1 (**Change to Services Required**);

**Operating Sub-contract** means the agreement dated on or about the date hereof between the Contractor and the Operating Sub-contractor in respect of the provision of certain operation and maintenance services to be provided by the Contractor hereunder or, if applicable, any replacement thereof entered into by the Contractor and any replacement Operating Sub-contractor pursuant to the provisions of Clause 39A (**Benchmarking**);

**Operating Sub-contractor** means Kalyx Limited or, with the prior written approval of the Authority and subject to the provisions of Clause 7 (**Sub-Contracting**), such other Sub-contractor(s) appointed by the Contractor from time to time to perform any of the Custodial Service

(other than those undertaken by the Construction Sub-contractor in its capacity as such) including any Operating Sub-contractor appointed pursuant to the provisions of Clause 39A (**Benchmarking**);

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

**Original Value** means the aggregate of the Contractor's outstanding third party financing and such amount as will enable the Shareholders to achieve their real post tax internal rate of return of 12.8% per annum on all amounts projected in the Finance Plan to be invested by them, which aggregate shall be an amount equal to the greater of Lender Liabilities and the result of the aggregate of the following:

(A) the Lender Liabilities;

PLUS

(B) the aggregate of all the amounts which are projected in the Finance Plan as at the date hereof and which are subsequently invested by the Shareholders (including by way of subordinated debt) and by CCA as lender pursuant to the Equity Subscription and Loan Agreement prior to the Termination Date pursuant to Clause 39.5, being multiplied by  $(1.128)^n$  multiplied by X;

LESS

(C) the aggregate of all the amounts ever actually received; or which could be received if the Contractor were to pay out all its available cash reserves at the Termination Date (other than cash reserves that are included in the calculation of the amount in paragraph (A) above and required to be paid to the counterparty to the Development Agreement pursuant to Clause 38.2 thereof or the counterparty to the Access Agreement pursuant to Clause 16.5 thereof), by the Shareholders or holders of debt from the Contractor (whether by way of dividend, principal, interest or otherwise, but ignoring any payments due to the Shareholders for services provided to the Contractor under any Sub-contract in accordance with the terms of that Sub-contract), being in the case of each single receipt of any payment by any shareholder and by CCA as lender pursuant to the Equity Subscription and Loan Agreement multiplied by  $(1.128)^n$  multiplied by X;



For the purposes of this definition:

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

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

amounts invested by the Shareholders or by CCA as lender pursuant to the Equity Subscription and Loan Agreement refer only to amounts invested by each of them in that capacity and shall not include any investment in relation to the Development Agreement or the Access Agreement;

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

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

**Performance Quarter** means in respect of the first Performance Quarter of the first Performance Year, the period commencing on 11 May 2000 and ending on 31 August 2000; and, in respect of any subsequent Performance Quarter, the relevant successive three (3) month period thereafter (or such shorter period as is remaining until the Expiry Date or Extended Termination Date, as the case may be); **Amendment No 7**

**Performance Year** means, in respect of the first Performance Year, the period commencing on 11 May 2000 and ending on 31 May 2001, and, in respect of any subsequent Performance Year, the relevant successive twelve (12) month period thereafter (or such shorter period as is remaining until the Expiry Date or Extended Termination Date, as the case may be);

**Amendment No 7**

**Permitted Level** means on any date the aggregate of:

- (a) ten per cent (10%) of the aggregate number of Available Prisoner Places occupied on that date (excluding Additional

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

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

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

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

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

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

**Planning Obligations Agreements** means the Deed entered into by the Authority on 22 April 1997 pursuant to Section 299A of the Town and Country Planning Act 1990 as amended by an Agreement pursuant to Sections 106 and 299A of the said Act dated 29 June 1998 and made between the Council of the City of Salford, the Authority and the Contractor in respect of the development of the Prison and adjacent land and the Deed dated on or about the date of the Amending Agreement pursuant to Section 106 of the said Act and made between the Council of the City of Salford, the Authority, the Contractor and the Operating Sub-contractor in respect of the development of the Houseblock;

**Planting** has the meaning given to it in Part 1 of Schedule A (**Specifications**);

**Prison** means the buildings and structures and land enclosed within the boundary of the Land and the Additional Land, and each and any of their component parts described in Schedule A (**Specifications**), and existing on the Land and the Additional Land, together with any extensions and alterations thereto existing from time to time within which the Contractor

is to provide the Custodial Service including, from the Actual Houseblock Opening Date, the Houseblock;

**Prison Cell** means a secure unit of accommodation for occupation by a Prisoner or Prisoners (including segregation units and secure units for occupation by a Prisoner or Prisoners in the healthcare centre of the Prison);

**Prisoner** means any person for the time being detained in legal custody as a result of a requirement, imposed by a court or otherwise, that he be so detained;

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

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

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

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

**Project** means the provision of the Services;

**Rectification Notice** shall have the meaning assigned to it in Clause 45.1 (**Rectification and Termination for Default**);

**Refinancing Agreement** means the agreement of the same name of or about the date hereof between the Contractor, CCA, CCA Prison Realty Trust and API;

**Relevant Agreements** means each of the Development Agreement, the Access Agreement, the Equity Subscription and Loan Agreement, the Refinancing Agreement, the Subordinated Loan Agreement and the Sub-Lease;

**Relevant Event** means any of the following events:

- (a) a change of service is required by the Authority under Clause 9 (**Change to Services Required**) or Prison Legislation is enacted as contemplated in Clause 39 (**Variation of Price**) and that change or Prison Legislation requires the Contractor to perform or procure building works upon the Site or to change the nature or extent of, or to reprogramme, the Works or to redesign or amend the nature or extent of the Custodial Service;
- (b) Planning Approval not having been obtained by 31 December 1998;
- (c) any failure or delay by the Authority to comply with any of its obligations under the Contract, or any delay by the Authority or any representative of the Authority in allowing the Contractor or Construction Sub-contractor to have access to the Site or any obstruction by the Authority or any representative of the Authority of such access;
- (d) strikes by any parties other than any of the employees of the Contractor or any of the Sub-contractors or suppliers to the Contractor or the Sub-contractors;
- (e) civil commotion (other than any civil commotion the primary intention of which is to disrupt the Works or the opening of the Prison) or terrorism;
- (f) exceptionally adverse weather conditions (at least significantly exceeding the worst conditions that have occurred in the area of the Site at the same time of year over the previous ten years);
- (g) specified perils under the Sub-contract entered into between API and the Construction Sub-contractor, being (except where

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

- (h) the compliance by the Contractor or the Construction Sub-contractor with any court order injunction it from carrying out any of the Works to the extent that such injunction is ordered on the grounds of a breach of the Restrictive Covenant;
- (i) the enforcement of any rights under the Easement or a failure to agree the manner in which the rights under the Easement will be accommodated during the carrying out of the Works (despite the use of all reasonable endeavours by the Contractor and the Construction Sub-contractor); or
- (j) the exercise or attempted exercise of the National Power Option or the failure to remove the Caution from Title Number GM719043;

**Relevant Liabilities** means on any date all liabilities to the Authority which are accrued on such date under this Contract under the Lease and the Direct Agreement, in each case whether liquidated or unliquidated and whether or not the same have become due and payable including such other liabilities as the parties may agree to designate as Relevant Liabilities from time to time in accordance herewith;

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

**Restrictive Covenant** means the restrictive covenant affecting the Land and the Additional Land contained in a conveyance dated 17 May 1920 made between (i) Evelyn Dautesey (ii) George Arthur Robinson and Ronald Charles William Beauchamp and (iii) The Mayor and Alderman & Burgesses of the County Borough of Salford (as varied by a Deed dated 28 September 1920 made between the same parties) as more particularly described in entries 2 and 3 of the Charges Register of the property registered at H.M. Land Registry under title number GM719043;

**Retail Prices Index** or **RPI** means the Retail Prices Index as published from time to time in Table 5 (in respect of all items other than mortgage interest payments (**RPIX**)) of Business Monitor (MM23) published by the

Office of National Statistics or such index in such other journal as shall replace such table (and, for the avoidance of doubt, if RPI is rebased during the Contract Term, it shall nevertheless be determined for the purposes hereof as if no such rebasing had occurred);

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

**Retention Percentage** means [REDACTED] of the Houseblock Works Fee;

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

**Security Technology Change** means any change in the manner in which security and control are or might be maintained in the Prison which materially reduces or will materially reduce the number of Prisoner Custody Officers required or otherwise materially reduces or will materially reduce the costs of the Contractor (or the Operating Sub-contractor) in performing its obligations under the Contract (or the Operating Sub-contract);

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

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

**Significant Change** means either:

- (a) a change in the costs of the Contractor or a Sub-contractor (other than API) of operating and/or maintaining the Prison (excluding for the avoidance of doubt taxes and financing costs) which has arisen as a result of events beyond the control of the Contractor or any of the Sub-contractors occurring after the date hereof; or
- (b) a change in factors affecting the costs of operating and/or maintaining prisons generally which have not been accurately reflected in the Indexation provisions contained in Schedule E (**Payment Mechanism**) or otherwise in Clause 39 (**Variation of Price**) (other than Clause 39.5 (**Variation of Price**)), occurring since the date hereof;

in each case without taking into account any changes effected voluntarily by the Contractor or a Sub-contractor or to the actual level of costs in

comparison with those referred to in the Finance Plan. A Significant Change does not include any of the circumstances which may give rise to a variation of the Contract Price under Clause 9 (***Change to Services Required***) or Clause 39 (***Variation of Price***) (other than Clause 39.5 (***Variation of Price***));

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

***Site*** means all the Land and the Additional Land together with any buildings or structures and parts of buildings or structures and each and any of their component parts, whether temporary or permanent, which may exist thereupon from time to time;

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

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

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

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

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

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

***Sub-contractor's Collateral Warranty*** means the collateral warranty between the Authority, the Houseblock Construction Sub-contractor and

the Contractor delivered to the Authority pursuant to Clause 2A (**Houseblock Documents**);

**Subordinated Loan Agreement** means the agreement so entitled between the Contractor, Corrections Corporation of America and Sodexho Alliance S.A as partially assigned by Sodexho Alliance S.A to Sodexho Holdings Limited pursuant to a Deed of Assignment dated on or about 30 June 2003;

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

**Sub-lease** means the sub-lease in the form initialled by the Authority and to be entered into between API and the Contractor pursuant to the Refinancing Agreement;

**Supplemental Fixed Charge** means the agreement dated on or about the date of the Amending Agreement between the Contractor and the Authority relating to the equipment referred to in Clause 14.1A (**Supply of Equipment**);

**Supplemental Lease** means the lease dated on or about the date of the Amending Agreement entered into by the Authority, the Contractor and the Operating Sub-contractor;

**Tenant** has the meaning assigned to it in the Lease and the Supplemental Lease;

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

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

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

**Underground Cable** means the cable whose route is shown by a green line on the plan annexed to the Wayleave Agreement (Underground Cable) dated 21 October 2003 and made between Her Majesty's Principal Secretary of State for the Home Department (1), Agecroft Prison Management Limited (2), UK Detention Services Limited (3), Agecroft Properties (No.2) Limited (4), Agecroft Prison Management Limited (5),



The Council of the City of Salford (6) and United Utilities Electricity Plc (7);

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

**Wage Costs** means (with the exception of API) all costs, claims and expenses in respect of the recruitment, training, employment or hiring by any Sub-contractor (or by any other person who has undertaken to provide any part of the Services, without double-counting) of any employee, servant, agent or representative to carry out any of the Services;

**Works** means all the works which the Contractor is required to carry out under the Contract as set out in Schedule A (**Specifications**); and

**year** means calendar year unless otherwise specified.

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

- (a) the masculine includes the feminine;
- (b) the singular includes the plural;
- (c) references to the Contract mean this Contract as concluded between the Authority and the Contractor including all Schedules, annexes, plans and drawings attached thereto, together with any variations agreed by the Authority in accordance with Clause 62 (**Authority to Commit and Variation**);
- (d) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EC instrument) as amended or re-enacted;
- (e) reference to a prison includes a Young Offender's Institution and a Remand Centre;
- (f) references to the Construction Sub-contract and the Operating Sub-contract include references to such documents as novated in accordance with the terms hereof and with Clauses 3 or 4 of the Construction Direct Agreement and references to a party to those agreements shall include references to such party's successor as a party to such agreements pursuant to any such novation;

- (g) references to any documents being *In the agreed form* means such documents have been initialled by each of the parties hereto for the purpose of identifying them;
  - (h) the headings to the clauses contained herein are for the convenience of the parties and are not intended to affect the interpretation thereof; and
  - (i) words preceding "include", "includes", "including" and "Included" shall be construed without limitation by the words which follow those words.
- 1.3 This Contract is entered into under the private finance initiative, the consideration due under this Contract is determined in part by reference to both the standards attained in the performance of a service and the extent of use of the prison, and one party to this Contract is a minister of the Crown. Accordingly, this Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of Clause 4 of the Construction Contracts Exclusion Order 1998. The parties agree that, insofar as permitted by law, the operation of the Act upon any Sub-contract shall not change the terms and conditions of this Contract.

## 2. DURATION OF CONTRACT

- 2.1 The obligations and rights of the parties to this Contract shall commence on the date on which this Contract is executed.
- 2.2 Subject to the terms of Part VII of the Contract (**Termination**) and any other provisions herein relating to termination, the contract term will be twenty-five (25) years from the Contractual Opening Date.
- 2.3 In the event that the Prison does not open until after the Contractual Opening Date in accordance with Clause 21 (**Contractual Opening Date**), the Contract Term will nonetheless begin on the Contractual Opening Date, and the Authority shall not be obliged to grant the Contractor any extension of the Contract Term.

## 2A HOUSEBLOCK DOCUMENTS

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

### 3. **PRELIMINARY INFORMATION**

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

- (a) the Relevant Agreements;
- (b) all documents creating or purporting to create security interests granted by the Contractor, API, the Operating Sub-contractor or the Construction Sub-contractor in respect of the Relevant Agreements or any obligations which relate to the obligations under the Relevant Agreements and which are documents referred to as conditions precedent to the Relevant Agreements;
- (c) an undertaking to the Authority from each Shareholder to comply with its obligations under the Equity and Loan Stock Subscription Agreement.

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

### 4. **INDEMNITIES**

4.1 Subject to Clauses 4.2 (**Indemnities**), 4.6 (**Indemnities**) and 4.7 (**Indemnities**), the Contractor shall fully and effectively indemnify the Authority or any servant, agent or representative of the Authority in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses ("**Losses**") suffered or incurred by the Authority, its servants, agents or representatives which arise in connection with the Contract or its breach, the Project, the Site or the Prison including, without limitation to the generality of the foregoing:

- (i) any Losses which may be incurred or suffered by the Authority or any servant, agent or representative of the Authority, in respect of personal injury (including injury resulting in death);
- (ii) any Losses in respect of any redundancy payments in relation to persons employed to provide any part of the Services; and
- (iii) any Losses suffered or incurred by the Authority in connection with its housing Prisoners outside the Prison due to any failure by the Contractor to fulfil its obligation hereunder to provide Available Prisoner Places or Additional Prisoner Places and for the avoidance of doubt any Loss in this Sub-clause (iii) shall

mean the aggregate cost to the Authority in connection with housing such Prisoners less the sum of (a) minus (b) where:

- (a) is the total amount of the Contract Price which but for such failure by the Contractor would have been payable by the Authority (after any other deductions or set-off of sums due to the Authority) during the relevant period; and
- (b) is the amount of the Contract Price actually paid by the Authority over the same period, disregarding any reduction made operation of Clause 41 (***Performance Measures***).

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

- (a) any Losses to the extent that they arise directly from the negligence or wilful default of the Authority or any servant, agent or representative of the Authority or any failure of the Authority to comply with its obligations under this Contract, statute or common law;
- (b) other than in respect of any action taken by the Authority pursuant to Section 88 of the Criminal Justice Act 1991, Losses to the extent arising directly from the performance by the Authority, its servants, agents or representatives of its obligations under or in respect of the Contract (including, but not limited to, the payment of any part of the Contract Price, any payments due to the Independent Engineer or any other servants, agents or representatives appointed by the Authority in connection with the Contract and any internal costs or expenses incurred by the Authority in monitoring the Contract) or Losses to the extent that the Authority is reasonably able to mitigate them;
- (c) any business rates in respect of the Prison or the Site (or any contributions made by or requested from a Minister of the Crown in lieu thereof) or any tax or charge imposed in substitution therefor;
- (d) any Losses attributable to any act, event, matter or omission after the expiry of the Contract Term, excluding, for the avoidance of doubt, those attributable to any matters for which the Contractor has accepted responsibility under Clause 10 (***Provision and Interpretation of Information***);


- (e) any Losses incurred by the Authority or any servant, agent or representative of the Authority in connection with a breach by the Authority of any public procurement rules; and
- (f) (except as expressly provided in Clause 4.1 (i), (ii) and (iii) above) any indirect or consequential Losses except to the extent that such Losses are (or would have been) covered by a policy of insurance which is maintained by the Contractor and/or any Sub-contractor or which the Contractor is obliged to maintain pursuant to Clause 5 (**Insurance**) and has failed to maintain.

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

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

4.4

- (a)   

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

(c) The liability of the Contractor pursuant to this Clause 4.4 (**Indemnities**) shall arise at the time the relevant Losses are incurred by the Authority. The Contractor will use its best endeavours to ensure the prompt settlement of any such claim. Nothing in this paragraph (c) shall in any way affect the Contractor's obligation to make payment up to the amount specified in Clause 4.4(b)(i) (**Indemnities**) in respect of any Losses.

