

THE SECRETARY OF STATE FOR JUSTICE

BRIDGEND CUSTODIAL SERVICES LIMITED

CONDITIONS OF CONTRACT

for the Design, Construction, Management

and Financing of a Custodial Service in

Bridgend, South Wales

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

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PART I - GENERAL

1. Definitions

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

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

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

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

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

Actual Opening Date means 17 November 1997;

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

Additional Prisoner Place means:

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

43 (Additional Prisoner

Places);

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

Additional Young Person Place means:

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

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

Adult Prisoner means any person aged twenty two (22) or above for the time being detained in legal custody as a result of a requirement imposed by a court or otherwise, that he be so detained;

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

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

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

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

Annual Performance System means:

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

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

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

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

Authority means the Secretary of State for Justice;

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

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

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

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

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

Capital Expenditure means any expenditure incurred which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time or any expenditure which is required once only and not on annual or periodic basis either in order to comply with the requirements of a Notice of Change or in constructing or, as the case may be, reconstructing the Prison as contemplated in paragraph 1(a) of **Schedule G (Payments on Termination for Default)**;

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

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

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

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

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

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

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

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

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

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

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

Confidential Information means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored)

and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the DPA; and/or

- (b) Commercially Sensitive Information;

Confidential Matters means any information which:

- (a) relates to the way in which the Contract Price is calculated;
- (b) reveals the numbers of staff at the Prison;
- (c) might prejudice security at the Prison; or
- (d) relates to the calculation of Phase 2 Works Fee;

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

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

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

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

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

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

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

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

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

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

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

Council means the Council of Bridgend County Borough Council;

Crown includes the Authority;

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

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

Daily Report means the daily report to be completed by the Contractor and made available to the Controller via the Prison's computer network within one (1) hour of Prisoners' lock-up with details (inter alia) as to the number of Available Prisoner Places, Additional Prisoner Places and Additional Young Person Places during the Day prior to lock-up and since the previous lock-up and presented in hard form to a representative of the Authority as contemplated in **Clause 37.4 (*Monitoring and Inspection*)**;

Date of Contract is 4 January 1996;

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

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

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

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

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

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

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

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

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

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

DPA means the Data Protection Act 1998;

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

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

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

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

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

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

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

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

Environmental Information Regulations means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

Escape means either:

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

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

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

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

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

Excusing Cause means:

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

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

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

Existing Prison means the Prison but shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Houseblock Construction Sub-contractor means Galliford Try Construction Limited or, with the prior written approval of the Authority, such other Houseblock Construction Sub-contractor appointed by the Contractor, subject to the provisions of **Clause 8 (Sub Contracting)**, from time to time to execute the Houseblock Works and/or the Phase 2 Works (where applicable);

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

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

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

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

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

Houseblock Relevant Event means any of the following events:

- (a) a change of Service is required by the Authority under, or Prison Legislation is enacted as contemplated in, **Clause 10 (Change to Services Required)** and that change or Prison Legislation requires the Contractor to:
 - (i) perform or procure additional building works at the Houseblock Works Area; or
 - (ii) to change the nature of, or reprogramme, the Houseblock Works; or
 - (iii) to redesign or amend the nature or extent of the Custodial Service;
- (b) any failure by the Authority to comply with any of its obligations under this Contract, or any obstruction by the Authority or any representative of the Authority insofar as such failure or delay is relevant to the Houseblock Works

and/or the provision of the Increased Capacity including (without limitation):

- (i) delay by the Authority in issuing a certificate where the Authority is obliged to do so under **Clause 21A.5 (*Preparation for Operation of the Increased Capacity*)**;
 - (ii) delay by the Independent Engineer in issuing a certificate or notice when it is obliged to do so pursuant to **Clause 27A.2 (*Engineer's Houseblock Declaration*)**;
 - (iii) delay by the Authority in issuing a Cell Certificate or granting Regime Approval which it is obliged to issue or grant pursuant to **Clause 31A (*Timetable for Approving Availability - Increased Capacity*)**; or
 - (iv) failure by the Authority to comply with its obligations under **Clause 16 (*Issue of Information Technology Equipment*)** with regard to the supply and installation of the equipment listed in **Part 2 of Schedule B (*Equipment for the Houseblock*)** except insofar as the Authority decides not to install, or decides to delay the installation of, such equipment and excuses the Contractor from its obligations in respect of such equipment for the period until such time as the equipment is installed;
- (c) strikes by any parties other than any of the Staff or suppliers to the Contractor or Sub-contractors affecting the Houseblock Works;
 - (d) civil commotion (other than any civil commotion the primary intention of which is to disrupt the Houseblock Works or the opening of the Houseblock) or terrorism;
 - (e) exceptionally adverse weather conditions (at least significantly exceeding the worst conditions that have occurred in the area of the Site at the same time of Year over the previous ten (10) Years);

- (f) specified perils under the Houseblock Construction Sub-contract being fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them (except where such specified perils are caused by the wilful or reckless default or breach of a relevant obligation under the Houseblock Construction Sub-contract by the Contractor or the Houseblock Construction Sub-contractor); or
- (g) any Planning Approval Challenge, any instruction or deemed instruction to suspend the Houseblock Works made pursuant to **Clause 13B.2 (Planning Approval Challenge)** or any actions requested of the Contractor pursuant to **Clauses 13B.5 (Planning Approval Challenge)** or **Clause 13B.6 (Planning Approval Challenge)**;

Houseblock Works means:

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

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

Houseblock Works Fee – definition;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Lender Liabilities means the aggregate of:

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

less the aggregate of:

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

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

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

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

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

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

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

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

Month means a calendar month;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A = the Lender Liabilities;

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

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

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

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

Performance Measure means an event or circumstance listed as such in **Schedule F (*Performance Measures*)** in respect of which there may be a reduction in the amount payable hereunder as provided in **Clause 44.9 (*Development Plans and Performance Measures*)**;

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

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

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

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

Permitted Level means the aggregate of:

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

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

Personal Data means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of performing the Services;

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

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

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

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

Phase 2 Construction Sub-contract means the contract to be entered into between the Contractor and the Houseblock Construction Sub-contractor in respect of the design, execution and completion of the Phase 2 Works;

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

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

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

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

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

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

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

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

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

Phase 2 Relevant Event means any of the following events:

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

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

- (e) exceptionally adverse weather conditions (at least significantly exceeding the worst conditions that have occurred in the area of the Site at the same time of Year over the previous ten (10) Years);
- (f) specified perils under the Phase 2 Construction Sub-contract being fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them (except where such specified perils are caused by the wilful or reckless default or breach of a relevant obligation under the Phase 2 Construction Sub-contract by the Contractor or the Houseblock Construction Sub-contractor); or
- (g) any Planning Approval Challenge, any instruction or deemed instruction to suspend the Phase 2 Works made pursuant to **Clause 13C.2 (*Planning Approval Challenge*)** or any actions requested of the Contractor pursuant to **Clauses 13C.5 (*Planning Approval Challenge*)** or **Clause 13C.6 (*Planning Approval Challenge*)**;

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

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

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

Phase 2 Works Fee redacted;

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

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

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

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

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

Phase-in Timetable means the timetable set out in paragraph 2 of **Schedule E (Payment Mechanism)** as the same may be adjusted from time to time in accordance with **Clause 25 (Extension of Time)**;

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

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

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

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

Prison means the buildings, structures and land enclosed within the boundary fencing of the Land including, on and from the Actual Houseblock Opening Date, the Houseblock and on and from the Actual New Houseblock Opening Date, the New Houseblock, and each and any of their component parts described in **Schedule A (Design and Construction Specification)**, and existing on the Land, together with any extensions and alterations thereto existing from time to time within which the Contractor is to provide the Custodial Service;

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

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

Prisoner means any person for the time being detained in legal custody as a result of a requirement imposed by a court or otherwise, that he be so detained and shall, unless stated otherwise, include Young Offender Prisoners and Young Persons;