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

4.6

The Contractor agrees (and undertakes to procure that its Sub-contractors agree) that the Authority has the sole right to control the conduct of any proceedings in relation to any claim from third parties, including employees of the parties hereto, to which the Authority is a party, regardless of whether the Contractor (or any Sub-contractor) is also a party thereto. The Authority agrees that it shall not settle or compromise any claim giving rise to losses exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) for which the Contractor is liable to indemnify the Authority under Clause 4.1 (**Indemnities**) above without prior consultation with the Contractor. The Authority shall keep the Contractor reasonably informed as to the progress and status of any such claim until such claim is settled or withdrawn. If, in contesting any claim, the Authority knowingly takes or fails to take any action which prejudices any entitlement of the Contractor to recover any proportion of the claim from any insurer under any Insurance policy maintained by the Contractor in accordance with the Contract, the liability of the Contractor to indemnify the Authority in respect of such claim shall be reduced by such proportion. The Contractor undertakes that: (i) it will notify the Authority of any claim against the Contractor if the claim relates to the provision of the Services or to the Prison (other than a claim of less than [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) in respect of the theft or loss of a Prisoner's property); (ii) it will not settle or compromise any claim notified under (i) (whether insured or uninsured) to which the Authority is, or is likely to become, a party without the Authority's consent; (iii) where a claim is made against the Contractor and the Authority has confirmed to the Contractor in writing that it is not, and is not likely to become, a party to such claim, the Contractor will not settle or compromise any claim exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) without the Authority's prior written consent; (iv) without prejudice to (ii) or (iii) above, the Authority shall have the right on giving written notice to such effect to the Contractor at any time, to have sole conduct of any claim which is required to be notified to the Authority pursuant to this Clause provided that if the Authority exercises its right to sole conduct of a claim referred to in subclause (iii) above the Authority shall pay to the Contractor a cash sum or cash sums equivalent to the amount of any losses or liability which the Contractor may incur by reason of any settlement of such claim by the Authority if the settlement is made without the Contractor's prior written consent (not to be unreasonably withheld or delayed) and (v) it will ensure that its Sub-contractors give undertakings identical to those given by the Contractor to the Authority under this Clause 4.6 (**Indemnities**).

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

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

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

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

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

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

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

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



responsibility of the Contractor and the Contractor will fully and effectively indemnify the Authority in that respect.

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

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

4.8 Losses shall not be recoverable under Clause 4.1 (***Indemnities***) in respect of a failure by the Contractor to provide Available Prisoner Places in accordance with the Phase-in Timetable during the period up to the Actual Full Operation Date to the extent the Contractor has fully complied with its obligations under Clause 25 (***Liquidated Damages***).

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

## 5. **INSURANCE**

5.1 Subject to Clauses 5.13 (***Insurance***) and 5.14 (***Insurance***), but without prejudice to any of its obligations hereunder, including, without limitation, Clauses 4 (***Indemnities***) and 6 (***Liability for Loss or Damage***), the Contractor shall effect and maintain (or shall procure are effected and maintained) in full force and effect insurances in the joint names inter alia of the Contractor and of the Authority as detailed in the Minimum Insurance Requirements detailed in Schedule O (***Insurance***) in respect of the Prison and the Site together with the plant, fixtures, fittings, materials, chattels, machinery or other equipment therein or thereupon (the "***Assets***").

5.2 Such insurances shall include:

- (a) A waiver of subrogation against the Crown, its agents, servants, officers, employees and contractors and a waiver of subrogation

against API, the Construction Sub-contractor and the Operating Sub-contractor (as applicable), their agents, servants, officers, employees and contractors;

- (b) A provision whereby the insurance shall apply to each of the insured as if a separate policy had been issued to each of them other than in the event of exhaustion of the sum insured or limit of indemnity;
- (c) A breach of condition or warranty/severability/non vitiation provision acceptable to the Authority or If such provision is not generally available in equivalent policies written in the worldwide insurance market, each of API, the Contractor and the Sub-contractors shall covenant, for the duration of such non-availability, with the Authority in writing that it will not make any misrepresentation to, or breach any condition or warranty made to, the insurer or take or omit to take any action which would cause the relevant insurance policy to fail;
- (d) A provision which requires the insurer to send copies of all notices of cancellation or any other notices given under or in relation to the policy to the Authority;
- (e) A provision whereby the policy shall only be cancelled subject to ninety (90) days' notice, or thirty (30) days' notice in respect of non payment of premium, however in respect of Construction All Risks, Advance Loss of Profits and Third Party Liability insurances during the construction period, there shall be no provision for cancellation except in respect of non payment of premium;
- (f) A provision that a notice of a claim given to the insurer by the Authority or the Contractor or any other Insured under the policy, shall in the absence of manifest error, be accepted by the insurer as valid notification of a claim in respect of the interests of all Insured parties;
- (g) A provision that such insurance shall be primary and no other policy shall be called into contribution;
- (h) A loss payee provision in accordance with Clause 5.6(i) (**Insurance**); and
- (i) A provision providing the Authority with the right to negotiate and settle any claims received from Third Parties, subject to

prior consultation with the Contractor and Insurers on any claim exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof).

- 5.3 Such insurances shall be taken out with an insurer approved by the Authority in writing (such approval shall not be unreasonably withheld or delayed).
- 5.4 The Insurances to be effected under Part 1 of Schedule O (*Insurance*) shall be effected from the date of the Contract and continue in force in accordance with Schedule O (*Insurance*).
- 5.5 The Insurances to be effective under Part 2 of Schedule O (*Insurance*) shall be effected from the date of commencement of operations or the date when the Construction Period Insurances lapse, whichever is the earlier, and remain in force until the end of the Contract Term.
- 5.6 Unless otherwise agreed by the Authority, on each and every occasion when any part or the whole of the Prison, the Site or the Asset is destroyed or damaged:
- (i) the Contractor shall (and shall procure that API, the Construction Sub-contractor, the Operating Sub-contractor and the Houseblock Construction Sub-contractor shall), subject to the provisions of Schedule 1 of the Direct Agreement, pay all Insurance Proceeds received under any insurance policy taken out in accordance with this Clause 5 (*Insurance*) into an account in the joint names of the Authority and the Contractor at a bank to be nominated by the Authority (and advised to the insurers accordingly), such Insurance Proceeds to be released (subject to the relevant provisions of the Direct Agreement) against application by or on behalf of the Contractor with such supporting information as the Authority may reasonably require; and
  - (ii) the Contractor shall forthwith lay out all Insurance Proceeds and at its own expense all such other money as shall be necessary (including the fees of the Independent Engineer acting in connection with the claims and the reinstatement, replacement or rebuilding of the Prison as the case may be) (x) well and substantially to reinstate, rebuild and/or replace the Prison in a workmanlike manner to the reasonable satisfaction of the Independent Engineer mutatis mutandis in accordance with Clause 26 (*Engineer's Declaration*) and in accordance with all such consents and approvals as shall be necessary and

(to the extent that the Authority and the Contractor agree that any reinstatement, rebuilding or replacement shall not be to a specification as set out in Schedule A (**Specifications**)) in accordance with drawings and specifications which shall first be submitted for approval in writing by the Authority or (y) to make good any loss sustained or settling any claim made. The Independent Engineer will, in such case of reinstatement, rebuilding or replacement have the same rights and obligations as those contained in Clause 13 (**Provision of the Prison**) and Clause 26.1 (**Engineer's Declaration**).

- 5.7 The Contractor shall within thirty (30) days from the date of Contract, and thereafter before renewal or replacement of any insurance policy maintained pursuant to this Clause, and further whenever required by the Authority, provide evidence, including copies of all insurance policies, to satisfy the Authority that insurance has been taken out and is being maintained by the Contractor as required by this Clause.
- 5.8 The Contractor shall inform the Authority in writing as soon as reasonably practicable after it becomes aware of the occurrence of any event that may give rise to a claim under a policy of insurance required by this Clause other than a claim of less than [REDACTED] (as such figure is increased by the percentage increase in RPI from the date hereof) in respect of the theft or loss of a Prisoner's property, and will ensure that the Authority is kept fully informed of subsequent action and developments concerning the claim. The Contractor will take such steps as are necessary or appropriate to ensure that each Sub-contractor, in respect of any event or claim of a like nature arising out of or relating to the operation or responsibility of the Sub-contractor, takes in relation to the Contractor like action to that which the Contractor is required to take under this Clause 5.8 (**Insurance**) in relation to the Authority, and shall inform the Authority promptly of information thus received from any Sub-contractor. Notwithstanding, and without prejudice to, any other provision hereof, the Contractor undertakes that it will not (and that its Sub-contractors will not) settle any insurance claim (except in accordance with the provisions of Clause 4.6 (**Indemnities**)) without the prior written agreement of the Authority.
- 5.9 The Contractor shall procure (at or before the effective date of the relevant policy and the date of appointment of any replacement broker) the issue of a broker's letter of undertaking in the form of Part 3 of Schedule O (**Insurance**), in relation to each policy of insurance maintained in accordance with this Clause 5 (**Insurance**).

- 5.10 Without prejudice to Clause 5.13 (**Insurance**) and Clause 5.14 (**Insurance**), where the Contractor has failed to take out or procure insurance pursuant to its obligations hereunder, the Authority shall be notified of such failure by the Contractor immediately and by the insurance broker pursuant to the broker's letter of undertaking in the form set out in Part 3 of Schedule O (**Insurance**) and shall have the right to take out such insurance in the Contractor's name and to be indemnified by the Contractor in respect of any costs or expenses incurred in so doing.
- 5.11 Without prejudice to the obligations of the Contractor under this clause, the Contractor shall effect and maintain in full force those insurances which it is required to have by any applicable law.
- 5.12 The Contractor undertakes with the Authority in relation to the insurances referred to in this Clause (and undertakes to procure that API, the Construction Sub-contractor, the Operating Sub-contractor and the Houseblock Construction Sub-contractor shall give the same undertakings):
- (a) to comply with all requirements and recommendations of the insurers;
  - (b) not to do or omit to do anything which could cause any policy of insurance to become void or voidable wholly or in part;
  - (c) to comply with all requirements and recommendations of the fire authority as to fire precautions relating to the Prison, the Site and the Assets; and
  - (d) to give notice to the Authority immediately of the happening of any event which might affect, invalidate or render unenforceable any policy of Insurance effected in accordance with this clause.

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

- 5.13 As soon as the Contractor considers that, on expiry of any policy of Insurance maintained by it in compliance with its obligations under Clause 5 (**Insurance**), it will be unable to obtain a replacement policy of insurance at what is considered to be a commercial price (taking into account its obligations under this Contract, the Sub-contracts and the

Access Agreement and the price and terms at which such insurance has previously been available) in the worldwide insurance market which complies with Clause 5 (**Insurance**), it shall inform the Authority by notice thereof. Such notice shall contain the Contractor's proposals (**Proposals**) as to what it reasonably considers reasonable and appropriate to mitigate, manage and control the relevant uninsured risks (which proposals will include measures to share the risks and costs associated with the absence of insurance and may include, without limitations, proposals to amend or vary the Services or the regime and/or to alter the Prison).

- 5.14 The Authority shall, if it reasonably considers that such insurances are not available at a commercial price in the worldwide insurance market, promptly consult with the Contractor in good faith for a period of sixty (60) days from the Authority receiving a notice from the Contractor pursuant to Clause 5.13 (**Insurance**). (For the avoidance of doubt, if the Authority does not so consider, the Contractor shall be required to effect or procure such insurance in accordance with the foregoing provisions of this Clause 5 (**Insurance**)). If, at the end of such sixty (60) day period, the parties cannot agree the Proposals (or any amendments to them) then either party may terminate the Contract on thirty (30) days' written notice. If the Contract is terminated under this Clause 5.14 (**Insurance**), the Authority will pay to the Contractor the Lender Liabilities.
- 5.15 Without prejudice to the Authority's rights under Clause 9 (**Change to Services Required**), the Authority retains the right to require the Contractor to amend the Insurance programme detailed in Schedule O throughout the Contract Term as it may reasonably require to reflect changes in the circumstances surrounding the Contract. Any such amendment shall be deemed an amendment to an obligation of the Contractor under the Contract for the purposes of Clause 9.1 (**Change to Services Required**) and shall be effected in accordance with the provisions of Clause 9.1 (**Change to Services Required**).

## **6. LIABILITY FOR LOSS AND DAMAGE**

- 6.1 The Contractor shall be liable for all loss and damage to the Prison and the Site, except to the extent that such loss or damage was caused or contributed to by an act or omission by, or directly as a result of, an express written request or instruction of the Authority, its servants or agents or the breach by the Authority of any of its obligations under this Contract; provided that the Contractor shall remain liable for any such loss and damage occurring by reason of the exercise by the Authority of

its powers under Section 88 of the Criminal Justice Act 1991 except to the extent such loss or damage is caused by the negligence of an employee of the Authority in exercising such powers.

- 6.2 The Contractor shall at its own cost re-instate, replace or make good to the reasonable satisfaction of the Authority, or if the Authority agrees compensate the Authority for, any loss or damage for which the Contractor is responsible under this Clause 6 (***Liability for Loss and Damage***).

## 7. **SUB-CONTRACTING**

- 7.1 The Contractor shall not at any time permit any of its obligations under the Contract to be performed or undertaken by any other person without the Authority's prior written consent to both the identity of such other person and the terms of such performance or undertaking, provided that the Authority in executing this Contract hereby provides such prior written consent to the entry into of the Development Agreement, the Access Agreement and the Sub-lease and to the sub-contracting to API, the Construction Sub-contractor and the Operating Sub-contractor of such obligations as are contained in, respectively, the Construction Sub-contract and the Operating Sub-contract (but, for the avoidance of doubt, not to any replacements or changes to either Sub-contract or Sub-Contractor). The Contractor agrees to procure that API shall not make any amendment to, nor grant any extension of time, nor waive any right to liquidated damages under, the Construction Sub-contract; and the Contractor agrees not to make any amendment to, nor grant any extension of time, nor waive any right to liquidated damages under, the Operating Sub-contract without (in each case) the prior written consent of the Authority unless the Authority has agreed to a like amendment, extension or waiver under this Contract. The Contractor shall provide the Authority with the information set out in Clause 6.1(b) of the Direct Agreement in relation to any replacement Sub-contractor together with any other information which the Authority requests for the purpose of deciding whether or not it should consent to any Sub-contractor or Sub-contract. For the avoidance of doubt neither the giving of consent by the Authority to the identity of any Sub-contractor nor the knowledge, review or approval of the terms of any Sub-contract shall relieve the Contractor of any of its obligations under this Contract nor render the Authority in any way liable to any Sub-contractor or in any way bound by the terms of any Sub-contract.

- 7.1A In executing the Amending Agreement the Authority provides its written consent to the sub-contracting of the Houseblock Works to the Houseblock Construction Sub-contractor.
- 7.2 In the event that the Authority does consent to any Sub-contract pursuant to Clause 7.1 (**Sub-contracting**), the Contractor shall, unless the Authority otherwise agrees, ensure that such Sub-contractor (whether self employed or otherwise) and its employees assume obligations direct to the Authority corresponding to those imposed in Clauses 33.5 (**The Staff**) and 33.7 (**The Staff**), 57 (**Public relations and Publicity**) and 58 (**Confidential Information**).
- 7.3 The Contractor shall procure that CCA provides an undertaking to the Authority in respect of the amounts equal to those payable under Clause 25 (**Liquidated Damages**) and that the Construction Sub-Contractor provides a collateral warranty to the Authority in respect of the construction of the Prison in accordance with Schedule A (**Specifications**), in each case in the agreed form. At the Authority's request, the Contractor will provide and will:
- (i) In the case of actions against CCA procure that the Construction Sub-contractor shall provide any assistance required by the Authority in its proper pursuit of any claim against CCA pursuant to such undertaking; and
  - (ii) in the case of actions against the Construction Sub-contractor procure that API and CCA, as applicable, shall provide any assistance required by the Authority in its proper pursuit of any claim against the Construction Sub-contractor pursuant to such collateral warranty,
- (and in case of either (i) or (ii) above) including without limitation giving evidence before an expert or arbitrator and providing the Authority with all information concerning the cause of, and responsibility for, any delay in achieving Contractual Opening Date. The Contractor shall further take all reasonable steps to secure the due observance by the Operating Sub-contractor of all obligations under the Operating Sub-contract.
- 7.3A The Contractor shall procure that the Houseblock Construction Sub-contractor provides, pursuant to Clause 2A (**Houseblock Documents**) the Sub-contractor's Collateral Warranty in respect of the performance of the Houseblock Works in accordance with Part 2 of Schedule A (**Specifications**) and that any limitation of the liability of the Houseblock Condition Sub-contractor does not fall below a minimum level agreed to in writing by the Authority, and the Contractor shall take all reasonable



steps to secure the due absence by the Houseblock Construction Sub-contractor of all such obligations.

- 7.4 The Contractor shall be directly responsible for the management and supervision of approved Sub-contractors unless otherwise requested by the Authority.
- 7.5 Where the Contractor enters into an approved Sub-contract with a Sub-contractor for the purpose of performing any of the obligations of the Contract, it shall cause a term to be included in such Sub-contract which requires payment by the Contractor to the Sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as required by the terms of the Sub-contract.

## 8. **ASSIGNMENT**

Subject to Clause 7 (***Sub-contracting***) and any security, charge or assignment by way of security or other encumbrance in favour of API to secure the Contractor's liabilities under the Development Agreement or the Access Agreement or in favour of the relevant financier and accepted by the Authority in accordance with Clause 9.2(a) (***Change to Services Required***) (to secure the financing of Capital Expenditure thereunder), the Contractor shall not give, bargain, sell, assign, sub-let, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, save that nothing in this Clause shall prevent the assignment and/or transfer of the Contract with the consent of the Authority in accordance with the provisions of the Direct Agreement.

## 9. **CHANGE TO SERVICES REQUIRED**

- 9.1 Subject to Clauses 9.2 (***Change to Services Required***) and 9.8 (***Change to Services Required***), the Authority may delete, amend or alter the extent of any obligation to be met by the Contractor under the Contract in respect of the Works, the Houseblock Works or Custodial Service, or add to such obligations of the Contractor under the Contract, by giving written notice (the "***Notice of Change***") to the Contractor of the required change. In the case of emergency, the requirements set out in the Notice of Change shall come into immediate effect, and the Contract Price and/or Houseblock Works Fee shall be varied as set out below. Otherwise than in the case of emergency, following service of any Notice of Change, the Authority will consult with the Contractor with respect to the deletion, alteration, extension of or addition to the obligations hereunder, and the Contractor shall if Capital Expenditure is not required provide the Authority on or before the date falling fifteen

(15) working days (or such longer period as a Named Representative of the Authority may consent to in writing) after the date of the Notice of Change with a reasonable estimate of the increase or reduction in the Contract Price and/or Houseblock Works Fee (if any), or proposal of other changes to the terms set out herein (including any extension of time for completion), which it believes should occur as a result of the changes set out in the Notice of Change. Any such estimate shall be accompanied by a reasonably detailed breakdown of the manner in which that estimate is calculated. The Authority may accept or reject such estimate or proposal. In the event that the Authority accepts such estimate or proposal, the changes referred to in the Notice of Change shall come into immediate effect, the Contract Price and/or Houseblock Works Fee (or other relevant terms hereof) shall change as set out in the Contractor's estimate or proposal, and the terms of the Contract shall be deemed changed as set out in the Notice of Change (except where the changes referred to in the Notice of Change require the Contractor to procure building works upon the Site or the changes cannot be reasonably effected immediately, in which case the Authority shall allow the Contractor such further period to effect such changes as is reasonably necessary). If the Authority rejects such estimate or proposal, it may either:

- (a) elect to allow the Notice of Change to lapse; or
- (b) elect that the changes referred to in the Notice of Change shall come into immediate effect (in the same manner and subject to the same conditions as to time allowed to the Contractor as aforesaid) but that the Contract Price and/or Houseblock Works Fee shall be varied or not varied in accordance with Clause 72 (***Dispute Resolution***).