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

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

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

Prison Legislation means any Legislation first having legal effect after the Date of Contract which expressly refers to the provision or running of the Prison or prisons generally (other than any such Legislation which, on the Date of Contract, has been published in substantially the same form as such Legislation takes when it has legal effect, as a draft Bill in a Governmental Departmental Consultation Paper, a Bill, or a draft statutory instrument or published as a proposal, in the Official Journal of the European Communities);

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

Prohibited Act means committing any offence under the Bribery Act;

Project means the provision of the Services;

Purposeful Activity means education (including e-learning), work visits, resettlement (including induction courses and Prisoner behavioural programmes) and other activities such as voluntary work and recreational sporting activities;

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

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

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

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

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

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

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

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

Relevant Event means any of the following events:

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

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

occurred in the area of the Site at the same time of Year over the previous ten (10) Years); or

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

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

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

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

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

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

Review Month means June 1997 and each third Month thereafter;

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

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

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

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

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

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

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

SDT means Service Delivery Target;

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

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

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

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

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

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

Significant Change means either:

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

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

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

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

Snagging Matters means:

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

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

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

Statutory Obligations has the meaning given to it in **Clause 17.1 (*Statutory Obligations, Notices, Fees and Charges*)**;

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

Sub-contract means the contract between the Contractor and the relevant Sub-contractor providing for the performance by the Sub-contractor of some or all of the obligations of the Contractor hereunder;

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

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

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

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

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

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

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

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

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

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

Works means all the works which the Contractor is required to carry out under the Contract as set out in **Part 1 of Schedule A (*Design and Construction Specification*)**;

Year means calendar year unless otherwise specified;

Young Offender Prisoner means any person between the ages of eighteen (18) and twenty-one (21) for the time being detained in legal custody as a result of a requirement imposed by a court or otherwise, that he be so detained;

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

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

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

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

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

2. **Duration of Contract**

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

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

Term will nonetheless begin on the Contractual Opening Date, and the Authority shall not be obliged to grant the Contractor any extension of the Contract Term.

2A Houseblock Documents

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

2B Phase 2 Documents

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

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

3. Binding Effect

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

4. Preliminary Information

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

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

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

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

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

4A.1 The parties shall complete and agree **Schedule D (Operational Requirements)**, **Schedule F (Performance Measures)**, **Schedule O (Management and Control of Documentation)** and **Part 1 of Schedule R (Houseblock Works Fee)** within ninety (90) Days of the date of the Amending Agreement or such other date as agreed between the parties.

4A.2 For the avoidance of doubt, on and from the date of the Phase 2 Amending Agreement, the parties acknowledge that the contents of **Schedule D (Operational Requirements)**, **Schedule F (Performance Measures)**, **Schedule O (Management and Control of Documentation)** and **Schedule R (Houseblock Works Fee)** are agreed and that any reference in this Agreement to a provision of those schedules shall on and from the date of the Phase 2 Amending Agreement be a reference to the versions attached hereto.

4B **Incorporation of Notices of Change**

4B.1 The Parties agree that:

4B.1.1 from the date of the Phase 2 Amending Agreement all Notices of Change made prior to the date of the Phase 2 Amending Agreement and listed in **Schedule Y (Notices of Change)** have been incorporated into the Contract as more fully set out in **Schedule Y (Notices of Change)**; and

4B.1.2 any Notice of Change made prior to the Phase 2 Amending Agreement which is not listed in **Schedule Y (Notices of Change)**, and whether specifically incorporated into the terms of this Contract or not, shall be deemed to have been incorporated into the Contract for the period (whether expired or continuing) of its relevance to the Contractor's obligations under this Contract.

4B.2 To the extent that the terms of any Notice of Change listed in Schedule Y (Notices of Change) are inconsistent with any terms of this Contract, the terms of the relevant Notice of Change shall prevail.

4B.3 The Parties acknowledge that upon the date of the Phase 2 Amending Agreement:

4B.3.1 the Enabling Works Agreement shall cease to have effect;

4B.3.2 all works carried out under the Enabling Works Agreement shall be subsumed into this Contract and shall be deemed to be part of the Phase 2 Works;

4B.3.3 any payments which have been made under the Enabling Works Agreement (such payments being identifiable as such in part 3 of

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

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

5. **Indemnity**

5.1 The Contractor shall fully and effectively indemnify the Authority or any servant, agent or representative of the Authority in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses ("**Losses**") suffered or incurred by the Authority, its servants, agents or representatives which arise in connection with this Contract or its breach, the Project, the Site or the Prison including, without limitation to the generality of the foregoing, any Losses which may be incurred or suffered by the Authority or any servant, agent or representative of the Authority, in respect of personal injury (including injury resulting in death).

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

- (a) any Losses to the extent arising directly from the negligence or wilful default of the Authority or any servant, agent or representative of the Authority or any failure of the Authority to comply with its obligations under this Contract; or
- (b) any indirect or consequential Losses except to the extent that such Losses are covered by a policy of insurance which is maintained by the Contractor or which the Contractor is obliged to maintain pursuant to **Clause 6 (*Insurance*)**;
- (c) Losses which are directly attributable to any matter of fact or circumstance occurring either prior to the Date of Contract or after this Contract terminates;
- (d) Losses to the extent arising directly from the performance by the Authority, its servants, agents or representatives of its obligations under or in respect of this Contract (including, but not limited to, the payment of any part of the Contract Price, any payments due to the Independent Engineer or any other servants, agents or representatives appointed by the Authority in connection with this Contract and any internal costs or expenses incurred by

the Authority in monitoring the Contract) or Losses to the extent that the Authority is reasonably able to mitigate them;

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

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

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

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

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

5.5 Except as expressly provided in this Contract, the Contractor shall not make any claim against the Authority or any servant, agent or representative of the Authority in respect of any Losses sustained by the Contractor (or by any other person employed by the Contractor or his Sub-contractors) by reason of or arising out of or in any way connected with the performance of the Contract, save that where any such Losses are caused or contributed to by the negligence of the Authority or any servant, agent or representative of the Authority or the breach by the Authority of its obligations under the Contract, the Authority will fully and effectively indemnify the Contractor to the extent to which such Losses are so caused or contributed to as aforesaid, subject, mutatis mutandis, to the limits and qualifications set out in **Clause 5.2 (Indemnity)** and **Clause 5.4 (Indemnity)**.

6. Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.7 The Contractor shall inform the Authority in writing as soon as reasonably practicable after it becomes aware of the occurrence of any event that may give rise to a claim under a policy of insurance required by this Clause and will ensure that the Authority is kept fully informed of subsequent action and developments

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

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

7. **Liability for Loss and Damage**

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

8. Sub-Contracting

- 8.1 The Contractor shall not at any time permit any of its obligations under the Contract to be performed or undertaken by any other person without the prior written consent of the Authority (not to be unreasonably withheld or delayed), provided that the Authority in executing this Contract hereby provides its prior written consent to the sub-contracting of such obligations as are contained in the Sub-contract entered into by the Contractor with the Construction Sub-contractor and such part of the Custodial Services as are sub-contracted to the Operating Sub-contractor. In executing the Amending Agreement the Authority provides its prior written consent to the Sub-contracting of the Houseblock Works to the Houseblock Construction Sub-contractor, and in executing the Phase 2 Amending Agreement the Authority provides its prior written consent to the Sub-contracting of the Phase 2 Works to the Houseblock Construction Sub-contractor.
- 8.2 In the event that the Authority does consent to the sub-contracting of any obligation of the Contract to a Sub-contractor, the Contractor shall, unless the Authority otherwise agrees, ensure that such Sub-contractor assumes obligations direct to the Authority corresponding to those imposed in **Clauses 61 (*Public Relations and Publicity*)** and **62 (*Confidential Information*)**, and shall procure that the Construction Sub-contractor provides collateral warranties to the Authority in respect of the amounts payable under **Clause 26 (*Liquidated Damages*)** in a form reasonably acceptable to the Authority and that any limitation of the liability of the Sub-contractor does not fall below a minimum level agreed to in writing by the Authority; and the Contractor shall take all reasonable steps to secure the due observance by the Sub-contractor of all such obligations.
- 8.2A The Contractor shall procure that the Houseblock Construction Sub-contractor provides, pursuant to **Clause 2A (*Houseblock Documents*)**, the Sub-Contractor's Collateral Warranty in respect of the performance of the Houseblock Works in accordance with **Part 2 of Schedule A (*Design and Construction Specification - Houseblock Works*)** and that any limitation of the liability of the Houseblock Construction Sub-contractor shall not fall below the minimum levels agreed in the Houseblock Construction Sub-contract; and the Contractor shall take all reasonable steps to secure the due observance by the Houseblock Construction Sub-contractor of all such obligations.
- 8.2B The Contractor shall procure that the Houseblock Construction Sub-contractor provides, pursuant to **Clause 2B (*Phase 2 Documents*)**, the Sub-Contractor's Phase 2 Collateral Warranty in respect of the performance of the Phase 2 Works

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

- 8.3 The Contractor shall be directly responsible for the management and supervision of approved Sub-contractors unless otherwise requested by the Authority.
- 8.4 Where the Contractor enters into an approved Sub-contract with a Sub-contractor for the purpose of performing any of the obligations of the Contract, it shall cause a term to be included in such Sub-contract which requires payment by the Contractor to the Sub- contractor within a specified period not exceeding thirty (30) Days from receipt of a valid invoice as required by the terms of the Sub-contract.
- 8.5 The Contractor undertakes and warrants to the Authority that it will not change its commercial arrangements in any manner which will increase the calculation of NPV in accordance with either **Schedule G (*Payments on Termination for Default*)** or **Schedule H (*Payments on Voluntary Termination*)** where the aforementioned change is effected solely or mainly for the purpose of increasing the value of the NPV.

9. **Assignment**

Subject to **Clause 8 (*Sub-contracting*)** and any security or assignment by way of security or other encumbrance in favour of the Third Party Lenders pursuant to the Financing Agreements, the Contractor shall not give, bargain, sell, assign, sub-let, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, save that nothing in this Clause shall prevent the assignment and/or transfer of the Contract with the consent of the Authority in accordance with the provisions of the Direct Agreement.

10. **Change to Services Required**

- 10.1 Subject to **Clauses 10.2 (*Change to Services Required*)** and **Clause 10.9 (*Change to Services Required*)**, the Authority may delete, amend, or alter the extent of any obligation to be met by the Contractor under the Contract, or add to the obligations of the Contractor under the Contract, (including in relation to the Houseblock Works and Phase 2 Works) by giving written notice (the “**Notice of Change**”) to the Contractor of the required change. In the case of emergency, the requirements set out in the Notice of Change shall come into immediate effect, and the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee shall be varied as set out below. Otherwise than in the case

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

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

Houseblock and/or Phase 2 Works Fee was so agreed or determined pursuant to **Clause 75 (Dispute Resolution)** and vice versa by the Contractor to the Authority if the provisional Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee set by the Authority is more than the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee as so agreed or determined pursuant to **Clause 75 (Dispute Resolution)**.

- 10.2 In the event that the Notice of Change would result in an obligation on the Contractor to incur any Capital Expenditure following the Date of Contract, the Contractor shall use all reasonable endeavours to obtain finance at a reasonable cost from the Third Party Lenders or other commercial sources for such Capital Expenditure. If the Contractor does obtain an offer of such reasonable finance within two (2) weeks (or, in respect of any Notice of Change served after the date of the Engineer's Declaration, within four weeks) of the date of the Notice of Change, the Contractor shall provide two estimates of the increase or decrease in the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee which it believes should occur as a result of the changes set out in the Notice of Change, one to include the cost of such reasonable finance, and one to exclude it, but to estimate the amount of the relevant Capital Expenditure which the Contractor believes is required to comply with the Notice of Change. If despite the use of the Contractor's reasonable endeavours and the operation of **Clause 42 (Variation of Price)** the Contractor fails to obtain finance for such Capital Expenditure, the Contractor shall within two weeks of the date of the Notice of Change provide the Authority with a written estimate of the amount of such Capital Expenditure together with its estimate of any increase or decrease in the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee which it believes should occur as a result of the changes set out in the Notice of Change. Any such estimate or estimates shall be accompanied by a reasonably detailed breakdown of the manner in which that estimate is calculated. The Authority may accept such estimate or estimates or request that it or they be changed, and following such request the Contractor may submit a different estimate or estimates, following which:

- (a) if the Authority accepts the Contractor's estimate which includes the cost of financing the relevant Capital Expenditure, the Notice of Change shall come into effect in the same manner and subject to the same conditions as those referred in **Clause 10.1 (Change to Services Required)** following the Authority's acceptance of the Contractor's estimate;
- (b) if the Authority rejects the Contractor's estimate which includes the cost of financing the relevant Capital Expenditure, or the Contractor fails to provide such an estimate, but accepts the Contractor's estimate which

- (i) the Authority shall be liable to reimburse the Contractor for such Capital Expenditure as is set out in such estimate in accordance with **Clause 10.3 (*Change to Services Required*)** or, if the Authority does not accept such estimate, for such amount of Capital Expenditure as is agreed or determined in accordance with **Clause 10.3 (*Change to Services Required*)**;
 - (ii) the Notice of Change shall come into effect once the amount of the Capital Expenditure has been agreed or determined as set out in **Clause 10.3 (*Change to Services Required*)**; and
 - (iii) the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee shall be varied once the Notice of Change comes into effect;
- (c) if the Authority rejects the Contractor's single estimate or both its estimates (as appropriate), then the Authority may elect either to allow the Notice of Change to lapse, or that the amount of the Capital Expenditure be agreed or determined in accordance with **Clause 10.3 (*Change to Services Required*)** and any change to the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee be determined in accordance with **Clause 75 (*Dispute Resolution*)**.

10.3 Where the Contractor fails to obtain finance at a reasonable cost for the relevant Capital Expenditure from the Third Party Lenders or other commercial sources and the Authority rejects the Contractor's estimate of the amount of the relevant Capital Expenditure, or the Authority rejects any estimate from the Contractor which includes the cost of such financing, the amount of such Capital Expenditure and the manner of its payment shall be determined in accordance with this **Clause 10.3 (*Change to Services Required*)**. The parties shall attempt to agree an estimate of such Capital Expenditure but if no agreement is reached within seven (7) Days of the Authority's rejection of the original estimates, the amount of the Capital Expenditure shall be decided in accordance with **Clause 75 (*Dispute Resolution*)**. Once the estimate has been agreed or determined, the Contractor shall procure that all that is necessary is done in

- 10.4 At the same time that the Contractor provides any estimate or estimates to the Authority under either **Clause 10.1 (*Change to Services Required*)** or 10.2 (***Change to Services Required***), it shall also provide the Authority with a proposal as to whether the Finance Plan should change, and if so, in what manner. Subject to the proviso below, once the contents of the Notice of Change have come into effect, the Authority must accept such proposal or reject it within seven (7) Days. If the Authority accepts the proposal, the Finance Plan will automatically be deemed changed as proposed. If the Authority rejects the proposal, the parties shall attempt to agree the manner in which the Finance Plan should be changed but if no agreement is reached within seven (7) Days of the Authority's rejection, the matter shall be decided in accordance with **Clause 75 (*Dispute Resolution*)**. Provided that if any matter referred to in **Clauses 10.1 (*Change to Services Required*)**, **10.2 (*Change to Services Required*)** or **10.3 (*Change to Services Required*)** is determined pursuant to **Clause 75 (*Dispute Resolution*)**, the manner in which the Finance Plan is to be changed shall be determined at the same time and in the same way.
- 10.5 The Contractor may propose changes to the Custodial Services, the Works, the Houseblock Works or the Phase 2 Works pursuant to this **Clause 10.5 (*Change to Services Required*)**. Any such change to the Custodial Services will require the written consent of the Authority by using the relevant procedure and form in Schedule M. A change to the Works may only be requested by the Contractor in the manner set out in Schedule M, Part 2 (***Compliance Monitoring***). A change to the Houseblock Works may only be requested by the Contractor in the manner set out in Schedule M, Part 2 (***Compliance Monitoring***). A change to the Phase 2 Works may only be requested by the Contractor in the manner set out in Schedule M, Part 2 (***Compliance Monitoring***). A change to the Works, Houseblock Works or Phase 2 Works which falls within the Design Objectives will require the written consent of the Authority, not to be unreasonably withheld. A change to the Works, Houseblock Works or Phase 2 Works which falls outside the Design Objectives will require the written consent of the Authority. In the event of any change in the costs of the Contractor resulting from any changes to the Works, Houseblock Works or Phase 2 Works (as the case may be) or any change to their design, there shall be no variation in the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee unless such changes in cost arise from either Prison Legislation or Exceptional Legislation in which case

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

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

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

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

10.8 For the avoidance of doubt, it shall not be deemed a change to any obligation hereunder and there shall not be any variation of the Contract Price and/or Houseblock Works Fee and/or Phase 2 Works Fee if:

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

10.9 The Authority will be entitled to serve a notice under **Clause 10.1 (Change to Services Required)** which deletes, amends or alters the extent of any obligation hereunder provided that such deletion, amendment or alteration would not result in any of the events referred to in **Schedule N (Limitation on Changes to Services)**.