In the case of an emergency, or when the Authority elects as referred to in paragraph (b) above, the Authority shall set such provisional change to the Contract Price and/or Houseblock Works Fee and extension of time as it considers fair which will be effective until such time as the Contract Price and/or Houseblock Works Fee is varied (or not varied) and/or a time extension granted as agreed by the Authority and the Contractor or determined in accordance with Clause 72 (***Dispute Resolution***) and the Contract Price and/or Houseblock Works Fee shall be deemed to be so changed on a provisional basis. In the event that the provisional Contract Price and/or Houseblock Works Fee set by the Authority is less than the Contract Price and/or Houseblock Works Fee as so agreed or determined pursuant to Clause 72 (***Dispute Resolution***), an adjusting payment shall be made by the Authority to the Contractor on or before the date falling thirty (30) days after the date of such agreement or

determination in the amount of such difference over the period from the date the changes referred to in the Notice of Change became effective until the date upon which the Contract Price and/or Houseblock Works Fee was so agreed or determined pursuant to Clause 72 (**Dispute Resolution**) and vice versa by the Contractor to the Authority if the provisional Contract Price and/or Houseblock Works Fee set by the Authority is more than the Contract Price and/or Houseblock Works Fee as so agreed or determined pursuant to Clause 72 (**Dispute Resolution**). For the avoidance of doubt, no Notice of Change may require the Contractor to provide Additional Prisoner Places (as to which the provisions of Clause 40 (**Additional Prisoner Places**) shall apply).

9.2

In the event that the Notice of Change would result in an obligation on the Contractor to incur any Capital Expenditure following the date hereof, the Contractor shall use all reasonable endeavours to obtain finance at a reasonable cost from banks or other commercial sources (including API) for such Capital Expenditure. If the Contractor does obtain an offer of such reasonable finance within twenty (20) working days (or such longer period as a Named Representative of the Authority may consent to in writing) of the date of the Notice of Change, the Contractor shall (within seven (7) days of receiving such offer of finance) provide two (2) estimates of the increase or decrease in the Contract Price and/or Houseblock Works Fee which it believes should occur as a result of the changes set out in the Notice of Change, one (1) to include the cost of such reasonable finance, and one to exclude it, but to estimate the amount of the relevant Capital Expenditure which the Contractor believes is required to comply with the Notice of Change and in relation to the estimate which includes the cost of such reasonable finance, the Contractor shall specify what reasonable amendments if any the relevant financier requires to be made to the definition of Lender Liabilities and what security the relevant financier requires of the Contractor. If despite the use of the Contractor's reasonable endeavours and the operation of Clause 39 (**Variation of Price**) the Contractor fails to obtain finance for such Capital Expenditure, the Contractor shall within twenty-eight (28) days of the date of the Notice of Change provide the Authority with a written estimate of the amount of such Capital Expenditure together with its estimate of any increase or decrease in the Contract Price which it believes should occur as a result of the changes set out in the Notice of Change. Any such estimate or estimates shall be accompanied by a reasonably detailed breakdown of the manner in which that estimate is calculated. The Authority may accept such estimate or estimates or request that it or they be changed, and following such request the Contractor may submit a different estimate or estimates, following which:

- (a) if the Authority accepts the Contractor's estimate which includes the cost of financing the relevant Capital Expenditure (including the amendments required by the relevant financier to the definition of Lender Liabilities and/or the definition of Access Payments (if API is the relevant financier) and the security requirements of the relevant financier), the Notice of Change shall come into effect in the same manner and subject to the same conditions as those referred in Clause 9.1 (***Change to Services Required***) (assuming for these purposes that no emergency has occurred) following the Authority's acceptance of the Contractor's estimate and the agreed amendments shall be made to the definition of Lender Liabilities and/or the definition of Access Payments;
- (b) if the Authority rejects the Contractor's estimate which includes the cost of financing the relevant Capital Expenditure, or the Contractor fails to provide such an estimate, but accepts the Contractor's estimate which excludes the cost of financing the relevant Capital Expenditure, then:
- (i) the Authority shall be liable to reimburse, or pay on behalf of, the Contractor the amount of such Capital Expenditure as is set out in such estimate in accordance with Clause 9.3 (***Change to Services Required***) or, if the Authority does not accept such estimate, such amount of Capital Expenditure as is agreed or determined in accordance with Clause 9.3 (***Change to Services Required***);
  - (ii) the Notice of Change shall come into effect once the amount of the Capital Expenditure has been agreed or determined as set out in Clause 9.3 (***Change to Services Required***); and
  - (iii) the Contract Price and/or Houseblock Works Fee shall be varied once the Notice of Change comes into effect;
- (c) if the Authority rejects the Contractor's single estimate or both its estimates (as appropriate), then the Authority may elect either to allow the Notice of Change to lapse, or that the amount of the Capital Expenditure be agreed or determined in accordance with Clause 9.3 (***Change to Services Required***)

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

9.3 Where the Contractor fails to obtain finance at a reasonable cost for the relevant Capital Expenditure from banks or other commercial sources and the Authority rejects the Contractor's estimate of the amount of the relevant Capital Expenditure, or the Authority rejects any estimate from the Contractor which includes the cost of such financing, the amount of such Capital Expenditure and the manner of its payment shall be determined in accordance with this Clause 9.3 (***Change to Services Required***). The parties shall attempt to agree an estimate of such Capital Expenditure but if no agreement is reached within seven (7) days of the Authority's rejection of the original estimates, the amount of the Capital Expenditure shall be determined in accordance with Clause 72 (***Dispute Resolution***). Once the estimate has been agreed or determined, the Contractor shall procure that all that is necessary is done in order to comply with the Notice of Change (unless the Authority notifies the Contractor within seven (7) days of the date of determination of the estimate that the Notice of Change should lapse). During execution by the Contractor of all necessary works to comply with the Notice of Change, the Authority shall either (a) promptly reimburse the Contractor, or, (b) at the option of the Contractor, pay on behalf of the Contractor against invoices in respect of those parts of such works which have been completed, subject to an aggregate maximum payment of the agreed estimate or, as the case may be, the amount determined in accordance with Clause 72 (***Dispute Resolution***), in either case within thirty (30) days of presentation of the relevant invoice(s) by the Contractor.

9.4 At the same time that the Contractor provides any estimate or estimates to the Authority under either Clause 9.1 (***Change to Services Required***) or 9.2 (***Change to Services Required***), it shall also provide the Authority with a proposal as to whether the Finance Plan should change, and if so, in what manner. Subject to the proviso below, once the contents of the Notice of Change have come into effect, the Authority must accept such proposal or reject it within seven (7) days. If the Authority accepts the proposal, the Finance Plan will automatically be deemed changed as proposed; if the Authority rejects the proposal, the parties shall attempt to agree the manner in which the Finance Plan should be changed but if no agreement is reached within seven (7) days of the Authority's rejection, the matter shall be decided in accordance with Clause 72 (***Dispute Resolution***). Provided that if any matter referred to in Clauses 9.1 (***Change to Services Required***), 9.2

**(Change to Services Required)** or 9.3 **(Change to Services Required)** is determined pursuant to Clause 72 **(Dispute Resolution)**, the manner in which the Finance Plan is to be changed shall be determined at the same time and in the same way.

9.5

- (a) If the Contractor wishes to introduce a change in Service, it must serve written notice (a **"Contractor Notice of Change"**) on the Authority.
- (b) The Contractor Notice of Change must:
  - (i) set out the proposed change in Service in sufficient detail to enable the Authority to evaluate it in full;
  - (ii) specify the Contractor's reasons for proposing the change in Service;
  - (iii) request the Authority to consult with the Contractor with a view to deciding whether to agree to the change in Service and, if so, what consequential changes the Authority requires as a result;
  - (iv) indicate any implications of the change in Service;
  - (v) indicate, in particular, whether a variation to the Contract Price and/or Houseblock Works Fee is proposed (and, if so, give a detailed cost estimate of such proposed change); and
  - (vi) indicate if there are any dates by which a decision by the Authority is critical.
- (c) The Authority shall evaluate the Contractor's proposed change in Service in good faith, taking into account all relevant issues, including whether:
  - (i) a change in the Contract Price and/or Houseblock Works Fee will occur;
  - (ii) the change affects the quality of the Service or the likelihood of successful delivery of the Service;

- (iii) the change will interface with the relationship of the Authority with third parties;
  - (iv) the financial strength of the Contractor is sufficient to perform the changed Service;
  - (v) the residual value of the Assets is reduced; or
  - (vi) the change materially affects the risks or costs to which the Authority is exposed.
- (d) As soon as practicable after receiving the Contractor Notice of Change, the parties shall meet and discuss the matter referred to in it. During their discussions the Authority may propose modifications or accept or reject the Contractor Notice of Change.
- (e) If the Authority accepts the Contractor Notice of Change (with or without modification), the relevant change in Service shall be implemented within seven (7) days of the Authority's acceptance. Within this period, the parties shall consult and agree the remaining details as soon as practicable and shall enter into any documents to amend this Contract or any relevant Project Document which are necessary to give effect to the change in Service.
- (f) If the Authority rejects the Contractor Notice of Change, it shall not be obliged to give its reasons for such a rejection.
- (g) Unless the Authority's acceptance specifically agrees to an increase in the Contract Price and/or Houseblock Works Fee, there shall be no increase in the Contract Price and/or Houseblock Works Fee as a result of a change in Service proposed by the Contractor.
- (h) If the change in Service proposed by the Contractor causes or will cause the Contractor's costs or those of a Sub-contractor to decrease, there shall be a decrease in the Contract Price and/or Houseblock Works Fee which represents a 50/50 share in any savings.
- (i) The Authority cannot reject a change in Service which is required in order to conform to a Change in Law.

9.6 Notwithstanding clause 9.5(h) (**Change to Services Required**) above, if the costs incurred by the Contractor, the Construction Sub-contractor, the

Operating Sub-contractor or the Houseblock Construction Sub-contractor have decreased as a result of any changes to the Custodial Service, Works, Houseblock Works or any change to their design proposed in each case by the Contractor (but not as a result of any Design Development as defined in Schedule M (**Compliance Monitoring**)), then the Authority may request a variation in the Contract Price and/or Houseblock Works Fee pursuant to this Clause 9 (**Change to Services Required**) which shall take into account such cost savings to the Contractor, the Construction Sub-contractor, the Operating Sub-contractor and/or the Houseblock Construction Sub-contractor.

9.7 Any change to the Contract Price and/or Houseblock Works Fee which is determined under this Clause 9 (**Change to Services Required**) shall be determined in accordance with the principles set out in Clause 39.4 (**Variation of Price**).

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

- (a) the Authority requires any Additional Prisoner Places in accordance with the terms of this Contract;
- (b) the operation of the Prison changes in any way within the parameters set out in Part 1 of Schedule D (**Operational Requirements**); or
- (c) the Authority requires any amendments to be made pursuant to Clause 20.2 (**Preparation for Operation of the Prison**) or 20A.2 (**Preparation for Operation of the Increased Capacity**).

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

## 10. **PROVISION AND INTERPRETATION OF INFORMATION**

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



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

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

10.3 The Authority shall not be liable for any costs arising from the Contractor's failure to perform its obligations under this Clause 10 (*Provision and Interpretation of Information*) or from any lack of knowledge which the Contractor is deemed to have under Clause 10.1 (*Provision and Interpretation of Information*).

#### **10A PROVISION AND INTERPRETATION OF INFORMATION - HOUSEBLOCK WORKS**

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

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

- 10A.2 The Contractor is responsible for obtaining all surveys and information necessary for carrying out its obligations under the Contract. The Contractor shall not rely on any information provided by the Authority with regard to these matters.
- 10A.3 The Authority shall not be liable for any costs arising from the Contractor's failure to perform its obligations under this Clause 10A (***Provision and Interpretation of Information - Houseblock Works***) or from any lack of knowledge which the Contractor is deemed to have under Clause 10A.1 (***Provision and Interpretation of Information - Houseblock Works***).

## **PART II - PROVISION**

### **11. THE LAND AND THE ADDITIONAL LAND**

- 11.1 The Land and the Additional Land upon which the Contractor shall provide the Prison shall be the piece of land shown coloured pink hatched black, pink cross-hatched black, pink hatched blue, pink hatched green, pink hatched orange, pink hatched red and pink cross-hatched red upon the plan attached to the Lease and shown coloured pink upon the plan attached to the Supplemental Lease.
- 11.2 The Lease for the demise of the Land to the Contractor and the Operating Sub-contractor is for a term of twenty-eight (28) years. The Lease shall be completed on the day on which the Contractor enters into the Contract and the Contractor hereby agrees that it will enter into and procure that the Operating Sub-contractor enters into the Lease.
- 11.3 The Supplemental Lease for the demise of the Additional Land to the Contractor and the Operating Sub-contractor is for a term to expire on 5 July 2026. The Supplemental Lease shall be completed on the day on which the Contractor enters into the Amending Agreement and the Contractor hereby agrees that it will enter into and procure that the Operating Sub-contractor enters into the Supplemental Lease.
- 11.4 On or prior to the date of the Amending Agreement, the Authority has received from Salford City Council a completed transfer of the underleasehold interest in the Additional Land and made between The Secretary of State for Environment, Food and Rural Affairs (1) and the Council of the City of Salford (2) and the Authority confirms that it will submit such transfer contemporaneously with the Transfer (as hereinafter defined) for registration at the Land Registry
- 11.5 On or prior to the date hereof the Authority has completed a transfer with the Council of the City of Salford (the "***Transfer***") by which the Authority

has acquired the leasehold interest in the Additional Premises in order that the Additional Premises may be demised to the Contractor in accordance with this Contract and the Authority hereby confirms that it shall within fourteen (14) days of the date of the Amending Agreement submit the Transfer for registration at the Land Registry and shall use all reasonable endeavours to answer any requisitions raised by the Land Registry as soon as practicable to ensure that the Transfer (and the transfer referred to in clause 11.5 (***The Land and the Additional Land***) above are registered to enable the Supplemental Lease to be registered with leasehold title absolute.

- 11.6 It is hereby acknowledged that in accordance with the terms of the Lease and the Supplemental Lease any and all interests in the Land and the Additional Land respectively, and in the Prison shall vest in the Landlord thereunder upon the termination of the leasehold interest of the Contractor and/or the Operating Sub-contractor whether through forfeiture, surrender, effluxion of time or some other cause and the Contractor agrees that it will comply with all the provisions of the Lease and the Supplemental Lease and will procure that the Operating Sub-contractor and API will comply with all the provisions of the Lease.
- 11.7 The land made available to the Contractor for the purpose of providing the Prison under the Contract shall not be used for any purpose other than the purposes of the Contract save with the prior written approval of the Authority.
- 11.8 The Contractor shall not, without prior written approval from the Authority (such approval not to be unreasonably delayed or (except in the case of sub-paragraph (iii) below) withheld), except in the performance of the obligations of the Contract:
- (i) execute any structural or other material work to the Prison;
  - (ii) carry out any business or trading activity within the confines of the Prison except activities in the ordinary course of running a prison which are permitted by Legislation nor display any advertisement, sign or notice of any description outside the Prison, unless such sign or notice is required to be displayed by Legislation;
  - (iii) permit the Prison to be used for any purpose other than the performance of the Contract.
- 11.9 In the event of the assignment and/or transfer of the Contract with the consent of the Authority in accordance with the provisions of the Contract

or the Direct Agreement or in the event of another Operating Sub-contractor being appointed by the Contractor from time to time to perform the Custodial Service in accordance with the provisions of this Contract, the Tenant named in the Lease and the Operating Sub-contractor and the Tenant and the Operating Sub-contractor named in the Supplemental Lease then subsisting will either (i) surrender their Lease and the Supplemental Lease to the Authority and immediately thereafter the Authority shall grant a new Lease, or (ii) if requested by the Authority, assign the Lease and the Supplemental Lease and procure the consent of the Operating Sub-contractor thereto (in either case, post such grant or assignment, the "**New Lease**") to the person who has the benefit of the Contract and the person who has been appointed by the Contractor to perform the Custodial Service (such persons respectively constituting the new Tenant and the new Operating Sub-contractor for the purposes of the New Lease) save that nothing in this Clause shall prevent the assignment of the Lease and the Supplemental Lease to a Substitute Entity in the circumstances envisaged by Clause 6.10.1 of the Lease. This procedure shall be repeated whenever there is a change in the identity of the Contractor and/or the Operating Sub-contractor whilst the Contract is subsisting.

11.10 If:

- (i) the Contract terminates; or
- (ii) pursuant to Clause 11.9 (***The Land and the Additional Land***) the Contractor as Tenant surrenders the Lease and the Supplemental Lease or is requested by the Authority to assign the Lease and the Supplemental Lease and the new tenant under the New Lease thereby created is to be a Substitute Entity or a party which is not the Contractor,

the Contractor shall procure that on the day prior to the date for the creation of the New Lease, or the termination of the Contract (as applicable), the rights of API as tenant under the Sub-lease shall terminate absolutely and/or API shall surrender the Sub-lease to the Contractor and, if applicable, vacate the Land and the Additional Land and API shall terminate the Access Agreement granted by it and the Contractor shall indemnify the Authority for any cost or loss whatsoever arising in connection with its failure to procure the termination and/or surrender of the Sub-lease by API and termination of the Access Agreement granted by it (including, without limitation, any costs or loss arising in connection with API (or any person whose right is derived through it) claiming for relief against the forfeiture, termination or

surrender of the Sublease and/or the Access Agreement and the yielding up of the Land and the Additional Land.)