11. Provision and Interpretation of Information

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

- (a) the form and nature of the Site and its surroundings, including the ground and sub-soil;
- (b) the extent of the work and materials necessary for constructing, completing, and maintaining the Works;

- (c) the means of communication with and access to the Site;
and
- (d) the provision and location of utilities.

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

11.3 The Authority shall not be liable for any costs arising from the Contractor's failure to perform its obligations under this Clause or from any lack of knowledge which the Contractor is deemed to have under **Clause 11.2 (*Provision and Interpretation of Information*)**.

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

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

- (a) the form and nature of the Houseblock Works Area and its surroundings, including the ground and sub-soil;
- (b) the extent of the work and materials necessary for constructing, completing and maintaining the Houseblock Works;
- (c) the means of communication with and access to the Houseblock Works Area; and
- (d) the provision and location of utilities.

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

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

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

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

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

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

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

PART II - PROVISION

12. The Land

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

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

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

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

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

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

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

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

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

12.6 In the event of the assignment and/or transfer of the Contract with the consent of the Authority in accordance with the provisions of the Contract or the Direct

- 12.7 The New Lease shall contain all those covenants conditions and provisions as are set out in the form of Lease annexed to the Original Contract at Appendix AX2 except that the term of Years granted by the New Lease shall be equal to the then unexpired residue of the term of Years granted by the Lease that was completed on the Lease Completion Date.
- 12.8 It is hereby acknowledged that in accordance with the terms of the Lease any and all interests in the land and in the Prison shall vest in the Landlord thereunder upon the termination of the leasehold interest of the Contractor and/or the Operating Sub-contractor whether through forfeiture surrender effluxion of time or some other cause and the Contractor agrees that it will comply with all the provisions of the Lease and will procure that the Operating Sub-contractor will comply with all the provisions of the Lease.
- 12.9 It will be the responsibility of the Contractor at its own expense (except in relation to the HHJ works defined in **Clause 13.3 (*Planning Approval*)** to obtain all easements, rights, licences and privileges that the Contractor and the Operating Sub-contractor require to enable them to carry out their obligations under this Contract where such easements, rights, licences and privileges are not specified in the Lease and are under over and upon the property and land that does not form part of the Land. The Contractor will inform the Authority in writing of any such easements, rights, licences and privileges which have been obtained or are being sought by the Contractor and/or the Operating Sub-contractor and, where requested in writing by the Authority, the Contractor will (and will procure that the Operating Sub-contractor will) at its (or their) own expense take all appropriate and necessary steps to ensure that the freehold owner of the property and land over under and upon which such easements rights licences and privileges have been or are to be granted also grants such easements, rights, licences and privileges to the Authority in fee simple as owner of the freehold interest in the Land for the benefit of the Land and each and every part thereof and the Contractor will (and will procure that the Operating Sub-contractor will) indemnify the Authority against all liabilities and obligations

13. Planning Approval

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

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

13.3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13C **Planning Approval Challenge**

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

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

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

14. **Provision of the Prison**

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

14A Provision of Increased Capacity

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

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

14B Provision of Phase 2 Increased Capacity

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

15. **Supply of Equipment**

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

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

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

16. Issue of Information Technology Equipment

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

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

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

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

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

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

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

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

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

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

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

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

PART III - MAINTENANCE

18. Maintenance of Prison

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

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

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

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

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

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

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

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

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

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

20. **Dilapidation Survey**

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

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

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

PART IV - PRE-OPERATION PERIOD

21. Preparation for Operation of the Prison

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

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

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

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

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

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

21A **Preparation for Operation of the Increased Capacity**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. Contractual Opening Date

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

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

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

22A **Contractual Houseblock Opening Date**

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

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

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

22B Contractual New Houseblock Opening Date

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

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

23. Phase-in Period

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

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

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

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

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

24. **Full Operation Date**

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

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

24A **Actual Increased Capacity Date**

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

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

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

25. **Extension of Time**

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

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

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

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

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

25A **Postponement**

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

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

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

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

25A.3.1

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

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

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

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

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

25A.4 If the Contractor:

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

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

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

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

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

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

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

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

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

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

25B.2 The Increased Capacity Delay Notice shall:

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

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

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

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

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

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

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

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

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

are being or are likely to be delayed, such that the Contractor will not meet its obligations under the Contract which are to be met on or before the Contractual New Houseblock Opening Date or on or before any date of the Phase 2 Increased Capacity Phase in Timetable or the Contractual Phase 2 Increased Capacity Date, the Contractor shall forthwith give written notice to the Authority (the "**Phase 2 Increased Capacity Delay Notice**") of the relevant circumstances.

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

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

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

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

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

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

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

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

26. **Liquidated Damages**

26.1 To the extent that:

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

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

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

26.3 **Clause redacted**

26.4 The Authority may deduct the said sums from any monies due to the Contractor under this Contract or the Authority may recover the same from the Contractor as a debt, except to the extent that such sums have been recovered from the Construction Sub-contractor or any other person.

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

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

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

26A.3 **Clause redacted**

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

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

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

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

26B.3 **Clause redacted**

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

27. **Engineer's Declaration**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27B Snagging Matters

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

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

27C Engineer's Phase 2 Declaration

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

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

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

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

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

27D Phase 2 Snagging Matters

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

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

28. **Cell Certification**

28.1 For the duration of this Contract the Contractor shall ensure that each and every Prison Cell, and any other living accommodation to be occupied by a Prisoner, shall comply with the terms of:

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

fair wear and tear excepted.

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

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

29. **Regime Approval**

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

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

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

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

29A. **Houseblock Regime Approval**

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

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

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

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

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

29B. New Houseblock Regime Approval

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

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

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

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

30. Available Prisoner Places

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

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

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

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

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

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

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

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

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

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

- 30.2 Failure by the Contractor to maintain either of the items (a) or (b) of **Clause 30C.1 (Available Prisoner Places)** on any particular Day during the term of the Contract with respect to a Prisoner Place shall entitle the Authority to treat that Prisoner Place as not being an Available Prisoner Place on that particular Day, until such time as the relevant item (a) or (b) is restored.
- 30.3 The Contractor shall on each Day following the Actual Opening Date produce the Daily Report and deliver a copy thereof to the representative of the Authority.
- 30.4 No Prison Cell (other than the designated double cells in the New Houseblock or in the healthcare centre of the Prison or as allocated to each Prison Cell in accordance with agreed Cell Certificates) shall be used to accommodate more than one (1) Prisoner at any one time, except where the number of Prisoners sharing a Prison Cell with another Prisoner does not exceed the Permitted Level.
- 30.5 Where two (2) Prisoners share a Prison Cell otherwise than as expressly permitted in **Clause 30.4 (Available Prisoner Places)**, the amount payable by the Authority for the services of the Contractor hereunder shall, without prejudice to the Authority's rights under **Clauses 48 (Default by Contractor)** and **50 (Termination for Default)**, be reduced in the following manner:

- (a) For so long as:

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

then the Fixed Availability Fee, the Indexed Availability Fee and the Indexed Costs Fee in respect of the Prisoner Places occupied by all such Prisoners shall each be reduced by one per cent. (1%) for each Day the sharing referred to above is, and for so long as it continues to be, so reported in Daily Reports, with effect from and including the third such consecutive Daily Report;

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

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

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

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

31. **Timetable for Approving Availability**

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

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

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

31.4 In the event that:

- (a) the Authority fails to certify a Prison Cell and/or grant Regime Approval to the Prison before the expiry of the notice period; and
- (b) the Authority fails to provide the Contractor with a written record under **Clause 31.3 (*Timetable for Approving Availability*)** before the expiry of the notice period,

then if, but for the Authority's failure as set out in (a) or (b) above, upon expiry of the notice period referred to in **Clause 31.1 (*Timetable for Approving Availability*)** a Prisoner Place would have been treated as being an Available Prisoner Place, then for the sole purpose of **Clauses 26 (*Liquidated Damages*)** and **41 (*Pricing Mechanism*)**, the Prisoner Place shall be treated as an Available Prisoner Place (for the sole purpose of **Clauses 26 (*Liquidated Damages*)** and **41 (*Pricing Mechanism*)**) until such time as either the Authority certifies the Prison Cell and grants Regime Approval (as appropriate) so as to make it an Available Prisoner Place within the meaning of **Clause 30 (*Available Prisoner Places*)** or the Authority provides the Contractor with a written record in accordance with **Clause 31.3 (*Timetable for Approving Availability*)** so that the Prisoner Place ceases to be treated as an Available Prisoner Place.

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

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

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

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

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

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

31A.4 In the event that:

- (a) the Authority fails to certify a Prison Cell that forms part of the Increased Capacity and/or grant Houseblock Regime Approval to the Houseblock before the expiry of the notice period; and
- (b) the Authority fails to provide the Contractor with a written record under **Clause 31A.3 (Timetable for Approving Availability - Increased Capacity)** before the expiry of the notice period,

then if, but for the Authority's failure as set out in (a) or (b) above, upon expiry of the notice period referred to in **Clause 31A.1 (Timetable for Approving Availability - Increased Capacity)** a Prisoner Place would have been treated as being an Available Prisoner Place, then for the sole purpose of **Clauses 26A (Liquidated Damages - Increased Capacity)** and **41 (Pricing Mechanism)**, the Prisoner Place shall be treated as an Available Prisoner Place (for the sole purpose of **Clauses 26A (Liquidated Damages - Increased Capacity)** and **41 (Pricing Mechanism)**) until such time as either the Authority certifies the relevant Prison Cell and grants Houseblock Regime Approval (as appropriate) so as to make it an Available Prisoner Place within the meaning of Clause 30 (**Available Prisoner Places**) or the Authority provides the Contractor with a written record in accordance with **Clause 31A.3 (Timetable for Approving Availability - Increased Capacity)** so that the Prisoner Place ceases to be treated as an Available Prisoner Place.

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

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

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

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

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

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

31B.4 In the event that:

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

- (b) the Authority fails to provide the Contractor with a written record under **Clause 31B.3 (*Timetable for Approving Availability – Phase 2 Increased Capacity*)** before the expiry of the notice period,

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

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

PART V - OPERATION

32. Conduct of Operation

- 32.1 The Contractor is responsible for the operation and maintenance of the Prison, in accordance with the terms and specifications of the Contract, and in accordance with and by reason of the Secretary of State's powers under the Criminal Justice Act 1991.
- 32.2 The Contractor shall at all times operate the Prison in accordance with all relevant provisions of Legislation including but not limited to the Prison Act 1952, the Criminal Justice Act 1991, the Prison Rules 1964 and the Young Offender Institution Rules 1988, without prejudice to the Contractor's rights under **Clause 42.2 (*Variation of Price*)**.

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

33. **The Director**

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

33.2 The Contractor shall submit a nomination for the position of Director to the Authority in accordance with **Clause 21 (Preparation for Operation of the Prison)**, which nomination the Authority may accept or reject as it thinks fit. The Contractor will submit to the Authority such further particulars of the proposed Director as the Authority may require in order to decide upon the appointment. The Authority will consult with the Contractor with respect to any such nominee and if a Contractor's nominee is rejected by the Authority, the Authority shall provide reasons for the rejection, and the Contractor shall nominate a new candidate for the Authority's approval or rejection in the same manner as the earlier nomination.

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

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

34. **Prisoner Custody Officers**

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

34.2 All persons carrying on Custodial Duties in the Prison shall be certified as Prisoner Custody Officers by the Authority as required by Sections 85 and 89 (and where appropriate Section 80) of, and Schedule 10 to, the Criminal Justice Act 1991. Whenever the Contractor requests a person be certified as a Prisoner Custody Officer, the Contractor shall submit to the Authority the name of any

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

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

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

35. **The Staff**

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

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

35.3 All members of staff who are not required to be certified as Prisoner Custody Officers shall be approved by the Authority. The Contractor shall provide to the Authority such details of the said members of staff as may be required by the Authority for the purposes of approval. Nothing in this sub-clause shall require the Contractor to obtain the Authority's approval for persons engaged upon the design and construction of the Prison except where such persons are engaged on matters relating to the security of the Prison, and the Authority may exempt other categories of staff from the requirements of this sub-clause if it so chooses.

35.4 The Contractor shall provide all staff with the operating and procedural instructions prepared in accordance with **Clause 21 (*Preparation for Operation of the Prison*)** which are relevant to them, and all staff shall be provided with any revised or amended operating and procedural instructions which are relevant to them which may be issued during the term of the Contract.

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

- 35.6 The Contractor shall notify the Authority of any behaviour by any employee which comes to its attention and casts doubt on that employee's fitness to work within the Prison. If, in the reasonable opinion of the Authority, any member of staff is guilty of misconduct or it is not in the public interest for such a person to work in the Prison the Contractor shall refuse the admission of such person to the Prison and shall without delay on being required to do so remove such person from the Prison and will cause the work to be performed by such other person as may be deemed necessary, and the Authority will, in respect of any such member of staff who has been certified as a Prisoner Custody Officer, revoke such certification.
- 35.7 The Contractor will note and comply with the provisions of Section 88 of the Criminal Justice Act 1991. The Contractor shall ensure the inclusion in the contract of employment of any member of staff a condition requiring the said member of staff to co-operate with any Governor who may be appointed to the Prison under the terms of Section 88 (2) of the Criminal Justice Act 1991.
- 35.8 The Contractor shall maintain sufficient staff to perform the obligations of the Contract, including the provision of cover for annual and sick leave or other absence and other emergencies.
- 35.9 The Contractor shall provide written job descriptions, staff record systems, and a performance evaluation plan which shall be available for inspection by the Authority. All members of staff shall be provided with written job descriptions before beginning work in the Prison. Job descriptions shall be amended as necessary and reissued to the members of staff concerned after each amendment.
- 35.10 If, whilst operating the Prison, the Contractor seeks to engage a new member of staff, and such person has not been the subject of prior approval or certification in accordance with this Clause, **Clause 34 (Prisoner Custody Officers)** and **Clause 33 (The Director)**, or such approval or certification has lapsed, the Contractor shall not permit the said person to commence work at the Prison until the Authority has been provided with the information required by this Clause and has given the requisite approval or certification.
- 35.11 The Contractor shall ensure that members of staff (including Prisoner Custody Officers, the Director and other senior management of the Prison or their delegated representatives) with sufficient authority to take decisions necessary for the proper operation of the Prison, shall be available 24 hours a Day 365 (or 366 in a leap year) Days a Year in respect of the performance of the Contract.

- 35.12 The Contractor shall ensure that a member of the senior management of the Contractor's and the Operating Sub-contractor's organisation, as distinguished from the senior management of the Prison, is contactable by the Authority 24 hours a Day 365 (or 366 in a leap year) Days a Year. The Authority shall be kept informed of the procedures by which this obligation will be performed, and shall agree all such procedures, and require such amendments as it thinks fit.
- 35.13 The Contractor shall be entirely responsible for all aspects, including costs, of the contracts of employment of his employees.
- 35.14 The Contractor shall be liable for any costs and payment of redundancy awards to his employees at the end of the Contract Term or (except in case of termination under **Clause 51 (Voluntary Termination)**) earlier termination of this Contract.