- 11.11 The New Lease shall contain all those covenants, conditions and provisions as are set out in the Lease and the Supplemental Lease except that the term of years granted by the New Lease shall be equal to the unexpired residue at the date the New Lease is granted of the term of years granted by the Lease and the Supplemental Lease that was completed on the day the Contract was executed.
- 11.12 It shall be the responsibility of the Contractor at its own expense to obtain all easements, rights, licences and privileges that the Contractor and the Operating Sub-contractor require to enable them to carry out their obligations under the Contract where such easements, rights, licences and privileges are not specified or referred to in the Lease and the Supplemental Lease and are under, over and upon the property and land that does not form part of the Land and the Additional Land or part of the Retained Property (as defined in the Lease). The Contractor shall inform the Authority in writing of any such easements, rights, licences and privileges which have been obtained or are being sought by the Contractor and/or the Operating Sub-contractor and where requested in writing by the Authority the Contractor shall (and shall procure that the Operating Sub-contractor shall) at its (or their) own expense take all appropriate and necessary steps to ensure that the freehold owner of the property and land over, under and upon which easements, rights, licences and privileges have been or are to be granted also grants such easements, rights, licences and privileges to the Authority in fee simple as owner of the freehold interest in the Land and the Additional Land for the benefit of the Land and the Additional Land and each and every part thereof and the Contractor shall (and shall procure that the Operating Sub-contractor shall) indemnify the Authority against all liabilities and obligations that the Authority enters into with such freehold owner in respect of the easements, rights, licences and privileges that are granted to the Authority pursuant to this Clause 11 (***The Land and the Additional Land***) for so long as the Lease and the Supplemental Lease subsist. For the avoidance of doubt, the maximum amount payable under this indemnity shall be limited as specified in Clause 4.4 (***Indemnities***).

#### **11A SDLT LIABILITY**

- 11A.1 Subject to Clause 11A.6 (***SDLT Liability***), the Authority covenants with the Contractor to pay to the Contractor or the Operating Sub-contractor (as appropriate) on demand an amount equal to any stamp duty land tax

liability of the Contractor or the Operating Sub-contractor arising in respect of the grant of the Supplemental Lease together with any interest or penalties thereon.

11A.2 If the Contractor or Operating Sub-contractor becomes aware of any Claim for Tax which may result in the Contractor or Operating Sub-contractor (the relevant company being the "**Indemnified Person**") having a claim against the Authority under Clause 11A.1 (**SDLT Liability**), the Indemnified Person shall give notice to the Authority as soon as is reasonably practicable and in any event within twenty-one (21) days of the Indemnified Person becoming aware of the Claim for Tax and the Authority shall, except where an allegation of fraud or wilful default or neglect is made, forthwith be entitled at its sole discretion (but after consultation with the Indemnified Person) to resist such Claim for Tax in the name of the Indemnified Person but at the expense of the Authority and to have the conduct of any appeal or incidental negotiations provided that:

- (a) the Indemnified Person shall be kept fully informed of all matters pertaining to the dispute; and
- (b) no material communication, written or otherwise, pertaining to the dispute (and in particular no proposal for or consent to any settlement or compromise thereof) shall be transmitted to the relevant tax Authority without the same having been submitted to and approved by the Indemnified Person, such approval not to be unreasonably withheld or delayed; and
- (c) the Authority shall not be entitled to resist any such Claims for Tax before any court, tribunal or other appellate body unless it has been advised by tax counsel of at least ten (10) years' call, after disclosure of all relevant information and documents, that it is reasonable to resist the Claim for Tax in the manner proposed by the Authority; and
- (d) the Indemnified Person shall not be obliged to undertake any action which it reasonably considers would be materially prejudicial to its business affairs or would materially increase its future liability to tax.

11A.3 The Indemnified Person shall give the Authority all reasonable co-operation, access and assistance, technical or otherwise, for the purpose of resisting such a Claim for Tax provided that the Indemnified Person is indemnified to its reasonable satisfaction against any additional stamp

duty land tax liabilities (including interest and penalties thereon) and reasonable costs and expenses which may be properly incurred.

11A.4 If the Authority does not request the Indemnified Person to take any appropriate action or shall fail to indemnify the Indemnified Person to its reasonable satisfaction within twenty-one (21) days of the said notice to the Authority, the Indemnified Person shall be free to pay or settle the Claim for Tax on such terms as it may in its absolute discretion think fit (acting reasonably).

11A.5 All sums payable by the Authority under Clause 11A.1 (***SDLT Liability***) shall be paid free and clear of all deductions or withholdings (including tax) unless a deduction or withholding is required by law, in which event or in the event that the Operating Sub-contractor or the Contractor (as appropriate) shall incur any liability for tax chargeable or assessable in respect of any payment pursuant to Clause 11A.1 (***SDLT Liability***), the Authority shall pay such additional amounts and shall be required to ensure that the net amount received and retained by the Operating Sub-contractor or the Contractor (as appropriate) (after tax) will equal the full amount which would have been received and retained by it had no such deduction or withholding been made and/or no such liability to tax being incurred and in applying this Clause 11A.5 (***SDLT Liability***) no account shall be taken of the extent to which any liability for tax may be mitigated or offset by any allowance, credit, exemption, deduction or relief from, in computing, against or in respect of tax or any right to the repayment of tax (a "***Relief***") available to the Contractor or Operating Sub-contractor (as appropriate) so that where such Relief is available the additional amount payable hereunder shall be the amount which would have been payable in the absence of such availability.

11A.6 The covenant at Clause 11A.1 (***SDLT Liability***) shall cease to apply in the event that the Contractor and/or Operating Sub-contractor (as appropriate) receive confirmation from HM Revenue And Customs in response to a letter sent by Ashurst LLP on 25 June 2008 or otherwise pursuant to a non-statutory clearance procedure, that the value of services provided by the Contractor pursuant to this agreement will not be treated as a payment of rent or premium for the purposes of calculating the amount of stamp duty land tax due on the grant of the Supplemental Lease, in which event the covenant shall cease to apply from the date such confirmation is received by or on behalf of the Contractor and/or the Operating Sub-contractor (as appropriate).

## 12. **PLANNING APPROVAL**

12.1 The Contractor will note:

- (i) the decision of the Secretary of State for the Environment dated 10 June 1997 whereby the Authority was granted outline permission under section 299 of the Town and Country Planning Act 1990 to proceed with the development of a prison in accordance with its planning application (the "**Outline Permission**"); and
- (ii) the decision of Salford City Council (the "**Council**") dated on or about the date hereof whereby the Contractor was granted approval of the reserved matters pursuant to the Outline Permission to proceed with the development of a prison in accordance with its planning application (the "**Detailed Permission**");

(and together the Outline Permission and the Detailed Permission shall be referred to as the "**Permission**" for the purposes of this Clause 12 (**Planning Approval**)).

- 12.2 The Contractor shall comply with the conditions and recommendations contained in the Permission and, without prejudice to the generality of the foregoing, in the course of providing the Prison the Contractor shall be responsible for applying for all planning permissions and/or clearances for the reserved matters not covered by the Permission.
- 12.3 The Contractor shall use its reasonable endeavours to obtain all necessary planning permissions and/or clearances for the development of a Prison upon the Land and shall bear any costs consequent upon and caused by such application, including any costs in respect of any delay to the Works caused by such application.
- 12.4 In the event that the Contractor applies for planning clearance under the Department of the Environment Circular No. 18/84, then for the purpose of this Clause, and of this purpose only, the Contractor is hereby authorised to act as the Authority's sole and exclusive agent in the matters relating to the obtaining of the said planning clearance.
- 12.5 If all necessary planning permissions and/or clearances under Department of the Environment Circular No. 18/84 should prove necessary for development of the Prison upon the Land have not been obtained on or before the first anniversary of the execution of the Contract, the Authority and the Contractor shall have the right to terminate the Contract on seven days' written notice. If on expiry of such notice, any such planning permission and/or clearance has not been obtained, the Contract shall terminate. No such notice may be served after such planning permission and/or clearance has been obtained. No



sum shall be payable by the Authority in the event of such termination, and nothing in this Clause shall prevent the Authority from pursuing a claim against the Contractor in the event that, in the opinion of the Authority, the Contractor fails to use its reasonable endeavours in accordance with Clause 12.3 (**Planning Approval**).

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

12.7 If the Highway Authority or relevant Planning Authority requires the Contractor or the owner of the Land to enter into any agreement under either section 278 of the Highways Act 1980 or section 106 of the Town and Country Planning Act 1990 in connection with the Project and the Authority is requested to either join in such agreement or enter into a separate agreement under either section 278 of the Highways Act 1980 or section 299A of the Town and Country Planning Act 1990 then:

(i) insofar as it is necessary for the Authority to enter into an agreement with either the Highway Authority under section 278 of the Highways Act 1980 or section 299A of the Town and Country Planning Act 1990 for the purposes of the Project and subject to the approval of the Treasury being given under the provisions of section 327 of the Highways Act 1980, the Authority shall at the cost of the Contractor also enter into the agreement if reasonably required to do so by the Contractor and it is necessary for it to do so to enable the Contractor to fulfil its obligations pursuant to that agreement; and

(ii) the Contractor shall indemnify the Authority in respect of all the Authority's liability and any reasonable expenses incurred by the Authority in connection with the entering into and performance of the relevant agreement during the subsistence of the Contract Term, or if shorter, whilst the relevant agreement is capable of being enforced against the Authority.

For the avoidance of doubt the Contractor shall not be obliged to indemnify the Authority for any liability incurred by the Authority for any agreement entered into by the Authority with the Highway Authority or relevant Planning Authority otherwise as set out above and the indemnity referred to in this Clause 12.7 (**Planning Approval**) shall be limited as specified in Clause 4.4 (**Indemnities**).

- 12.8 The Parties shall comply with their respective obligations under the Planning Obligations Agreement and, in particular, the Authority shall make the offer referred to in Clause 2.1 of that Agreement on or before the date on which the Engineer's Declaration is issued.

**12A PLANNING APPROVAL - HOUSEBLOCK WORKS**

- 12A.1 The Contractor will note the decision of City of Salford Council dated 8 February 2008 whereby the Contractor was granted full planning permission in respect of the Houseblock Works under application number 07/55579/FUL (the "**Increased Capacity Permission**").

- 12A.2 The Contractor shall comply with the conditions and recommendations contained in the Increased Capacity Permission and, without prejudice to the generality of the foregoing, in the course of providing the Increased Capacity, the Contractor shall be responsible for applying for all planning permissions and/or clearances for the reserved matters not covered by Clause 12A.1 (**Planning Approval - Houseblock Works**).

- 12A.3 The Contractor shall use its reasonable endeavours to obtain all necessary planning permissions and/or clearances for the development of the Houseblock upon the Land and the Additional Land, and shall bear any costs consequent upon and caused by such application, including any costs in respect of any delay to the Houseblock Works caused by such application.

- 12A.4 Nothing in the Contract nor in any consent granted by the Authority under the Consent shall be deemed to imply or warrant that the Houseblock may lawfully be used under the Planning Acts (as defined in the Lease) for the purpose authorised in the Contract or the Lease and the Supplemental Lease (or any purpose subsequently authorised).

- 12A.5 If the Housing Authority or relevant Planning Authority requires the Contractor or the owner of the Land and the Additional Land to enter into any agreement under either section 278 of the Highways Act 1980 or section 106 of the Town and Country Planning Act 1990 in connection with the Houseblock Works and the Authority is requested to either join in such agreement or enter into a separate agreement under either section 278 of the Highways Act 1980 or section 106 of the Town and Country Planning Act 1990 then:

- (i) Insofar as it is necessary for the Authority to enter into an agreement with either the Highway Authority under section 278 of the Highways Act 1980 or section 106 of the Town and Country Planning Act 1990 for the

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

- (ii) the Contractor shall indemnify the Authority in respect of all of the Authority's liability and any reasonable expenses incurred by the Authority in connection with the entering into and performance of the relevant agreement during the subsistence of the Contract Term, or if shorter, whilst the relevant agreement is capable of being enforced against the Authority.

### 13. PROVISION OF THE PRISON

- 13.1 The Contractor shall design and construct the Prison subject to and in accordance with the terms of Schedule A (***Specifications***) (as varied from time to time (pursuant to Clause 9 (***Change to Services Required***)) and in accordance with the applicable Legislation.
- 13.2 The Authority hereby appoints the Contractor as the only client for the purposes of the Construction (Design & Management) Regulations 1994 (the "***Regulations***") and for the design and construction of the Prison (including any changes and/or additions to such design and construction). The Contractor agrees to accept this appointment and undertakes to deliver, or if API accepts the appointment as agent of the Contractor for the purposes of this Clause 13.2 (***Provision of the Prison***), undertakes to procure that API delivers, a declaration in the form contained in Schedule L (***Letter to Health and Safety Executive***) to The Health and Safety Executive, within seven (7) working days from the date hereof. Failure by the Contractor to deliver or to procure the delivery of such a declaration to The Health and Safety Executive shall constitute a material failure for the purposes of Clause 44(a)(i) (***Default by Contractor***). The Contractor warrants to the Authority that it is competent to perform each and every duty imposed by the Regulations on the client (as such term is defined in the Regulations). The Contractor warrants to the Authority that if API accepts the appointment as agent of the Contractor for the purposes of this Clause 13.2 (***Provision of the Prison***) then the Contractor will ensure that it is satisfied that API has

the competence to perform the duties imposed by the Regulations on a client.

- 13.3 The Contractor shall (at its own cost) provide site accommodation (minimum 20m<sup>2</sup> floor space) and all reasonable attendant services on the Site for the use of the Independent Engineer and its team for the duration of the Contract until such time as the Engineer's Declaration has been given in accordance with Clause 26 (**Engineer's Declaration**), including the provision of separate dedicated telephone and fax machine for the sole use of the Independent Engineer and all bills, costs and expenses of whatever nature arising pursuant to this Clause 13 (**Provision of the Prison**) shall be borne by the Contractor.

#### 13A **PROVISION OF THE INCREASED CAPACITY**

- 13A.1 The Contractor shall design and construct the Houseblock subject to and in accordance with the terms of Part 2 of Schedule A (**Specifications**) and in accordance with the applicable legislation.
- 13A.2 The Independent Engineer shall monitor the progress of the Houseblock Works and be entitled to exercise rights in accordance with the provisions of Schedule M (**Compliance Monitoring**). The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in Clause 26A (**Engineer's Houseblock Declaration**). Notwithstanding the foregoing, the Authority shall procure that the Independent Engineer shall inform the Contractor promptly upon becoming aware of any matter which may adversely affect the issue of the Engineer's Houseblock Declaration in accordance with Clause 26A (**Engineer's Houseblock Declaration**). Nothing done by the Authority or the Independent Engineer in accordance with this Clause 13A.2 (**Provision of the Increased Capacity**) or Schedule M (**Compliance Monitoring**) shall in any respect relieve or absolve the Contractor from its responsibility for the design of the Houseblock Works under or in connection with the Contract.
- 13A.3 As between the Contractor and the Authority, the Contractor shall be entirely responsible for the safety of any design which forms part of the Houseblock Works and for the adequacy, stability and safety of all site operations and methods of construction.
- 13A.4 In accordance with the CDM Regulations, the Authority and the Contractor have elected that the Contractor shall be, and shall be treated as the only client in respect of the Houseblock Works pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to

the completion of the Houseblock Works, seek in any way to withdraw, terminate or derogate from such election.

- 13A.5 The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations, requirements and duties arising under the CDM Regulations in connection with the Houseblock Works (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the Contractual Houseblock Opening Date, provide a certified copy of the final Health and Safety File (as defined in the CDM Regulation) to the Authority and within thirty (30) Business Days of issue of the Engineer's Houseblock Declaration, a certified copy of the full and complete Health and Safety file.

#### 14. **SUPPLY OF EQUIPMENT**

- 14.1 Prior to the Actual Opening Date the Contractor shall supply and install at the Prison all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the Prison on the Actual Opening Date in the lists agreed between the Contractor and the Authority pursuant to Part 1 of Schedule B (**Equipment**). Subject to Clauses 14.2 (**Supply of Equipment**) and 14.3 (**Supply of Equipment**), all equipment referred to in Part 1 of Schedule B (**Equipment**) shall be the property of the Contractor and all the equipment referred to in Part 1 of Schedule B (**Equipment**) shall be in good and serviceable condition for the period it is in the Prison or on the Site (or, if it is not capable of being kept in good and serviceable condition, shall be replaced as required by the Contractor at its own cost with like equipment which is the property of the Contractor (subject to Clause 14.2 (**Supply of Equipment**)) and in good and serviceable condition) in order to allow the Contractor to comply with the standards set out in Schedule C (**Maintenance Management**), and shall not be removed by the Contractor from the Prison except with the written consent of the Authority.

- 14.1A Prior to the Contractual Houseblock Opening Date the Contractor shall supply and install at the Houseblock the fixtures, fittings, furnishings, chattels and other equipment specified as being required in the Houseblock on the Contractual Houseblock Opening Date in the lists agreed between the Contractor and the Authority pursuant to Part 4 of Schedule B (**Equipment**). Subject to Clauses 14.2 (**Supply of Equipment**) and 14.3 (**Supply of Equipment**), all equipment referred to in Part 4 of Schedule B (**Equipment**) shall be the property of the Contractor and all the equipment referred to in Part 4 of Schedule B (**Equipment**) shall be in good and serviceable condition for the period it

is in the Houseblock or on the Site for, if it is not capable of being kept in good and serviceable condition, shall be replaced as required by the Contractor at its own cost with like equipment which is the property of the Contractor (subject to Clause 13.2 (**Supply of Equipment**) and in good and serviceable condition) in order to allow the Contractor to comply with the standards set out in Schedule C (**Maintenance Management**) and shall not be removed by the Contractor from the Houseblock except with the consent of the Authority.

- 14.2 Subject to Clause 14.3 (**Supply of Equipment**), at the end of the Contract Term, any property in such fixtures, fittings, furnishings, chattels, and other equipment referred to in Clause 14.1 (**Supply of Equipment**) and Clause 14.1A (**Supply of Equipment**) (including any replacement property or equipment) or which is otherwise used or present in the Prison, the Houseblock or on the Site (other than personal possessions of Staff or Prisoners) shall pass to the Authority by delivery and the Contractor shall use all reasonable endeavours to procure that the benefit of all guarantees, warranties, documentation and service agreements then in force relating to the said fixtures, furniture, furnishings, chattels, and other equipment, and relating to any part of the Prison or Houseblock which is referred to in Schedule A (**Specifications**) is assigned to the Authority or, to the extent not assignable, is transferred in a manner agreed between the Contractor and Authority at the time.
- 14.3 Notwithstanding Clause 14.1 (**Supply of Equipment**) and Clause 14.1A (**Supply of Equipment**), the Contractor may lease any equipment referred to in Part 3 of Schedule B (**Equipment**), provided that the Contractor shall ensure that any lease entered into in respect of any such equipment shall be on such terms as to allow the Authority to use such equipment as if it were the Contractor on any occasion where it exercises its powers under Section 88 of the Criminal Justice Act 1991 or the Contract terminates before the Expiry Date. If the Contractor wishes to lease any equipment in Part 1 of Schedule B (**Equipment**) which is not referred to in Part 3 of Schedule B (**Equipment**), it must obtain the Authority's prior written consent.
- 14.4 The Contractor shall at the reasonable request of the Authority from time to time provide the Authority with details of all equipment referred to in Part 3 of Schedule B (**Equipment**) that is for the time being leased, together with copies of the relevant leases and other relevant documentation to enable the Authority to satisfy itself that the provisions of this Clause 14 (**Supply of Equipment**) are being complied with.

14.5 The Contractor agrees that it shall at all times comply with its obligations under the Fixed Charge.

14.6 The Contractor agrees that, from the date of the Amending Agreement, it shall comply with its obligations under the Supplemental Fixed Charge.

15. **ISSUE OF INFORMATION TECHNOLOGY EQUIPMENT**

15.1 The Authority shall supply, install, configure, test and commission (i) the equipment (the **LIDS System**) listed in Part 2 of Schedule B (**Equipment**) at the Prison on or prior to the date falling no later than ten (10) weeks prior to the Estimated Opening Date and (ii) such equipment as may from time to time replace, upgrade or modify the LIDS System; (together with the LIDS System, each a "**Database System**"). Notwithstanding any other provision of this Contract, all such equipment shall remain the property of the Authority. Such equipment shall be used only in respect of the Services, and for no other purpose whatsoever.

15.1A The Authority shall supply, install, configure, test and commission (i) the LIDS System listed in Part 2 of Schedule B (**Equipment**) at the Houseblock on or prior to the date falling no later than ten (10) weeks prior to the Contractual Houseblock Opening Date and (ii) such equipment as may from time to time replace, upgrade or modify the LIDS System. Notwithstanding any other provision of this Contract, all such equipment shall remain the property of the Authority. Such equipment shall be used only in respect of the Services, and for no other purpose whatsoever.

15.2 The Contractor shall:

- (a) at its own expense provide, install and maintain all necessary ducts, wireways and Category 5 network cabling and such cabling and ancillary fixtures and fittings and power supplies as the Authority may require for the purpose of supplying, installing, maintaining, configuring, testing, commissioning and operating the Database System; and
- (b) at the Authority's request, make available appropriately qualified personnel to consult with the Authority or its authorised service engineers regarding the installation, configuring, testing, commissioning, maintenance, operation, upgrading, modification or replacement of any Database System; and

- (c) ensure that the Authority has the opportunity, for a reasonable time prior to any Database System going on line, to test such Database System's ability to send and receive data via the Government Data Network Access Point; and
  - (d) procure and provide free access to the Authority or its authorised service engineers at any reasonable time on reasonable notice for the purpose of (i) routine maintenance and fault resolution of the Database System and the Government Data Network Access Point and (ii) upgrading, modify or replacing any Database System and/or the Government Data Network Access Point.
- 15.3 The Authority will supply and install the equipment for the Government Data Network Access Point in the Prison following receipt of a written request therefor from the Contractor provided that the following provisions are met:
  - (a) the Contractor's written request to the Authority to supply and install the Government Data Network Access Point shall be delivered to the Authority at least sixteen (16) weeks in advance of the proposed date for its installation; and
  - (b) the installation date for the Government Data Network Access Point shall be at least twelve (12) weeks prior to the Estimated Opening Date.
- 15.3A The Authority will supply and install the equipment for the Government Data Network Access Point in the Houseblock following receipt of a written request therefor from the Contractor provided that the following provisions are met:
  - (a) the Contractor's written request to the Authority to supply and install the Government Data Network Access Point shall be delivered to the Authority at least sixteen (16) weeks in advance of the proposed date for its installation; and
  - (b) the installation date for the Government Data Network Access Point shall be at least twelve (12) weeks prior to the Actual Houseblock Opening Date.
- 15.4 The Authority shall be responsible for the provision, installation, maintenance and operation of the Government Data Network Access Point. The Contractor shall communicate with the Authority's service personnel by telephone on it becoming aware of any perceived faults in



the operation of any Database System or the Government Data Network Access Point and shall take such action in connection with such perceived fault as the Authority's service personnel reasonably instruct (including, without limitation, the taking of readings), provided that the Contractor shall not be liable to the Authority for any losses whatsoever arising from such action as is carried out on the instructions of the Authority's service personnel.

- 15.5 Without prejudice to any of its other rights hereunder, if the Authority decides to replace the Database System then installed it shall give written notice thereof to the Contractor which notice shall be deemed to be a Notice of Change for the purpose of Clause 9 (***Change to the Services Required***).
- 15.6 The Information to be provided to the Authority by the Contractor in accordance with this Clause 15 (***Issue of Information Technology Equipment***) and Section 3.11.1 of Part 1 of Schedule D (***Operational Requirements***) shall be transmitted only via the Database System and the Government Data Network Access Point.
- 15.7 The Authority shall provide, at its own expense, training on the LIDS System for the following numbers of the Contractor's staff in the following circumstances:
- (a) One hundred and twelve (112) staff in the operation of the LIDS System as appropriate to enable them to undertake their day to day duties;
  - (b) twelve (12) staff in system administration duties for the LIDS System prior to the system going live;
  - (c) twelve (12) staff in application administration duties for the LIDS System prior to the system going live; and
  - (d) twelve (12) staff in respect of and at the time of any upgrade or change to the LIDS System.

It shall be the responsibility of the Contractor to arrange for the training, at its own expense, of any additional staff not referred to in (a), (b) and (c) of this Clause 15 (***Issue of Information Technology Equipment***).

## 16. **STATUTORY OBLIGATIONS, NOTICES, FEES AND CHARGES**

- 16.1 The Contractor shall and (if applicable) shall procure that API shall, comply with and give all notices required by or under any Legislation, or required by any Statutory Undertaker with rights over the Site, or with

whose systems the Prison is or will be connected, which may be required in relation to the Works and/or the Houseblock Works, the operation of the Prison or otherwise affecting the Contractor (the "**Statutory Obligations**").

- 16.2 Where the terms of the Contract conflict with the Statutory Obligations, the Contractor shall as soon as reasonably possible inform the Authority of this fact, and where the said conflict necessitates a variation of the terms of the Contract in the reasonable opinion of the Authority, the Contractor shall first use all reasonable endeavours to obtain the approval of the Authority to effect the variation in accordance with Clause 62 (**Authority to Commit and Variation**), save where the Contractor is obliged to effect emergency compliance with a Statutory Obligation, in which case the Authority shall be informed as soon as practicable. The Contractor shall not otherwise be liable to the Authority for complying with the Statutory Obligations where they are in conflict with the terms hereof.
- 16.3 Without prejudice to the provisions of Clause 39 (**Variation in Price**) the Contractor shall pay any fees or charges required to be paid under any Legislation and shall pay any licence fees or charges pertaining to the provision of utilities in respect of the Prison, save that the Contractor shall not be liable for (i) any business rates payable (or any sum payable in lieu of such rates) in respect of the Prison, or (ii) council tax in respect of the Prison, to the extent that council tax in any calendar year has increased by more than ten per cent (10%) of the previous calendar year's council tax in respect of the Prison (such amount over such ten per cent (10%) to be reimbursed to the Contractor by the Authority within thirty (30) days of the Contractor's written request (supported by all relevant information)).

### **PART III - MAINTENANCE**

#### **17. MAINTENANCE OF PRISON**

- 17.1 Subject to Clause 18.1 (**Maintenance of Authority's Equipment**), the Contractor shall maintain at its own expense the Prison, the Site and all plant, fixtures, fittings, chattels, and other equipment specified in Schedule B (**Equipment**) in accordance with the terms of Schedule C (**Maintenance Management**).
- 17.2 In addition to the obligations set out in Schedule C (**Maintenance Management**), the Contractor shall ensure that the Prison is kept in good structural and decorative order during the Contract Term, so as to allow the Contractor to comply with the standards set out in Schedules C

**(Maintenance Management)** and D **(Operational Requirements)** and shall ensure that all plant, fixtures and fittings are kept in good and serviceable condition so as to allow the Contractor to comply with the standards set out in Schedule C **(Maintenance Management)** or, if not capable of being kept in good and serviceable condition, shall at its own cost be replaced as required with like equipment which is in good and serviceable condition.

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

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

18. **MAINTENANCE OF AUTHORITY'S EQUIPMENT**

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

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

19. **DILAPIDATION SURVEY**

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

- 19.1A The surveys referred to in Clause 19.1 (***Dilapidation Survey***) above shall from the first survey to be undertaken following the Actual Increased Capacity Date, include the Houseblock.
- 19.2 Where, following a survey referred to in Clause 19.1 (***Dilapidation Survey***) or Clause 52.1 (***Termination Survey***), the condition of the Prison as shown by such survey is found in the reasonable opinion of the Authority to have fallen below the standards of repair and maintenance set out in Clause 17 (***Maintenance of Prison***) and Schedule C (***Maintenance Management***), the Authority shall notify the Contractor of the work it reasonably believes is required to be done to bring the Prison to the requisite contractual standard. Within seven (7) days of such notification (or such longer period as is reasonable in the circumstances) the Contractor shall commence such works, or procure such works to be commenced, at the Contractor's cost. The works shall be completed within such period as is reasonably set by the Authority in the notice to the Contractor (or, in the case of a final dilapidation survey carried out in accordance with Clause 52.1 (***Termination Survey***), on or before the Termination Date or Expiry Date, as applicable).
- 19.3 Where, following any survey, the Contractor fails to effect any and all repairs and/or maintenance required pursuant to Clause 19.2 (***Dilapidation Survey***) or required following resolution of any dispute regarding the same pursuant to Clause 72 (***Dispute Resolution***) to the reasonable satisfaction of the Authority, within the reasonable time specified (or, in the case of a final dilapidation survey carried out in accordance with Clause 52.1 (***Termination Survey***), on or before the Termination Date or Expiry Date, as applicable), the Authority shall be entitled to carry out such unremedied repairs and/or maintenance itself, or to procure the same, at the Contractor's cost and shall be entitled to set off its costs against any amounts payable to the Contractor hereunder.

#### **PART IV - PRE-OPERATION PERIOD**

##### **20. PREPARATION FOR OPERATION OF THE PRISON**

- 20.1 The Contractor shall provide to the Authority the following matters in relation to the Contractor's proposed performance (which matters shall where the Authority considers appropriate provide for adequate testing procedures) (the "***Operation Proposals***"):
- (a) at least three (3) months prior to the Estimated Opening Date:

- (I) the operating procedures, local security procedures and medical care procedures;
    - (II) the emergency and contingency plans;
    - (III) the staff handbook; and
    - (iv) the public relations procedures;
  - (b) a reasonable period in advance of the Estimated Opening Date such other information as the Authority reasonably requests, including but not limited to all the documents listed in Schedule D (***Operational Requirements***) as requiring submission before the Actual Full Operation Date.
- 20.2 The Contractor shall make any amendments as the Authority may reasonably requires for the purpose of ensuring that the Operation Proposals are in accordance with the terms of the Contract. The Authority shall be entitled to refuse to approve all or any part of the Operation Proposals until the Contractor has made such amendments.
- 20.3 When the Contractor considers that it has prepared the Operation Proposals it shall give written notice to the Authority. Within thirty (30) days of receipt of the written notice, the Authority shall either approve the Operation Proposals or shall provide the Contractor with a written record of the reasons why it is not satisfied with the Operation Proposals.
- 20.4 If the Contractor is refused approval and a written record of the reasons has been provided by the Authority in accordance with Clause 20.3 (***Preparation for Operation of the Prison***), the Contractor shall amend the Operation Proposals in accordance with the Authority's reasons as set out in the written record and shall then comply with the requirements of Clause 20.3 (***Preparation for Operation of the Prison***) when seeking any new approval of the Operation Proposals save that the notice period shall be fourteen (14) days instead of the thirty (30) days specified in Clause 20.3 (***Preparation for Operation of the Prison***).
- 20.5 When the Authority approves the Operation Proposals, the Authority shall promptly issue to the Contractor a certificate certifying that the Operation Proposals are approved, subject to satisfactory completion of the tests in accordance with Clause 20.6 (***Preparation for Operation of the Prison***).
- 20.6 Once the Authority has issued a certificate under Clause 20.5 (***Preparation for Operation of the Prison***), the Operation Proposals

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

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

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

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

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

## 20A **PREPARATION FOR OPERATION OF THE INCREASED CAPACITY**

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

- (a) at least three (3) months prior to the Contractual Houseblock Opening Date:

- (i) the operating procedures, local security procedures and medical care procedures;
  - (ii) the emergency and contingency plans;
  - (iii) the staff handbook;
  - (iv) the public relations procedures;
- (b) a reasonable period in advance of the Contractual Houseblock Opening Date, such other information as the Authority reasonably requests.

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

20A.3 When the Contractor considers that it has prepared the Increased Capacity Operation Proposals it shall give written notice to the Authority. Within thirty (30) days of receipt of the written notice, the Authority shall either approve the Increased Capacity Operation Proposals or shall provide the Contractor with a written record of the reasons why it is not satisfied with the Increased Capacity Operation Proposals.

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

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

20A.6 Once the Authority has issued a certificate under Clause 20A.5 (***Preparation for Operation of the Increased Capacity***), the Increased Capacity Operation Proposals shall be tested in accordance with the proposals for testing in the Increased Capacity Operation Proposals. The Contractor shall give the Authority fourteen (14) days notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within seven (7) days of such tests, the Authority shall either finally approve the Increased Capacity Operation Proposals (by giving written notice to that effect) or shall provide the Contractor with a written record of the reasons why the Increased Capacity Operation Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re-run the tests in accordance with the above provisions except that the notice period to the Authority shall be two (2) days instead of the fourteen (14) days specified above.

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

## 21. **CONTRACTUAL OPENING DATE**

Upon the Contractual Opening Date the Contractor will provide the Authority with thirty (30) Available Prisoner Places. In the event that the Contractor does not provide thirty (30) Available Prisoner Places to the Authority on the Contractual Opening Date (and without prejudice to the Authority's rights under Clause 25 (***Liquidated Damages***) and Clause 44 (***Default by Contractor***)) the Contractor shall provide thirty (30) Available Prisoner Places as soon as possible thereafter.

## 22. **PHASE-IN PERIOD**

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

## 22A **INCREASED CAPACITY PHASE-IN PERIOD**



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

**23. FULL OPERATION DATE**

At all times on and from the Full Operation Date the Contractor shall provide to the Authority eight hundred (800) Available Prisoner Places and on the date falling six (6) months after the Full Operation Date the Contractor shall be capable of providing two hundred and forty (240) Additional Prisoner Places. The Authority shall not be liable to make any payment in respect of more than eight hundred (800) Available Prisoner Places (except to the extent of its obligations hereunder in respect of any Additional Prisoner Places).

**23A. ACTUAL INCREASED CAPACITY DATE**

At all times on and from the Actual Increased Capacity Date the Contractor shall provide to the Authority one thousand and sixty four (1064) Available Prisoner Places and two hundred and sixty four (264) Additional Prisoner Places. The Authority shall not be liable to make any payment in respect of more than one thousand and sixty four (1064) Available Prisoner Places (except to the extent of its obligations hereunder in respect of any Additional Prisoner Places).

**24. EXTENSION OF TIME**

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

**24.2** The Delay Notice shall (a) identify the cause or causes of the delay (b) state whether and to what extent the delay is caused by a Relevant Event (c) provide details of the nature of the Relevant Event and its duration (or the Contractor's reasonable estimate of its likely continued duration) (d) identify clearly which of the Contractual Opening Date, the

Full Operation Date and the dates on the Phase-in Timetable are to be affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Relevant Event and (e) in the case of a Relevant Event being claimed under paragraph (a) or (c) of the definition of Relevant Event the Contractor's estimate of the costs it is likely to incur directly as a result of such Relevant Event. If the Contractor serves a Delay Notice while a Relevant Event is continuing, the Contractor shall provide the Authority periodically (and at least on a weekly basis) with details of the Relevant Event and the Contractor's reasonable estimate of its impact on the Project or the provision of the Prison. The Contractor shall afford the Authority such access to the Site and papers of the Contractor as the Authority may reasonably consider necessary and appropriate for the purposes of establishing the accuracy of any Delay Notice.

- 24.3 If the Authority accepts that a Relevant Event is the cause of any delay to the Contractual Opening Date, the Full Operation Date or any date in the Phase-in Timetable, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Opening Date or the relevant date in the Phase-in Timetable and/or the Full Operation Date as it then reasonably estimates to be fair to take into account the effect of the Relevant Event (whereupon such other dates shall become the Contractual Opening Date, the Full Operation Date or the relevant date in the Phase-in Timetable for the purposes of this Contract).
- 24.4 Where a Relevant Event has caused or will cause a delay and such Relevant Event is one of the events referred to in paragraph (a) or (c) of the definition of Relevant Event, the Authority shall on written demand supported by particulars of the loss or expenses claimed reimburse to the Contractor any reasonable loss or expenses incurred by the Contractor as a direct result of the delay caused by such Relevant Event.

## 24A EXTENSION OF TIME - INCREASED CAPACITY

- 24A.1 If and whenever it becomes reasonably apparent to the Contractor that the fulfilment of its obligations in respect of the Houseblock Works 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 any date of the Increased Capacity Phase-in Period 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.
- 24A.2 The Increased Capacity Delay Notice shall (a) identify the cause or causes of the delay (b) state whether and to what extent the delay is caused by a Houseblock Relevant Event (c) provide details of the nature of the Houseblock Relevant Event and its duration (or the Contractor's reasonable estimate of its likely continued duration) (d) identify clearly which of the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date and the dates in the Increased Capacity Phase-in Period Timetable are to be affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Houseblock Relevant Event and (e) in the case of a Houseblock Relevant Event being claimed under paragraph (a) or (c) of the definition of Houseblock Relevant Event the Contractor's estimate of the costs it is likely to incur directly as a result of such Houseblock Relevant Event. If the Contractor serves an Increased Capacity Delay Notice while a Houseblock Relevant Event is continuing, the Contractor shall provide the Authority periodically (and at least on a weekly basis) with details of the Houseblock Relevant Event and the Contractor's reasonable estimate of its impact on the Project or the provision of the Houseblock. The Contractor shall afford the Authority such access to the Site and papers of the Contractor as the Authority may reasonably consider necessary and appropriate for the purposes of establishing the accuracy of any Increased Capacity Delay Notice.
- 24A.3 If the Authority accepts that a Houseblock Relevant Event is the cause of any delay to the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date or any date in the Increased Capacity Phase-in Period Timetable, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Houseblock Opening Date or the relevant date in the Increased Capacity Phase-in Period Timetable and/or the Contractual Increased Capacity Date as it then reasonably estimates to be fair to take into account the effect of the Houseblock Relevant Event (whereupon such other dates

shall become the Contractual Houseblock Opening Date, the Contractual Increased Capacity Date or the relevant date in the Increased Capacity Phase-in Period Timetable for the purposes of this Contract).