35A TUPE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36. **The Controller**

- 36.1 The Contractor will note and comply with the provisions of Section 85 of the Criminal Justice Act 1991.
- 36.2 The Controller shall be allowed unrestricted access to the Prison at any hour of the Day, and shall be provided with accommodation in accordance with **Clause 60 (*Facilities for Authority*)**. In accordance with Section 85 (5) of the Criminal Justice Act 1991 the Contractor shall do all that he reasonably can to facilitate the exercise by the Controller of his functions, whether such functions be those conferred on him by statute or the Authority.
- 36.3 The Authority will, so far as it is able, procure the performance by the Controller of his statutory duties.

37. **Monitoring and Inspection**

- 37.1 The Contractor shall give or procure access to the Prison and to any training or catering or other facilities of the Contractor or the Operating Sub-contractor and shall use all reasonable endeavours to procure access is given to any such facilities of any other Sub-contractor where such facilities are used in connection with the provision of Custodial Services (all such facilities being referred to as the "***Facilities***") to, and will otherwise co-operate with, Her Majesty's Inspectorate of Prisons, the Prison Ombudsman, the Independent Monitoring Board, and any other statutory, regulatory or other properly interested body, including relevant international bodies.
- 37.2 The Contractor shall be required to permit or use all reasonable endeavours to procure reasonable access to the Facilities to any other person whom the Authority notifies to the Contractor, subject to the Contractor's and the Sub-contractors' security and operational requirements and reimbursement of any reasonable costs expenses or damage incurred in relation to the Facilities which are caused by such person.
- 37.3 The Authority may require periodic reviews of the Contractor's operating procedures, emergency and contingency procedures, public relations procedures, and staff handbook. In order to carry out such reviews, the Authority may require the aforesaid procedures to be put into operation by the Contractor in order to test their effectiveness. Such a requirement will not be invoked so as to compromise the security of the Prison or unreasonably to interfere with the operation of the Prison (having regard to the nature of the relevant review). The Authority may require the Contractor to make reasonable alterations or amendments to the said procedures and staff handbook as it thinks fit, save that where the alterations give rise to a change of service under **Clause 10 (*Changes to Services Required*)**, the provisions of **Clause 42 (*Variation of Price*)** shall apply.

37.4 Copies of each Daily Report shall be provided to a representative of the Authority by 9 am on the Day following the Day to which such Daily Report refers. Full Details of the Daily Report shall be available on the Prison's computer network within one (1) hour of the Prisoners' lock-up and the details accessed after that time shall constitute the Daily Report in respect of the Day preceding that lock-up. Any representative of the Authority shall be entitled at any time to inspect the Prison and its operation to ensure that the information contained in any Daily Report is correct. If any of the matters contained in any Daily Report are found to be incorrect, the provisions of paragraph 11 of **Schedule E (*Payment Mechanism*)** shall apply.

38. **Escort Arrangements**

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

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

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

39. **Visitors**

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

PART VI - FINANCE

40. **Price**

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

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

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

██████████.

41. **Pricing Mechanism**

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

42. **Variation of Price**

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

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

42.3 When any Security Technology Change arises or comes to the attention of the Contractor, the Contractor shall as soon as reasonably practicable notify the Authority of such matter and shall provide to the Authority all information in its knowledge or possession necessary to enable the Authority to evaluate the position. Upon such notification, or if the Authority reasonably believes that a Security Technology Change has occurred or should occur, the Authority shall be entitled to a reduction of the Contract Price equal to the Agreed Proportion of the reduction in the Contractor's costs which has resulted or would result from such Security Technology Change, and may if it wishes serve notice upon the Contractor, whereupon:

- (a) the Contractor shall provide the Authority with a quotation to reduce the Contract Price;
- (b) the Contractor shall provide all the information referred to in Clause 10.6(b) as the Authority may require for the Authority to ascertain the amount of reduction in costs which the Contractor will or should achieve as a result of the said Security Technology Change;
- (c) the Contractor and the Authority shall agree a reduction in the Contract Price which shall fairly reflect the Agreed Proportion of the savings which result or will result from the said Security Technology Change.

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

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

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

- 42.4 Any variation to the Contract Price pursuant to **Clause 10 (*Changes to Services Required*)** shall be set at a level so as to allow the parties providing the necessary works or new services in order to comply with the Contract following the date upon which the Notice of Change comes into effect to receive a reasonable rate of return in respect of such works or services comparable with the return normally obtained by such parties in respect of such works or services in the United Kingdom (taking into account the nature of the financing of such works or services and of any existing financing); and any variation to the Contract Price pursuant to **Clause 10 (*Changes to Services Required*)** and this Clause 42 shall further be made in accordance with the following principles:

- (a) any changes in Wage Costs shall be reflected by an appropriate change in the amount of the Indexed Costs Fee and by the appropriate change in the amount of the Additional Prisoner Place Payment and/or the Young Person Place Fee any other amounts previously agreed as being payable pursuant to **Clause 43.4 (*Additional Prisoner Places*)** to reflect the proportion of the Additional Prisoner Place Payment and such other amounts which is attributable to Wage Costs;
- (b) any changes in any financing costs resultant upon the financing of any Capital Expenditure pursuant to **Clause 10.2 (*Change to Services Required*)** or **42.2**

- (c) any changes in the costs of the Contractor or the Sub-contractors other than in respect of the matters referred to in (a) and (b) above shall be reflected by an appropriate change in the amount of the Indexed Availability Fee and by appropriate changes in the amount of Additional Prisoner Place Payment and/or the Young Person Place Fee and any other amounts previously agreed as being payable pursuant to **Clause 43.4 (Additional Prisoner Places)** and **Clause 43A (Young Person Place Fee)** to reflect the proportion of the Additional Prisoner Place Payment and/or the Young Person Place Fee and such other amounts which is not attributable to Wage Costs.

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

- (a) the parties will attempt to agree a fair variation of the Contract Price which will provide the Contractor thereafter with the Level of Return;
- (b) if the parties do not reach such agreement within one month of the date of the notice, the matter must be referred to the Expert, who will receive and be entitled to ask for all reasonably necessary information from the parties as he sees fit, and will recommend within one month of the referral of the matter to him whether the Contract Price should be varied, and if so the manner of such variation, so that the Contractor will thereafter obtain the Level of Return;

- (c) the parties may thereupon make such further representations to the Expert as they wish, following which the Expert shall within two weeks of the date of his original recommendation issue a final recommendation (the "***Final Recommendation***") as to whether and to what extent there should be such a variation;
- (d) within two weeks of the date of the Final Recommendation, each party shall notify the Expert whether it accepts the Final Recommendation; and
- (e) in the event that the Authority accepts the Final Recommendation, the Contract Price shall forthwith be varied in accordance with the contents of the Final Recommendation. In the event that both parties reject the Final Recommendation, no variation of the Contract Price will occur except as otherwise agreed between the parties. In the event that the Authority rejects the Final Recommendation but the Contractor accepts it, unless the parties otherwise agree, there shall be no variation of the Contract Price but the Contract shall terminate three months after the date of the Final Recommendation and the Authority shall pay to the Contractor the Original Value.

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

43. **Additional Prisoner Places**

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

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

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

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

43.3 The Contractor shall receive the Additional Prisoner Place Payment:

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

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

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

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

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

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

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

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

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

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

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

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

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

Development Plans and Performance Measures

- 44.5 The Contractor shall provide a strategic development plan to operate the Prison for the first five (5) Years from the Actual Opening Date at least six (6) months prior to the Actual Opening Date. The Contractor shall be under a duty to meet the requirements and targets contained in the said plan for achieving continuing improvements to the Custodial Service.
- 44.1A The Contractor shall provide an update to the current strategic development plan to operate the Prison, including the Houseblock, at least six (6) months prior to the Contractual Increased Capacity Date. The Contractor shall be under a duty to meet the requirements and targets contained in the updated said plan for achieving continuing improvements to the Custodial Service.
- 44.1B The Contractor shall provide an update to the current strategic development plan to operate the Prison, including the New Houseblock, at least six (6) months prior to the Contractual Phase 2 Increased Capacity Date. The Contractor shall be under a duty to meet the requirements and targets contained in the updated said plan for achieving continuing improvements to the Custodial Service.
- 44.6 At the end of the first five (5) Year plan, and every five (5) Years thereafter, the Contractor shall consult with the Authority and submit such further strategic development plans to the Authority for its approval. The said plans and the plan referred to in **Clause 44.1 (*Development Plans and Performance Measures*)** are to accord with the policies and vision statements adopted from time to time by the Authority, provided (and without prejudice to the provisions of Clause 10 (***Change to Services Required***)) that the Contractor shall only be obliged to implement such plans to the extent they would not increase the cost to the Contractor of providing the Custodial Service.
- 44.7 The Contractor shall operate systems to ensure the continuing quality of the Custodial Service.
- 44.8 The Contractor shall have no recourse to **Clause 42 (*Variation of Price*)** as a result of any obligation imposed by this Clause.
- 44.9 Without prejudice to the Authority's rights under **Clauses 48 (*Default by Contractor*)** and **50 (*Termination for Default*)**, the amount payable by the Authority for the services of the Contractor hereunder shall be reduced in the event that Performance Measures arise such that the number of Performance Points accrued exceeds the Baseline Total for the relevant Quarter. The amount of the reduction shall be calculated for each Quarter in accordance with the relevant formula at paragraph 10 of **Schedule E (*Payment Mechanism*)**, and shall be deducted from the amount otherwise payable in respect of the first month of the Quarter following the

44.10 In the event of:

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

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

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

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

45 **Payment**

45.1 No payment of the Contract Price shall become due to the Contractor until after the date when fifty (50) Available Prisoner Places have been provided to the Authority by the Contractor.

45.2 Payment of the Contract Price shall be claimed monthly and in arrears, by means of an invoice, together with such other documentation as the Authority may reasonably require, submitted to the Contracts and Competition Group of HM Prison Service or its successor, and shall be subject to any reduction pursuant to the terms of this Contract. The first such invoice and documentation shall be due on the last Day of the month in which the Contractor provides fifty (50) Available Prisoner Places to the Authority.

45.3 Payment will be due in accordance with Schedule E (***Payment Mechanism***) thirty (30) Days from the presentation by the Contractor of each valid monthly invoice, and such other documentation as may be reasonably required.

45.4 Interest shall accrue on any amounts due hereunder which are not paid on the due date at a rate of two per cent. (2%) over the base rate of National Westminster Bank plc from time to time.

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

45.6 Following the provision of one hundred and thirty eight (138) Additional Prisoner Places, in accordance with **Clause 43.5.8 (*Additional Prisoner Places*)**, the Contractor shall invoice the Authority for the sum of [REDACTED] in accordance with **Part 2B2 of Schedule R (*Houseblock Works Fee*)**. The Authority shall pay the Contractor within twenty (20) Business Days of receipt by the Authority of such valid invoice.

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

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

46 **Value Added Tax**

- 46.8 The Contract Price together with any other payments due from the Authority to the Contractor hereunder (including without limitation under Part VII of this Contract) shall be exclusive of Value Added Tax, and all reference to fees and prices in this Contract shall be regarded as exclusive of Value Added Tax. The Authority shall pay to the Contractor a sum equal to the Value Added Tax chargeable on the value of the provision of the obligations of the Contract, in addition to the Contract Price.
- 46.9 Any invoice or other request for payment of monies due to the Contractor under the Contract shall be in the same form and contain the same information as if the same were a tax invoice for the purpose of the regulations made under the Value Added Tax Act 1994.
- 46.10 The Contractor shall, if so requested by the Authority, furnish such information as may be reasonably required by the Authority as to the amount of Value Added Tax chargeable in accordance with the Contract, and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of **Clause 47 (Recovery of Sums Due)**.
- 46.11 If the Contract Price is increased or decreased, or if a sum of money shall become due for payment by or to the Authority, any monies thereby payable shall have added to them a sum equal to any appropriate adjustment in respect of Value Added Tax due on the final value of the Contract.
- 46.12 Any payment to the Contractor by the Authority pursuant to the provisions of **Clause 53 (Payment for Termination)** or **56.3 (Termination Survey)** shall be regarded as exclusive of Value Added Tax and the Authority shall pay to the Contractor in addition to the payment a sum equal to any Value Added Tax thereon.

47 **Recovery of Sums Due**

Whenever, under the Contract, any sum or sums of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract, or under any other contract which the Contractor has with the Authority or with the Crown provided that:

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

PART VII - TERMINATION

48 **Default by Contractor**

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

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

- (b) failure to obtain the Engineer's Declaration within nine (9) months after the Contractual Opening Date;
- (c) failure to provide fifty (50) Available Prisoner Places within six (6) months after the Contractual Opening Date or, if later, within three (3) months after the date upon which the Engineer's Declaration is obtained;
- (d) failure to pay any liquidated damages in accordance with **Clause 26 (*Liquidated Damages*)** within thirty (30) Days of the due date;
- (e) if:
 - (i) a court makes an order that the Contractor be wound up; or
 - (ii) any receiver or manager is appointed in respect of the Contractor (other than for the purpose of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the receiver is appointed by the Third Party Lenders under the Financing Agreements); or
 - (iii) a meeting of creditors of the Contractor passes or a meeting of any class of shareholders of the Contractor is convened for the purposes of considering, a resolution for the winding-up of the Contractor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the meeting is

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

48A. **Houseblock Default**

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

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

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

48B. **Phase 2 Default**

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

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

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

49 Rectification

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

49A. Houseblock Works Termination

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

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

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

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

49B.2.2 the Contractor shall comply with:

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

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

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

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

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

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

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

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

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

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

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

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

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

49C Phase 2 Works Termination

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

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

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

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

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

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

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

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

49D.2.2 the Contractor shall comply with:

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

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

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

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

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

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

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

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

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

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

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

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

50 Termination for Default

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

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

51 **Voluntary Termination**

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

52 **Force Majeure**

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

The Force Majeure events are:

- (a) war, civil war (whether declared or undeclared) or armed conflict arising within and affecting England and Wales; or

- (b) nuclear, chemical or biological contamination of the site arising from any of the events at (a) above or arising from an act of terrorism; or
- (c) substantial damage arising from the effect of sonic booms.

53 **Payment for Termination**

53.1 Where the Contract terminates as contemplated in **Clause 50** (***Termination for Default***) the Authority shall, provided that the Third Party Lenders have complied with their obligations under the Direct Agreement (and in particular their obligation to use all reasonable endeavours as set out in Clause 9.1 of the Direct Agreement), promptly pay to the Contractor the amounts as set out in **Part 1 of Schedule G** (***Payments on Termination for Default***) and:

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

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

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

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

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

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

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

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

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

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

plus, if the Contract terminates during the period from:

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

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

53.6

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

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

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

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

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

- (iii) that full account shall be taken of any unrelieved trading losses or other reliefs derived from the Project and the Contractor's interest under the Lease which can be set off against the Termination Payment;
- (iv) losses or other amounts eligible for relief from corporation tax derived from the Project or the Contractor's interest under the Lease which have been surrendered by the Contractor by way of group relief or consortium relief, which shall be assumed for these purposes not to have been surrendered and to remain available as carried forward trading losses or other reliefs;
- (v) that full account is taken of any right of credit, repayment or set-off, or other relief deriving from the deduction or withholding of taxes within **Clause 53.6(a) (*Payment for Termination*)**, taking full account of timing differences in calculating the value of such right or relief; and
- (vi) that full account is taken of timing of differences.

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

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

54 **Change of Control**

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

55 **Corrupt Gifts and Payments**

- 55.1 Neither the Contractor nor any Sub-contractor, nor anyone employed by either of them or acting on behalf of either of them, shall:
- (a) offer to give or agree to give any person in Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for Her Majesty's Service or for showing or forbearing to show

- (b) enter into this or any other agreement with Her Majesty or any Government Department in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and clauses of any contract for the payment thereof have been disclosed in writing to the Authority.