- 24A.4 Where a Houseblock Relevant Event has caused or will cause a delay and such Houseblock Relevant Event is one of the events referred to in paragraph (a) or (b) of the definition of Houseblock Relevant Event, the Authority shall on written demand supported by particulars of the loss or expenses claimed reimburse to the Contractor any reasonable loss or expenses incurred by the Contractor as a direct result of the delay caused by such Houseblock Relevant Event.
- 24A.5 Where a Houseblock Relevant Event occurs, the Long Stop Date will be adjusted by the duration of that Houseblock Relevant Event.

**25. LIQUIDATED DAMAGES**

- 25.1 To the extent that on or before the Actual Full Operation Date the Contractor fails on any day to provide the number of Available Prisoner Places specified in the Phase-in Timetable (including, for the avoidance of doubt, thirty (30) Available Prisoner Places from the Contractual Opening Date and eight hundred (800) Available Prisoner Places from the Full Operation Date), the Contractor shall be liable to pay liquidated damages to the Authority.
- 25.2 Liquidated damages shall be calculated at the daily rate set out in Schedule E (**Payment Mechanism**) per Prisoner per Day for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms hereof and set out in Clause 25.1 (**Liquidated Damages**) has not been provided and shall, subject to Clause 25.4 (**Liquidated Damages**), be payable monthly in arrears. The Contractor agrees that such rate represents a reasonable pre-estimate of the Authority's loss arising from delay.

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

## 25A LIQUIDATED DAMAGES - INCREASED CAPACITY

25A.1 To the extent that on or before the Actual Increased Capacity Date the Contractor fails on any day to provide the number of Available Prisoner Places specified in the Increased Capacity Phase-in Period Timetable (including, for the avoidance of doubt, thirty (30) Available Prisoner Places from the Contractual Houseblock Opening Date and two hundred and sixty four (264) Available Prisoner Places from the Actual Increased Capacity Date), the Contractor shall be liable to pay liquidated damages to the Authority.

25A.2 Liquidated damages shall be calculated at the daily rate set out in Schedule E (**Payment Mechanism**) per Prisoner per Day for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms hereof and set out in Clause 25A.1 (**Liquidated Damages - Increased Capacity**) has not been provided and shall, subject to Clause 25A.4 (**Liquidated Damages - Increased Capacity**) be payable monthly in arrears. The Contractor agrees that such rate represents a genuine and reasonable pre estimate of the Authority's loss arising from delay.

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25A.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 25A.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 by the Authority from the Houseblock Construction Sub-contractor. To the extent such sums have been paid to the Authority or recovered by the Authority from the Houseblock Construction Sub-contractor, the Contractor's obligation hereunder to pay such sums shall be discharged.

## 26. ENGINEER'S DECLARATION

26.1 The Independent Engineer shall monitor the progress of the Works upon the Site, and be entitled to exercise rights, in accordance with the provisions of Schedule M (**Compliance Monitoring**). The Independent Engineer shall have no authority to approve or accept the Contractor's

performance of its obligations under the Contract as being discharged except as provided in this Clause 26 (**Engineer's Declaration**). The Authority shall use reasonable endeavours to procure that the Independent Engineer acts in accordance with the terms of the Monitoring Contract. The Authority agrees that it will not amend or waive any of its rights under the Monitoring Contract in a manner that could reasonably be expected to be adverse to the interests of the Contractor.

- 26.2 When the Contractor considers that the whole of the Works will be, or has been, completed in accordance with Schedule A (**Specifications**) and will be, or has been, satisfactorily commissioned by passing all the tests referred to in Schedule A (**Specifications**), the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer. In the event that at the time such notice is given, the Contractor considers that the Works will be completed at a later date, the Contractor must specify such date, which shall be not less than fourteen (14) days and not more than thirty (30) days from the date of the notice.
- 26.3 The Authority shall procure that the Independent Engineer shall within twenty-one (21) days of the date of the delivery of the notice referred to in Clause 26.2 (**Engineer's Declaration**) (or, if the Works will be completed at a later date, within seven (7) days of the date of completion specified in the notice) either issue a certificate to the Authority (signed by a director in the firm appointed as Independent Engineer) declaring that the Works have been completed in accordance with Schedule A (**Specifications**) (the "**Engineer's Declaration**") or give notice to the Contractor in writing specifying all the matters which 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 Clause 26.2 (**Engineer's Declaration**) and 26.3 (**Engineer's Declaration**) shall apply. Any dispute as to whether the Works have been completed in accordance with Schedule A (**Specifications**) or, in the case of any amount due from the Contractor pursuant to Clause 25 (**Liquidated Damages**), as to the date on which the Engineer's Declaration should have been issued in accordance with the provisions hereof shall be referred to the Expert in accordance with Clause 72.1 (**Dispute Resolution**).
- 26.4 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 to in Part 2 of Schedule B **(Equipment)**, in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract as unavoidably require use of such equipment which is not fit for use for such period as such lack of fitness continues.

- 26.5 If the Independent Engineer gives written notice to the Authority that a matter has come to his attention in the course of any inspection by him of the Works which may adversely affect his decision to Issue the Engineer's Declaration, the Authority shall, without unreasonable delay, notify the Contractor in writing of such matter. For the avoidance of doubt, nothing done by the Authority or the Independent Engineer in accordance with this Clause 26 **(Engineer's Declaration)**, Clause 13 **(Provision of the Prison)** or Schedule M **(Compliance Monitoring)** shall in any respect relieve or absolve the Contractor from its responsibility for the design or construction of the Works under or in connection with the Contract.

#### 26A **ENGINEER'S HOUSEBLOCK DECLARATION**

- 26A.1 The Independent Engineer shall monitor the progress of the Houseblock Works upon the Site, and be entitled to exercise rights, in accordance with the provisions of Schedule M **(Compliance Monitoring)**. The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in this Clause 26A **(Engineer's Houseblock Declaration)**. The Authority shall use reasonable endeavours to procure that the Independent Engineer acts in accordance with the terms of the Houseblock Works Monitoring Contract. The Authority agrees that it will not amend or waive any of its rights under the Houseblock Works Monitoring Contract in a manner that could reasonably be expected to be adverse to the interests of the Contractor.
- 26A.2 When the Contractor considers that the Houseblock Works (other than the Houseblock Planting and Completion Works) will be, or have been, completed in accordance with Part 2 of Schedule A **(Specifications)** and will be, or have been, satisfactorily commissioned by passing all the tests referred to in Part 2 of Schedule A **(Specifications)**, the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer. In the event that at the time such notice is given, the Contractor considers that the Houseblock Works (other than the Houseblock Planting and Completion Works) will be completed at a later date, the Contractor must specify such date, which shall be not less than

fourteen (14) days and not more than thirty (30) days from the date of the notice.

- 26A.3 The Authority shall procure that the Independent Engineer shall within twenty-one (21) days of the date of the delivery of the notice referred to in Clause 26A.2 (**Engineer's Houseblock Declaration**) (or, if the Houseblock Works will be completed at a later date, within seven (7) days of the date of completion specified in the notice) either issue a certificate to the Authority (signed by a director in the firm appointed as Independent Engineer) declaring that the Houseblock Works have been completed in accordance with Schedule A (**Specifications**) (the "**Engineer's Houseblock Declaration**") or give notice to the Contractor in writing specifying all the matters which must be satisfied before the Engineer's Houseblock Declaration can be issued. If such notice is given by the Independent Engineer, the Contractor shall carry out such works as may be required to obtain the Engineer's Houseblock Declaration and the requirements of Clause 26A.2 (**Engineer's Houseblock Declaration**) and 26A.3 (**Engineer's Houseblock Declaration**) shall apply. Any dispute as to whether the Houseblock Works have been completed in accordance with Schedule A (**Specifications**) or, in the case of any amount due from the Contractor pursuant to Clause 25A (**Liquidated Damages - Increased Capacity**), as to the date on which the Engineer's Houseblock Declaration should have been issued in accordance with the provisions hereof shall be referred to the Expert in accordance with Clause 72.1 (**Dispute Resolution**).
- 26A.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 to in Part 2 of Schedule B (**Equipment**), in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract as unavoidably require use of such equipment which is not fit for use for such period as such lack of fitness continues.
- 26A.5 If the Independent Engineer gives written notice to the Authority that a matter has come to his attention in the course of any inspection by him of the Houseblock Works which may adversely affect his decision to issue the Engineer's Houseblock Declaration, the Authority shall, without unreasonable delay, notify the Contractor in writing of such matter. For the avoidance of doubt, nothing done by the Authority or the Independent Engineer in accordance with this Clause 26A (**Engineer's Houseblock Declaration**), Clause 13A (**Provision of the Increased**



**Capacity**) or Schedule M (**Compliance Monitoring**) shall in any respect relieve or absolve the Contractor from its responsibility for the design or construction of the Houseblock Works under or in connection with the Contract.

## 26B SNAGGING MATTERS

26B.1 The Independent Engineer shall issue a certificate in accordance with Clause 26A (**Engineer's Houseblock Declaration**) notwithstanding that there are any Snagging Matters. Where there are Snagging Matters, the Independent Engineer shall, within ten (10) days of the issue of his certificate in accordance with Clause 26A (**Engineer's Houseblock Declaration**), issue a notice specifying the Snagging Matters together with an estimate of the cost of rectifying such Snagging Matters.

26B.2 Following the issue of a certificate in accordance with Clause 26A (**Engineer's Houseblock Declaration**) the Contractor shall, in consultation with the Authority and the Independent Engineer and in such manner as to cause as little disruption as reasonably practicable to the Custodial Service, rectify all Snagging Matters within a reasonable period from the issue of the certificate in accordance with Clause 26A (**Engineer's Houseblock Declaration**) and in any event before the end of the Defects Period.

26B.3 If, within the period referred to in Clause 26B.2 (**Snagging Matters**) the Contractor has failed to rectify the Snagging Matters specified in such notice, the Authority may by itself or by the engagement of others carry out the works necessary to rectify the Snagging Matters.

26B.4 The issue of the certificate of the Independent Engineer in accordance with Clause 26A (**Engineer's Houseblock Declaration**) shall in no way affect the obligations of the Contractor under this Contract.

## 27. CELL CERTIFICATION

27.1 When the Contractor declares a Prison Cell to be available, and for the duration of the Contract, the Contractor shall ensure that each and every Prison Cell, and any other living accommodation to be occupied by a Prisoner, shall comply with such parts of Schedules A (**Specifications**), B (**Equipment**) and C (**Maintenance Management**) as relates to Prison Cells and such other living accommodation to be occupied by a Prisoner.

27.2 Prior to its first ever occupation by a Prisoner and immediately following any subsequent refurbishment or rebuilding, each and every Prison Cell shall be inspected by the Authority (which expression shall for the

purposes of this Clause 27 (**Cell Certification**) mean an officer of the Authority) to determine whether the Prison Cell complies with such parts of Schedules A (**Specification**), B (**Equipment**) and C (**Maintenance Management**) as relate to Prison Cells. When the Authority agrees that an inspected Prison Cell complies with such parts of Schedules A (**Specification**), B (**Equipment**) and C (**Maintenance Management**) as relate to Prison Cells, the Authority shall issue the Contractor with a Cell Certificate for the inspected Prison Cell, in accordance with Clause 28 (**Timetable for Cell Certification**).

- 27.3 Following the issue of any initial Cell Certificate in accordance with Clause 27.2 (**Cell Certification**), the Authority shall carry out such further inspections during the term of the Contract as it thinks fit, in order to reassess the certification of any Prison Cell. In the event that the Authority identifies during any such further inspection that a Prison Cell does not comply substantially with all of the requirements of such parts of Schedule A (**Specifications**), B (**Equipment**) and C (**Compliance Monitoring**) as relate to Prison Cells, it shall notify the Contractor in writing of the nature of the non-compliance (through a "**Non-Compliance Notice**"). If within ten (10) days of service of a Non-Compliance Notice, the Contractor has not remedied the matter referred to in the Non-Compliance Notice, until such time as the Contractor has rectified the Prison Cell so that it complies substantially with all of the requirements of such parts of Schedules A (**Specifications**), B (**Equipment**) and C (**Maintenance Management**) as relate to Prison Cells as aforesaid the Authority may (without prejudice to its other rights hereunder) withdraw the Cell Certificate. Such Cell Certificate shall be reinstated only after the Contractor has rectified the Prison Cell so that it complies substantially with such parts of Schedules A (**Specifications**), B (**Equipment**) and C (**Maintenance Management**) as relate to Prison Cells.

28. **TIMETABLE FOR CELL CERTIFICATION**

- 28.1 A minimum of thirty (30) days prior to any date when the Contractor considers it can provide the Authority with Available Prisoner Places as required by Clauses 21 (**Contractual Opening Date**), 22 (**Phase-in Period**), 22A (**Increased Capacity Phase-in Period**), 23 (**Full Operation Date**) and 23A (**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.
- 28.2 The Authority, and such other persons as the Authority may specify, whenever so notified, shall carry out inspections of (i) the Prison Cells and the Prison for the purpose of granting Cell Certificates in accordance with Clauses 27 (**Cell Certification**) and (ii) prior to the Contractual Houseblock Opening Date up to and including the Actual Houseblock Opening Date, the Houseblock in accordance with Clause 27 (**Cell Certification**).
- 28.3 The Authority shall issue each Prison Cell with a Cell Certificate within the notice period referred to in Clause 28.1 (**Timetable for Cell Certification**), unless the Prison Cell does not comply with Clause 27 (**Cell Certification**), in which case the Authority shall provide the Contractor with a written record of those parts of Schedule A (**Specifications**), B (**Equipment**) or C (**Maintenance Management**) that are not complied with.
- 28.4 In the event that:
- (a) the Authority fails to certify a Prison Cell before the expiry of the notice period; and
  - (b) the Authority fails to provide the Contractor with a written record under Clause 28.3 (**Timetable for Cell Certification**) before the expiry of the notice period,

then if, but for the Authority's failure as set out in (a) or (b) above, upon expiry of the notice period referred to in Clause 28.1 (**Timetable for Cell Certification**) a Prisoner Place would have been treated as being an Available Prisoner Place, then for the sole purpose of Clauses 25 (**Liquidated Damages**), 25A (**Liquidated Damages - Increased Capacity**) and 38 (**Price**), the Prisoner Place shall be treated as an Available Prisoner Place until such time as the Authority certifies the Prison Cell so as to make it an Available Prisoner Place within the

meaning of Clause 29 (**Available Prisoner Places**) or the Authority provides the Contractor with a written record in accordance with Clause 28.3 (**Timetable for Cell Certification**) so that the Prisoner Place ceases to be treated as an Available Prisoner Place.

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

## 29. **AVAILABLE PRISONER PLACES**

- 29.1 There shall be no Available Prisoner Places in respect of the Existing Prison until:

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

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

- (a) the Engineer's Houseblock Declaration has been obtained;
- (b) the Authority's final approval of the Increased Capacity Operation Proposals has been obtained in accordance with Clause 20A.6 (**Preparation for Operation of the Increased Capacity**);
- (c) the Contractor has demonstrated to the satisfaction of the Authority that it is capable of providing properly trained and

certified Staff for the provision of the Custodial Service in the Houseblock; and

- (d) all the conditions required to be satisfied prior to the holding of Prisoners (for any period, whether overnight or otherwise) at the Houseblock in accordance with the Increased Capacity Permission (as may be amended from time to time) are complied with in full.

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

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

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

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

29.3 No Single Prison Cell shall be used to accommodate more than one (1) Prisoner, and no Double Prison Cell shall be used to accommodate more than two (2) Prisoners, at any one time (other than in each case Prison Cells designated for multiple occupancy in the healthcare centre of the Prison), except where the number of Prisoners sharing a Single Prison Cell with another Prisoner plus the number of Prisoners sharing a Double Prison Cell with more than one Prisoner does not exceed the Permitted Level (in which case Clause 29.4 (**Available Prisoner Places**) would apply).

The Authority agrees to consider, at any time whilst it is entitled to recover Losses of the type described in Clause 4.1(iii) (**Indemnities**) from the Contractor, whether it will in its discretion increase the Permitted Level (either on a temporary or permanent basis) so as to reduce the liability of the Contractor pursuant to Clause 4.1(iii) (**Indemnities**). The Authority shall be under no obligation to exercise its discretion pursuant to this paragraph and shall in no circumstances incur a liability to the Contractor or any other party if it declines to do so.

- 29.4 Where two (2) Prisoners share a Single Prison Cell or three Prisoners share a Double Prison Cell otherwise than as expressly permitted in Clause 29.3 (**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 44 (**Default by Contractor**) and 45 (**Rectification and Termination for Default**), be reduced in the following manner:

Where:

- (a) the number of Prisoners sharing Prison Cells (other than in the healthcare centre of the Prison) is greater than the Permitted Level; and
- (b) the sharing of Prison Cells in the manner referred to in (a) above has been reported in one or more Daily Reports;

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

- 29.5 No Single Prison Cell shall be used to accommodate more than two (2) Prisoners, and no Double Prison Cell shall be used to accommodate more than three (3) Prisoners under any circumstances other than, in each case, Prison Cells designated for multiple occupancy in the healthcare centre of the Prison.
- 29.6 The Contractor agrees that it will not refuse to accept a Prisoner for an Available Prisoner Place where such Prisoner has been sent to the Prison by any Court; and that it will not refuse to accept a Prisoner for an Available Prisoner Place where it receives a request to do so from the Authority unless the Contractor has reasonable cause to believe that

complying with the Authority's request would prejudice the Contractor's ability to maintain security and control within the Prison. The Authority agrees not to introduce any Category A Prisoners to the Prison if to do so can be reasonably avoided and, if it cannot be reasonably avoided, the Authority undertakes to remove any such Category A Prisoners from the Prison at the earliest possible opportunity. Notwithstanding any other provision of this Clause, a Prisoner Place shall not be an Available Prisoner Place if the Contractor refuses to accept a Prisoner to occupy such Prisoner Place, unless in requesting that the Prisoner occupy such Prisoner Place, the Authority is not acting in accordance with its own guidelines for placing Prisoners in its own prisons. If the Contractor refuses to comply with the Authority's request and the Authority is not acting in accordance with such guidelines, the Prisoner Place shall continue to be an Available Prisoner Place (subject to the requirements of Clause 29.1 (**Available Prisoner Places**)); if the Authority is acting in accordance with such guidelines, the Prisoner Place shall not be an Available Prisoner Place until the earlier to occur of the following:

- (a) save in respect of the Phase-In Period, eight hundred (800) or more Prisoners have occupied the Prison at any one time after the date of the Contractor's refusal; or
- (b) three (3) months have passed since the date of the Contractor's refusal.

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

## **PART V - OPERATION**

### **30. CONDUCT OF OPERATION**

- 30.1 The Contractor is responsible for the operation and maintenance of the Prison, in accordance with the terms and specifications of the Contract, and in accordance with the Authority's powers under the Criminal Justice Act 1991.
- 30.2 The Contractor shall at all times operate the Prison in accordance with all relevant provisions of Legislation including but not limited to the Prison Act 1952, the Criminal Justice Act 1991, the Prison Rules 1964 and the Young Offender Institution Rules 1988.

- 30.3 Without prejudice to Clause 30.2 (**Conduct of Operation**) the Contractor shall operate the Prison in accordance with the terms of Part 1 of Schedule D (**Operational Requirements**).

31. **THE DIRECTOR**

- 31.1 The appointment of the Director of the Prison shall be subject to the special approval of the Authority and to his certification as a Prisoner Custody Officer under Sections 85 and 89 of, and Schedule 10 to the Criminal Justice Act 1991.
- 31.2 The Contractor shall submit a nomination for the position of Director to the Authority in accordance with Clause 20 (**Preparation for Operation**), which nomination the Authority may accept or reject as it thinks fit. The Contractor will submit to the Authority such further particulars of the proposed Director as the Authority may require in order to decide upon the appointment. The Authority will consult with the Contractor with respect to any such nominee and if a Contractor's nominee is rejected by the Authority, the Authority shall provide reasons for the rejection, and the Contractor shall nominate a new candidate for the Authority's approval or rejection in the same manner as the earlier nomination.
- 31.3 During the term of the Contract the Director shall be an appointee of the Contractor. Any change to the person occupying the position of Director must be approved by the Authority before being effected.
- 31.4 The Contractor shall ensure that any person required to exercise the powers of the Director, by reason of the Director's absence, or to replace the existing Director or for whatsoever reason, will be subject to the same terms of approval and appointment as specified in this Clause 31 (**The Director**).

32. **PRISONER CUSTODY OFFICERS**

- 32.1 For the purpose of this Clause 32 (**Prisoner Custody Officers**), and Clause 33 (**The Staff**), "**member of staff**" shall mean a person who is required to work or perform duties at the Prison during the period from Actual Opening Date to the end of the Contract Term and who is an employee of the Contractor, or an employee of any Sub-contractor, and "**staff**" shall have the like meaning.
- 32.2 All persons carrying on Custodial Duties in the Prison shall be subject to certification as Prisoner Custody Officers by the Authority as required by Sections 85 and 89 (and where appropriate Section 80) of, and Schedule



10 to the Criminal Justice Act 1991. Whenever the Contractor requests a person be certified as a Prisoner Custody Officer, the Contractor shall submit to the Authority the name of any proposed Prisoner Custody Officer and such other particulars as the Authority may require, to assist in the Authority's decision as to his certification.

32.3 No person certified as a Prisoner Custody Officer may be employed in that capacity if his certification has been revoked or during any period when his certificate is suspended. The Contractor shall notify the Authority immediately of any behaviour of a Prisoner Custody Officer which would cast doubt on his fitness for certification as a Prisoner Custody Officer.

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

### 33. **THE STAFF**

33.1 The Contractor shall be responsible for the recruitment and provision of suitable staff and in particular the Contractor shall appoint one or more suitably qualified individuals to the position of prison medical officer. All staff shall receive proper training in their functions and duties and such training is subject to approval by the Authority (such approval not to be unreasonably delayed).

33.2 The Contractor shall submit for the Authority's approval any and all uniforms to be worn by the staff of the Prison (including the Prisoner Custody Officers) at least three (3) months prior to Estimated Opening Date and, in any event, before such uniforms are taken into use. Such uniform and the Contractor's and Operating Sub-contractor's required standards of dress for the staff shall be subject to approval by the Authority before being implemented. Any change to the uniforms or standards shall be subject to the Authority's approval.

33.3 All members of staff who are not required to be certified as Prisoner Custody Officers (including, for the purposes of this Clause 33.3 (**The Staff**), the medical officer or officers and members of staff of any Sub-contractor employed inside the Prison after Engineer's Declaration) shall be subject to approval by the Authority. The Contractor shall provide to the Authority such details of the said members of staff as may be required by the Authority for the purposes of approval. Nothing in this sub-Clause shall require the Contractor prior to Engineer's Declaration to obtain the Authority's approval for persons engaged upon the design and construction of the Prison except where such persons are engaged on matters relating to the security of the Prison, and the Authority may

exempt other categories of staff from the requirements of this sub-Clause if it so chooses.

- 33.4 The Contractor shall provide all staff with the operating and procedural instructions prepared in accordance with Clause 20 (***Preparation for Operation of the Prison***) which are relevant to them, and all staff shall be provided with any revised or amended operating and procedural instructions which are relevant to them which may be issued during the term of this Contract.
- 33.5 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 to the Contractor but also to the Authority not to disclose any information acquired during the course of that employment otherwise than in the proper discharge of their duties or as authorised by the Authority, and shall procure that the Sub-contractors will undertake in the same terms to the Authority as the provisions of this Clause 33.5 (***The Staff***).
- 33.6 If, in the opinion of the Authority, any member of staff is guilty of misconduct, is incapable of efficiently performing his duties or it is not in the public interest for such a person to work in the Prison, then the Authority shall notify this to the Contractor and the Contractor shall immediately refuse the admission of such person to the Prison and shall, immediately on being required to do so, remove such person from the Prison and will cause such person's work to be performed by such other person as may be deemed necessary. The Authority shall, in respect of any such member of staff who has been certified as a Prisoner Custody Officer and in respect of any such other member of staff, take such action as it considers appropriate. If the Contractor fails to comply with any such requirement of the Authority under this Clause 33.6 (***The Staff***) to refuse admission and/or remove such person, or delays in doing so, the Authority may employ such other person as it may deem necessary for the purpose of carrying out the work, and any additional costs thereby incurred shall be a debt due from the Contractor to the Authority.
- 33.7 The Contractor will note and comply with the provisions of Section 88 of the Criminal Justice Act 1991. The Contractor shall ensure the inclusion in the contract of employment of each member of staff a condition requiring the said member of staff to co-operate with any Governor who may be appointed to the Prison under the terms of Section 88 (2) of the Criminal Justice Act 1991.

- 33.8 The Contractor shall maintain sufficient staff to perform the Custodial Service, including the provision of cover for annual and sick leave or other absence and other emergencies.
- 33.9 The Contractor shall provide written descriptions of job responsibilities, staff record systems, and a performance evaluation plan which shall be available for inspection by the Authority. All members of staff shall be provided with written job descriptions before beginning work in the Prison. Job descriptions shall be amended as necessary and reissued to the members of staff concerned after each amendment.
- 33.10 If, whilst operating the Prison, the Contractor or a Sub-contractor seeks to engage a new member of staff, and such person has not been the subject of prior approval or certification in accordance with this Clause 33 (**The Staff**), Clause 32 (**Prisoner Custody Officers**) and Clause 31 (**The Director**), or such approval or certification has lapsed, the Contractor shall not permit the said person to commence work at the Prison until the Authority has been provided with the information required by this Clause and has given the requisite approval or certification.
- 33.11 The Contractor shall ensure that members of staff (including Prisoner Custody Officers, the Director and other senior management of the Prison or their delegated representatives) with sufficient authority to take decisions necessary for the proper operation of the Prison, shall be available twenty-four (24) hours a day on every day throughout the Contract Term in respect of the Custodial Service.
- 33.12 The Contractor shall ensure that a member of the senior management of the Contractor's and the Operating Sub-contractor's organisation, as distinguished from the senior management of the Prison, is contactable by the Authority twenty-four (24) hours a day on every day throughout the Contract Term. The Contractor shall ensure that the Authority is informed well in advance of the procedures by which this obligation will be performed (and of any changes thereto) and such procedures (and of any changes thereto) shall be subject to the approval of the Authority.
- 33.13 The Contractor shall be entirely responsible for all aspects, including costs, of the contracts of employment of its employees.
- 33.14 The Contractor shall be liable for any costs and payment of redundancy awards to its employees at the end of the Contract Term (except in the case of voluntary termination under Clause 46 (**Voluntary Termination**), as to which the provisions of Schedule H (**Payments on Voluntary Termination**) shall apply) and for any costs and payment of redundancy awards to the employees of the outgoing Operating

Sub-contractor if a replacement Operating Sub-contractor is appointed pursuant to the provisions of Clause 39A (**Benchmarking**) but is not required by the Contractor or the outgoing Operating Sub-contractor to assume those employees' contracts of employment.

- 33.15 During the period of eighteen months preceding the Expiry Date or after notice has been given to terminate the Contract, and within fourteen (14) days of being so requested by the Authority, the Contractor shall (and shall ensure that the Operating Sub-contractor shall) fully and accurately disclose to the Authority information relating to its employees engaged in providing services under the Contract (or Operating Sub-contract) in particular but not necessarily restricted to:
- (a) the number of personnel whose employment is likely to be terminated at the expiry of the Contract (and the Operating Sub-contract) but for any operation of the law;
  - (b) the payroll bill of those employees (i.e. basic pay, all allowances, employers' contributions to pension schemes);
  - (c) their terms and conditions of employment;
  - (d) their length of service and the cost of their redundancy entitlement.
- 33.16 The Contractor shall (and shall ensure that the Operating Sub-contractor shall) permit the Authority to use the information for such purposes as it shall deem appropriate and shall enable and assist the Authority and such other persons as the Authority may determine to communicate with and meet those employees and their trade union or other employee representatives when and where the Authority may determine.
- 33.17 The Contractor agrees to indemnify the Authority fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 33.15 (**The Staff**).
- 33.18 From the earlier of the date eighteen months prior to the Expiry Date or the date of being given written notice of the Authority's intention to terminate the Contract or re-tender the services performed under the Contract (including in accordance with the provisions of Clause 39A (**Benchmarking**) and until the termination or expiry of the Contract (and the Operating Sub-contract), the Contractor shall not (and shall ensure that the Operating Sub-contractor shall not) amend the rates of

remuneration or hours to be worked by any employee, including holidays, or change the number of employees performing services under the Contract without the prior written agreement of the Authority, which will not be unreasonably withheld.

**33A. TUPE TRANSFERS**

33A.1 Unless otherwise agreed by both parties, the Contractor and the Authority acknowledge that the TUPE Regulations will apply at the expiry or on the termination of this Contract.

33A.2.1 During the period of eighteen (18) months preceding the expiry of the Contract or at any other time as directed by the Authority or after the Authority has given notice to terminate the Contract, the Contractor shall:

- (a) fully and accurately disclose to the Authority the information listed in Part 1 of Schedule Q (**TUPE Information**) relating to personnel who are engaged in providing the Services; and
- (b) shall permit the Authority to use the information to inform any tenderer bidding for any services which are substantially the same type of services as provided by this Contract provided that, prior to doing so, any such tenderer shall have executed in writing a confidentiality undertaking in favour of the Contractor.

33A.2.2 During the period of six (6) months preceding the expiry of the Contract, or after the Authority has given notice to terminate the Contract, the Contractor shall provide all reasonable assistance and facilities to the Authority, or any prospective employer of the said personnel as the Authority may determine, to include the communication with and meeting of those personnel whom the Contractor reasonably believes will be involved in the TUPE transfer and their trade union or other employee representatives when and where the Authority may determine.

33A.3 During the period of three (3) months preceding the expiry of the Contract or at any time as directed by the Authority or after the Authority has given notice to terminate the Contract, the Contractor shall fully and accurately disclose to the Authority the information listed in Part 2 of Schedule Q (**TUPE Information**) which relates to its employees who are engaged in providing the Services and shall permit the Authority to use the information to inform any prospective employer about its prospective employees provided that, prior to doing so, the prospective employer

shall have executed in writing a confidentiality undertaking in favour of the Contractor.

33A.4.1 The Contractor warrants that it will supply complete and accurate information and agrees to indemnify and keep the Authority indemnified fully in respect of any costs and liabilities whatsoever arising from the provision of information pursuant to Clauses 33A.2.1 (**TUPE Transfers**), 33A.2.2 (**TUPE Transfers**), 33A.3 (**TUPE Transfers**) and Schedule Q (**TUPE Information**) which is incorrect, the failure to provide information pursuant to such Clauses and/or the failure to provide assistance pursuant to Clause 33A.2.2 (**TUPE Transfers**). The indemnity pursuant to this Clause will survive the expiry or termination of this Contract PROVIDED THAT the Contractor will only be obliged to indemnify the Authority in respect of those costs or liabilities which are notified to the Contractor by the Authority for a period no later than nine (9) months after the termination or expiry of this Contract.

33A.4.2 From the date of being given notice of the Authority's intention to re-tender the Services (and the Operating Sub-contract) or where notice terminating the Contract (and the Operating sub-contract) for whatever reason has been given, the Contractor shall not (and shall ensure that the Operating Sub-contractor shall not) without the prior written agreement of the Authority:-

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

33A.4.3 Agreement by the Authority in respect of Sub-clauses 33A.4.2(a) (**TUPE Transfers**), (b) (**TUPE Transfers**), (c) (**TUPE Transfers**) and (d) (**TUPE Transfers**) above shall not be unreasonably withheld or delayed.

- 33A.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 appertaining to the period up to the expiry or termination of the Contract (or the Operating Sub-contract, as the case may be) shall be borne by the Contractor and all necessary apportionments shall be made.
- 33A.6 Within fourteen (14) days prior to the TUPE Transfer Date the Contractor shall provide to the Authority and the New Contractor a complete and accurate list of all Transferring Employees.
- 33A.7 Within fourteen (14) days following the TUPE Transfer Date, the Contractor shall provide to the Authority and the New Contractor in writing Final Pay Details of the Transferring Employees.
- 33A.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 given by the Contractor or received from any employee performing any part of the Services regardless of when such notice is to take effect.
  - (b) of the termination, for whatever reason of the employment of any employees performing any part of the Services; and
  - (c) of any other change to any employee performing part of the Services and their terms and conditions of employment, the Information set forth in Part 2 of Schedule Q (**TUPE Information**) and the Relevant Personnel Documentation.
- 33A.9 The Contractor warrants that it shall satisfy all of its obligations up to the TUPE Transfer Date in respect of all salaries and other emoluments, tax and national insurance payments, contributions to retirement benefit schemes and bonus arrangements in respect of each Transferring Employee provided that (i) where the same are due to be paid before the TUPE Transfer Date in respect of the period after the TUPE Transfer, the same shall be paid by the Contractor who shall forthwith on demand be indemnified in respect thereof by the Authority, and (ii) where the Transferring Employees are to be paid after the TUPE Transfer Date in respect of the period up to and including the TUPE Transfer Date the

Authority forthwith on demand shall be indemnified by the Contractor in respect of this payment.

33A.10 The Contractor shall indemnify and keep the Authority indemnified in respect of all and any costs and liabilities whatsoever suffered or incurred by the Authority or the New Contractor by reason of any proceeding, claim or demand arising out of or in connection with:

- (a) any claim against the Authority, or the New Contractor nominated by the Authority, by any Transferring Employee Included on the list provided in accordance with Clause 33A.6 (**TUPE Transfers**) so far as it relates to any act or omission of the Contractor prior to the TUPE Transfer Date.
- (b) any claim against the Authority or the New Contractor by any Transferring Employee engaged in providing the Custodial Service under this Contract whose name is not included on the list provided by the Contractor pursuant to Clause 33A.6 (**TUPE Transfers**).
- (c) any claim against the Authority or the New Contractor by any person engaged in providing the Custodial Service under this Contract who is not a Transferring Employee that they were employed immediately prior to the TUPE Transfer Date in the provision of the Services and that accordingly their employment has been transferred to the New Contractor provided that the New Contractor terminates their employment within ten (10) days of becoming aware of that person's claim.

33A.11 The Authority shall (and shall procure that any New Contractor shall) so far as reasonable, ensure that the Authority (or any New Contractor) does not impede or prevent the Contractor from complying with its duties in accordance with Regulation 10 of the TUPE and the Authority shall make reasonable endeavours to provide (or procure the provision) of relevant and accurate information to the Contractor. The provision or procurement by the Authority of information or other assistance shall not import or imply any warranty or other representation by the Authority in connection with such information or assistance.

33A.12 For the purposes of this Clause 33A (**TUPE Transfers**), Final Pay Details means in respect of each of the Transferring Employees the following: copy pay slip data for the final month, cumulative pay for tax and pension purposes, cumulative tax paid tax code, voluntary deductions from pay, bank/building society account details for payroll purposes, TUPE Transfer Date means the date of termination or expiry of this



Contract, Transferring Employees means those employees of the Contractor or any Sub-contractor who are at the TUPE Transfer Date employed under a contract or service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract, pursuant to TUPE or the Acquired rights Directive EEC 187/77 or otherwise to the New Contractor, Relevant Personnel Documentation means all documents, manuals, codes, handbooks, procedure guides, publications and agreements (including collective agreements) that relate to the Transferring Employees terms and conditions of employment and benefits. New Contractor means the person nominated by the Authority to undertake the services substantially the same as the Services after the expiry of termination of this Contract.]

34. **THE CONTROLLER**

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

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

35. **MONITORING AND INSPECTION**

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

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

- 35.3 The Authority may require periodic reviews of the Contractor's operating procedures, emergency and contingency procedures, public relations procedures, and staff handbook. In order to carry out such reviews, the Authority may require the aforesaid procedures to be put into operation by the Contractor in order to test their effectiveness. Such a requirement will not be invoked so as to compromise the security and control of the Prison. The Authority may require the Contractor to make such alterations or amendments to the said procedures and staff handbook as it thinks fit, save that where the alterations give rise to a change of service under Clause 9 (**Change to Services Required**), the provisions of Clause 39 (**Variation of Price**) shall apply.
- 35.4 Copies of each Daily Report shall be provided by the Contractor to a representative of the Authority by 9 am on the day following the day to which such Daily Report refers. Full details of the Daily Report shall be input into the Prison's computer network within one hour of the Prisoners' lock-up and the details accessed after that time shall constitute the Daily Report in respect of the day preceding that lock-up. Any representative of the Authority shall be entitled at any time to inspect the Prison and its operation to ensure that the Information contained in any Daily Report is correct. If any of the matters contained in any Daily Report are found to be incorrect, the provisions of paragraph 10 of Schedule E (**Payment Mechanism**) shall apply in the event that an overpayment by the Authority in respect of the Contract Price results.

36. **ESCORT ARRANGEMENTS**

- 36.1 The Contractor is under a duty to co-operate with all reasonable requirements of any other person providing a Prisoner Escort Service to the Prison, but subject at all times to the maintenance of the security and control of the Prison.
- 36.2 Unless the Authority otherwise notifies the Contractor in writing, the Contractor will provide a Prisoner Escort Service in accordance with Part 3 of Schedule D (**Operational Requirements**), for which the Contractor will be entitled to a fee as set out in paragraph 11 of Schedule E (**Payment Mechanism**) and payable in accordance therewith.
- 36.3 The Contractor shall, if the Authority so requires, itself provide a Prisoner Escort Service other than as provided in Clause 36.2 (**Escort Arrangements**), subject to Clause 9 (**Change to Services Required**).

37. **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**

38. **PRICE**

- 38.1 The Authority shall (subject to the provisions in the Preamble to Schedule A (*Specifications*)) pay to the Contractor the Contract Price which shall be calculated by reference to the relevant formula at paragraph 9 of Schedule E (*Payment Mechanism*), expressed in pounds sterling per day, subject to any variations of Contract Price as provided for in Clause 9 (*Change to Services Required*), Clause 39 (*Variation of Price*) and Clause 39A (*Benchmarking*) (which for the avoidance of doubt shall not include any direct reimbursement by the Authority of specific costs or expenses).
- 38.2 Without prejudice to the Authority's obligations pursuant to Clauses 9.3 (*Change to Services Required*) and 39.2 (*Variation of Price*), no payment of the Contract Price shall become due to the Contractor until after the date when thirty (30) Available Prisoner Places have been provided to the Authority by the Contractor.
- 38.3 Payment of the Contract Price shall be claimed monthly and in arrears, by means of an invoice, together with such other documentation supporting the invoice as the Authority may reasonably require, submitted to the Contracts and Competition Group of HM Prison Service or its successor, and shall be subject to any reduction pursuant to the terms hereof. The first such invoice and documentation shall be due on the last day of the month in which the Contractor provides thirty (30) Available Prisoner Places to the Authority.
- 38.4 Subject to the provisions in the Preamble to Schedule A (*Specifications*), payment will be due in accordance with Schedule E (*Payment Mechanism*) thirty (30) days from the presentation by the Contractor of each valid monthly invoice, and such other documentation as may be reasonably required.
- 38.5 Interest shall accrue on any amounts due under this Contract which are not paid on the due date at a rate of LIBOR from time to time plus one per cent (1%) on the unpaid amount thereof except where such non-payment is due to a technical failure in the banking system.

- 38.6 The Authority shall pay to the Contractor in accordance with Schedule R (**Houseblock Works Fee**) the Houseblock Works Fee.

39. **VARIATION OF PRICE**

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

- 39.2 Where any Prison Legislation alters the costs incurred by the Contractor in fulfilling its obligations hereunder the following shall apply:

- (i) where such Prison Legislation does not result in an obligation on the Contractor to incur any Capital Expenditure, the Contractor may notify the Authority of such alteration in its costs and request that an adjustment be made to the Contract Price. Following such notification, the parties shall endeavour to agree such adjustment as soon as practicable in accordance with the following provisions:

- (a) the Contractor shall provide the Authority with a quotation to decrease or increase the Contract Price;

- (b) the Contractor shall submit all such information referred to in Clause 60 (**Contractor's Records**) as the Authority may reasonably require together with break-downs of price and supporting material as the Authority may require including wage rates, suppliers costs, overhead and profit calculations, for the purpose of satisfying the Authority that the proposed revised price is fair and reasonable; or

- (ii) where such Prison Legislation results in an obligation on the Contractor to incur any Capital Expenditure, the provisions in Clauses 9.2 (**Change to Services Required**) and 9.3 (**Change to Services Required**) shall apply, save that (a) any reference to a Notice of Change shall be deemed to include Prison Legislation for the sole purpose of this paragraph (ii) and (b) the Authority shall not be entitled to allow such Notice of Change to lapse, provided that it may dispute in good faith the reasonableness of any estimate referred to in Clauses 9.2 (**Change to Services Required**) or 9.3 (**Change to Services Required**).

- 39.3 When any Security Technology Change arises or comes to the attention of the Contractor, the Contractor shall as soon as reasonably practicable notify the Authority of such matter and shall provide to the Authority all information in its knowledge or possession necessary to enable the

Authority to evaluate the position. Upon such notification, or if the Authority reasonably believes that a Security Technology Change has occurred or should occur, the Authority shall be entitled to a reduction of the Contract Price equal to seventy five per cent (75%) of the aggregate of the reduction in the Contractor's costs which has resulted or would result from such Security Technology Change, and may if it wishes serve notice upon the Contractor, whereupon:

- (a) the Contractor shall provide the Authority with a quotation to reduce the Contract Price;
- (b) the Contractor shall provide all the information referred to in Clause 39.2(b) (**Variation of Price**) as the Authority may require for the Authority to ascertain the amount of reduction in costs which the Contractor will or should achieve as a result of the said Security Technology Change;
- (c) the Contractor and the Authority shall agree a reduction in the Contract Price which shall fairly reflect seventy five per cent (75%) of the reduction in the costs of the Contractor, and (but without double counting) any Sub-contractors (calculated on a consolidated basis) which result or will result from the said Security Technology Change.

In the event that any Security Technology Change which is yet to be put in place at the time of the notification referred to in this Clause 39 (**Variation of Price**) requires any Capital Expenditure on the part of the Contractor before it can be put in place in the Prison, Clause 9.2 (**Change to Services Required**) shall apply in respect of such notification as though it were a Notice of Change under Clause 9.1 (**Change to Services Required**). To the extent that the Security Technology Change has been developed by the Contractor or the Operating Sub-contractor, the amount of the reduction in the Contract Price shall only come into effect after a sufficient period following the date the Contractor effects, or is obliged to effect, the Security Technology Change within the Prison to allow the Contractor to recover the Development Cost so that the amounts of the Contract Price will only alter pursuant to this Clause once the difference between the amount the Contractor receives from the Authority and the amount it would have received if the reduction in Contract Price had come into immediate effect equals the amount of the Development Cost. For the purpose of this Clause, the "**Development Cost**" shall be the costs reasonably incurred by the Contractor or the Operating Sub-contractor in developing the Security Technology Change, such costs to be divided by the number of

prisons operated by the Contractor and the Operating Sub-contractor or their respective affiliates in which the Security Technology Change is to be, or is reasonably capable of being, installed to produce a similar costs reduction and to be evidenced in reasonable detail in writing to the Authority.

39.4 Any variation to the Contract Price pursuant to Clause 9 (***Changes to Services Required***) or (except as provided otherwise) this Clause 39 (***Variation of Price***) shall be set at a level so as to allow the parties providing the necessary works or new services in order to comply with the Contract following the date upon which the Notice of Change comes into effect to receive a reasonable rate of return in respect of such works or services comparable with the return normally obtained by such parties in respect of such works or services in the United Kingdom (taking into account the nature of the financing of such works or services and of any existing financing), such rate not to exceed 7.7% (real post-tax project IRR) per annum; and any variation to the Contract Price pursuant to Clause 9 (***Changes to Services Required***) and this Clause 39 (***Variation of Price***) shall further be made in accordance with the following principles:

- (a) any changes in Wage Costs shall be reflected by an appropriate change in the amount of the Indexed Costs Fee and by the appropriate change in the amount of the Variable Payment and any other amounts previously agreed as being payable pursuant to Clause 40.4 (***Additional Prisoner Places***) to reflect the proportion of the Variable Payment and such other amounts which is attributable to Wage Costs;
- (b) any changes in any financing costs (including any amount payable by the Contractor under the Access Agreement) resultant upon the financing of any Capital Expenditure pursuant to Clause 9.2 (***Change to Services Required***) shall be reflected by an appropriate change in the amount of the Fixed Availability Fee (taking into account the repayment schedule of such financing);
- (c) any changes in the costs of the Contractor or the Sub-contractors other than in respect of the matters referred to in (a) and (b) above shall be reflected by an appropriate change in the amount of the Indexed Availability Fee and by appropriate changes in the amount of Variable Payment to reflect the proportion of the Variable Payment and such other amounts which is not attributable to Wage Costs; and

- (d) any benefit or saving accruing to the Contractor, a Sub-contractor or any of their affiliates at any other prison(s) operated by them as a result of the matter giving rise to the change in the Contract Price shall be taken into account.

For the avoidance of doubt, the provisions of this Clause 39.4 (**Variation of Price**) shall not apply to any variation in price in accordance with the provisions of Clause 39A (**Benchmarking**).

39.5 Except in the circumstances where the other provisions of this Clause 39 (**Variation of Price**) are applicable, where as a direct result of any Significant Changes occurring since the date hereof (or, if there has been any variation of the Contract Price under this Clause 39.5 (**Variation of Price**), since the date of such variation) the aggregate costs incurred by the Contractor or the Operating Sub-contractor in the operation of the Prison have altered by more than five per cent (5%) in real terms and a party believes that the effect thereof is significantly to alter the Level of Return, it may serve notice on the other party, which notice may only be served on the fifth, tenth and fifteenth anniversaries of the date hereof or within one month thereafter, applying for a review of the Contract Price in accordance with the following provisions (no such notice may be served in respect of the fifteenth anniversary of the date hereof by either party if the Authority has invoked its rights under Clause 39A (**Benchmarking**) and a variation of the Contract Price occurs pursuant to the operation of those provisions (whether or not a replacement Operating Sub-contractor is appointed):

- (a) the parties will attempt to agree a fair variation of the Contract Price which will ensure the Level of Return is obtained thereafter;
- (b) if the parties do not reach such agreement within one month of the date of the notice, the matter must be referred to the Expert, who will receive and be entitled to ask for all reasonably necessary information from the parties as he sees fit, and will recommend within one (1) month of the referral of the matter to him whether the Contract Price should be varied, and if so the manner of such variation, so that the Level of Return is obtained thereafter;
- (c) the parties may thereupon make such further representations to the Expert as they wish, following which the Expert shall within two (2) weeks of the date of his original recommendation issue a final recommendation (the "**Final Recommendation**")

as to whether and to what extent there should be such a variation;

- (d) within two (2) weeks of the date of the Final Recommendation, each party shall notify the Expert whether it accepts the Final Recommendation; and
- (e) In the event that the Authority accepts the Final Recommendation, the Contract Price shall forthwith be varied in accordance with the contents of the Final Recommendation. In the event that both parties reject the Final Recommendation, no variation of the Contract Price will occur except as otherwise agreed between the parties. In the event that the Authority rejects the Final Recommendation but the Contractor accepts it, unless the parties otherwise agree, there shall be no variation of the Contract Price but the Contract shall terminate three months after the date of the Final Recommendation and the Authority shall pay to the Contractor the Original Value.

39.6 In respect of any price review or amount payable under this Clause, Clause 72 (***Dispute Resolution***) shall apply, other than in respect of any determination of the Expert or the Final Recommendation under Clause 39.5 (***Variation of Price***).

#### 39A **BENCHMARKING**

In this Clause 39A (***Benchmarking***):

***Equity Transfer Value*** means

- (i) the aggregate nominal value of the paid up issued share capital of Contractor; plus
- (ii) the aggregate nominal value of any subordinated debt or debt securities of the Contractor (other than any debt or debt securities issued at a discount invested pursuant to the Equity Subscription and Loan Agreement);

subject to a maximum of [REDACTED] or such other amount agreed with the Authority pursuant to Clause 9 (***Change to Services Required***).

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



39A.1 On or after the fourteenth anniversary of the Actual Opening Date but prior to the date which is nine (9) months after such fourteenth anniversary, the Authority may notify the Contractor of its decision to undertake a review of the Custodial Service to compare the  $I_1$ ,  $I_2$  and  $V$  (as defined in Schedule E (**Payment Mechanism**)) components of the Contract Price for the period from the fifteenth anniversary of Actual Opening Date to the Expiry Date (the "**Relevant Period**") with the perceived market cost of providing the Custodial Service for that period (other than the element of the Custodial Service that relates to the provision of utilities) (the "**Benchmarked Service**"). This comparison will be made, where possible, by considering the relative value for money provided or to be provided by the Contractor (having regard to the level of  $I_1$ ,  $I_2$  and  $V$  (as defined in Schedule E (**Payment Mechanism**)) for the Relevant Period) when compared to prices charged and the costs incurred (by reference to accounts) by other private sector operators providing custodial services under prevailing market conditions for the provision of the operating element (other than the provision of utilities) of comparable custodial services (whether under design construction management and financing ("**DCMF**") or similar contracts, operating contracts or otherwise). In conducting its review of such custodial services the Authority shall (if such services then exist) draw up a list of comparable custodial services (whether provided under DCMF contracts, operating contracts or otherwise) for privately managed prisons in the UK.

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

- (a) that the relevant prison is not, or is only marginally, financially viable;
- (b) that the quality of the relevant comparable custodial service is materially below that required of the Contractor pursuant to the Contract;
- (c) that the relevant prison operator does not have the appropriate qualifications, experience or technical competence or the financial resources to operate the relevant custodial service or to provide the Benchmarked Service; and

- (d) that the relevant comparable custodial services are not comparable in material respects to the Benchmarked Service in terms of the category of prisoners received and/or scope of the service provided.

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

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

- 39A.3 If the Authority considers that no such comparable services exist, the Authority shall consider (by reference to such factors as it deems relevant, including the cost of provision of custodial services by the public sector) whether the provision by the Contractor of the Benchmarked Service for the Relevant Period is likely to represent value for money. If it considers that it is not likely to do so, the Authority shall notify the Contractor (giving reasonable details as to the basis for its view). The Contractor shall have thirty (30) days to make written representations on the matter to the Authority.
- 39A.4 The Authority shall consider any written representations made to it by the Contractor in relation to the matters referred to in Clauses 39A.2 (**Benchmarking**) and 39A.3 (**Benchmarking**) above. If, having considered such representations, it determines in good faith that a rebidding of the Operating Sub-contract for the Relevant Period in accordance with this Clause 39A (**Benchmarking**) would result in a reduced  $I_1$ ,  $I_2$  and V (in aggregate for the Relevant Period) (as defined in Schedule E (**Payment Mechanism**)) component of the Contract Price, it shall notify the Contractor of its intention to appoint an independent expert pursuant to this Clause 39A.4 (**Benchmarking**) and the Contractor shall have the right, prior to such appointment, to offer the Authority (in writing) a reduction in the Contract Price. If the Contractor fails to make such offer, or the Authority does not accept such offer, an Independent expert may, within fifteen (15) days of the end of the thirty (30) day period referred to in Clauses 39A.2 (**Benchmarking**) or 39A.3 (**Benchmarking**) above (as applicable), be appointed in accordance with Clause 72.1 (**Dispute Resolution**) of the Contract to consider the matter. Such expert shall consider whether the expected cost of the Benchmarked Service for the Relevant Period, having regard to the  $I_1$ ,  $I_2$

and V (as defined in Schedule E (**Payment Mechanism**)) components of the Contract Price for that period, is likely to represent good value for money. In so doing, the expert shall take account of:

- (a) all information provided by the Authority in relation to any list of comparable services (the **Comparable Services**) drawn up by the Authority pursuant to Clause 39A.2 (**Benchmarking**) above;
- (b) (if applicable) the suitability of the Comparable Services for the purposes of making comparison with the cost of the Benchmarked Service for the Relevant Period;
- (c) (if applicable) the elements of the contract price for each Comparable Service which represent the price charged for the operating element (other than provision of utilities) of the relevant Comparable Service;
- (d) (If applicable) the quality of the service provided by each provider of Comparable Services as indicated (inter alia) by the performance points recorded for each;
- (e) (If applicable) any particular circumstances which relate to any of the sites at which each Comparable Service is provided which could reasonably be expected to have an effect on the quality of service offered by the relevant operator or the relevant contract price;
- (f) any written representations by the Contractor as referred to in Clauses 39A.2 (**Benchmarking**) or 39A.3 (**Benchmarking**) above (including any made by the counterparty to the Direct Agreement to the Contractor);
- (g) any written representations by the Authority (which may include details of costs incurred in connection with the public sector provision of custodial services); and
- (h) such other information as the expert may consider appropriate.

The expert shall be required to state within sixty (60) days of receipt of the information referred to above:

- (i) that in his view a rebidding of the Operating Sub-contract in the manner contemplated by this schedule would be likely to lead to a reduction of the

aggregate  $I_1$ ,  $I_2$  and V elements of the Contract Price for the Relevant Period; or

- (ii) that such is not the case; or
- (iii) that he is not able to conclude with a reasonable degree of certainty that (i) or (ii) applies.

39A.5 If:

- (i) the expert's determination is as described in Clause 39A.4(i) (**Benchmarking**) above; or
- (ii) if the expert's determination is as described in Clause 39A.4(iii) (**Benchmarking**) above and the Authority determines in good faith that a rebidding of the Operating Sub-contract in accordance with this Clause would result in a reduction in the  $I_1$ ,  $I_2$  and V (in aggregate for the Relevant Period) (as defined in Schedule E (**Payment Mechanism**) elements of the Contract Price for the remainder of the Contract Term; or
- (iii) if the Contractor and the Authority agree that a retendering of the Operating Sub-contract for the Relevant Period would result in a reduction of the  $I_1$ ,  $I_2$  and V (in aggregate in the Relevant Period) (as defined in Schedule E (**Payment Mechanism**) elements of the Contract Price,

then the Authority may enter into discussions with the Contractor to seek an adjustment to the Contract Price. In such circumstances, the Authority and the Contractor shall negotiate in good faith with a view to agreeing a reduction of the  $I_1$ ,  $I_2$  and V (in aggregate in the Relevant Period) (as defined in Schedule E (**Payment Mechanism**) elements of the Contract Price to reflect then market terms for the provision of the Benchmarked Service for the Relevant Period.

39A.6 If the Authority and the Contractor agree a variation of the Contract Price, such variation shall be implemented on the fifteenth anniversary of Actual Full Operation Date (or forthwith on it being agreed, if after such anniversary).

39A.7 If the Authority and the Contractor cannot agree on an appropriate reduction in the Contract Price, the Authority may, within eighteen (18)