55.2 Any breach of **Clause 55.1 (*Corrupt Gifts and Payments*)** by the Contractor or any Sub-contractor or by anyone employed by them or acting on their behalf with or without their knowledge or consent, or the commission of any offence by the Contractor or any Sub-contractor or anyone employed by them or acting on their behalf under the Prevention of Corruption Acts 1889 to 1916 and/or under the Bribery Act in relation to this or any other contract shall entitle the Authority to act as follows: -

- (a) where the breach or commission of any offence is occasioned by the Contractor or an employee of the Contractor, and such person intended thereby to benefit the Contractor, the Authority shall be entitled to determine the Contract immediately and recover from the Contractor the amount of any loss resulting from the breach and/or to recover from the Contractor the amount or value of any such gift, consideration or commission;
- (b) where the breach or commission of any offence is occasioned by either the Operating Sub-contractor, the Construction Sub-contractor, or an employee of that Sub-contractor, and such person intended thereby to benefit that Sub-contractor, the Authority shall be entitled as set out in (a) above unless the Contractor terminates the relevant Sub-contract and procures that all those parts of the Services which were performed by that Sub-contractor are (with the consent of the Third Party Lenders in their absolute discretion) performed by the Contractor itself or another Sub-contractor to which the Third Party Lenders have (in their absolute discretion) consented in writing and the Authority has consented in accordance with **Clause 8 (*Sub-contracting*)** within thirty (30) Days of notification to the Contractor of the breach or commission of an offence or such longer period as the Authority permits in writing;

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

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

55A Prevention of Bribery

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

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

56 Termination Survey

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

57 Notice of Default Events

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

58 Consequential Arrangements on Termination

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

PART VIII - MISCELLANEOUS

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

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

- 59.2 In the event that the Secretary of State shall appoint a Governor of the Prison by virtue of his powers under Section 88, the Contract shall continue in force, and all provisions of the Contract shall, without prejudice to the Authority's rights under **Clauses 48 (*Default by Contractor*)** or **50 (*Termination for Default*)**, continue to operate, save that the functions that would otherwise be exercisable by the Director or the Controller shall be exercised by the Governor.
- 59.3 Any costs incurred by the Authority as a result of action being taken by virtue of Section 88 will be reimbursed to the Authority by the Contractor and the Authority shall be entitled to set off all such amounts due to it against any other amounts due to the Contractor from the Authority hereunder.

60 Facilities for Authority

- 60.1 From the Date of Contract, the Contractor shall provide suitable accommodation at the Site or (following the Engineer's Declaration) in the Prison as the Authority may require, at no additional cost, for the use of the Controller and his representatives, and any other representative of the Authority who has cause to visit the Site or the Prison. All such accommodation shall be adequately furnished, lighted, heated and ventilated, and shall include cloakroom and telephone facilities. Accommodation for the Controller shall be capable of being made secure by means of door locks or other such equipment.
- 60.2 The Contractor shall be responsible for the cleanliness, proper use and reasonable care of all such facilities provided.

61 Public Relations and Publicity

- 61.1 The Authority reserves the right to publish information about the performance of the Contract and/or any other information as it may deem appropriate from time to time, other than in respect of the Confidential Matters, which it may only publish in response to enquiries from Parliament, its members and officers and to enquiries legitimately made by persons acting in the public interest.
- 61.2 Save where in accordance with the procedures referred to in **Clause 21.1(d) (*Preparation for Operation of the Prison*)** which have been approved by the Authority in accordance with **Clause 21.6 (*Preparation for Operation of the Prison*)**, the Contractor shall not by himself, his servants, agents or Sub-contractors communicate with any part of the media, either written or broadcast on any matter concerning the Contract without referring to and complying with the guidelines set out in the Media Handling Protocol. The Authority will provide appropriate training on

- 61.3 No facilities to photograph or film in or upon the land or the Prison shall be given or permitted by the Contractor unless the Authority has given prior written approval in accordance with the Media Handling Protocol, provided nothing in this Clause shall prevent or restrict the Contractor, the Construction Sub-contractor or the Operating Sub-contractor from taking photographs or filming solely in order to provide the Services.

62 Confidential Information and Documents

- 62.1 The Contractor will note and comply with the provisions of Section 91 of the Criminal Justice Act 1991 on the wrongful disclosure of information acquired by persons who are or have been employed at a Prison (whether as a Prisoner Custody Officer or otherwise).
- 62.2 The Contractor will note and comply with the provisions of the Official Secrets Acts 1911 -1989.
- 62.3 The Contractor shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all persons including staff or Sub-contractors employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue to apply to them after the completion or earlier termination of the Contract and after termination of their employment.
- 62.4 The Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract, except with the written consent of the Authority.
- 62.5 At the end of the Contract Term, or upon earlier termination, the Contractor shall ensure that all documents in his possession, custody or control, which contain information relating to a particular Prisoner who is or has been detained at the Prison, including any documents in the possession, custody or control of a Sub-contractor, are delivered up to the Authority. Any rights belonging to the Contractor and subsisting in the said documents are hereby assigned to the Authority upon termination by virtue of this Clause.
- 62.6 Notwithstanding any of the provisions of this clause or of **Clause 61 (Public Relations and Publicity)** nothing in this Contract shall apply to information which is revealed made available or published by either party:
- (a) to its professional advisers, the Third Party Lenders or their professional advisers provided they execute a

- (b) as required by law or any regulatory authority including the rules of any Recognised Securities Exchange or where such information is or comes into the public domain other than by reason of a breach of this Clause.

62.7

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

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

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

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

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

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

62.9 Where disclosure is permitted under **Clause 62.8 (Confidential Information and Documents)**, other than **Clauses 62.8(b), 62.8(d), 62.8(e) or 62.8(h) (Confidential Information and Documents)**, the party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

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

62.11 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the

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

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

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

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

63 Intellectual Property Rights

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

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

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

64 **Contractor's records**

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

- (b) when requested by the Authority, furnish the summary of any of the aforementioned costs in such form and detail as the Authority may reasonably require; and
- (c) afford such facilities as the Authority may reasonably require for its representatives to visit the site (or any other place where the records are held) and examine the records maintained under this clause.

64.2 For the duration of the Contract the Contractor:

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

64.3 The Contractor shall keep books of account in accordance with best accountancy practice with respect to the Contract showing in detail:

- (a) expenditure on wages and salaries;
- (b) administrative overheads;
- (c) expenditure on consumable items;
- (d) payments made to Sub-contractors;
- (e) capital and revenue expenditure;
- (f) such other items as the Authority may require, save that such requirements shall be reasonable;

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

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

64.5 The Contractor shall maintain or produce the following:

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

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

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

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

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

64A Internal and External Audits

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

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

64A.2 The Authority hereby agrees that:

(a) the Authority shall provide the Contractor and the Operating Sub-contractor with the terms of references of any Relevant Audits not less than ten (10) Business Days prior to any Relevant Audit commencing;

(b) interim draft reports relating to any Relevant Audit shall promptly be provided by the Authority to the Contractor and the Operating Sub-contractor at the Authority's discretion, acting reasonably at all times;

(c) final reports relating to any Relevant Audit shall be provided by the Authority to the Contractor and the Operating Sub-contractor as soon as reasonably practicable and not more than five (5) Business Days after such report has become available to the Authority;

(d) the Relevant Audits will not compromise the security of the Prison or unreasonably interfere with the operation of the Prison (having regard to the nature of the Relevant Audit);

(e) the Contractor shall have no obligation to procure that the Operating Sub-contractor shall be obliged to comply with the recommendations of any Relevant Audit where such recommendations are contrary and/or in addition to the Operating Sub-contractor's obligations under the Operating Sub-contract save for in such instances where the Authority issues a Notice of Change in relation to such recommendations within forty (40) Business Days after the receipt of such recommendations by the Authority, the Contractor and the Operating Sub-contractor and the provisions of Clause 10 have been complied with by the Parties and if a Notice of Change has not been so issued, the Operating Sub-contractor has notified the Contractor and the Authority of the proposed required change in accordance with clause 13.5 of the Operating Sub-contract and the provisions of Clause 10 have been complied with.

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

65 **Independent Contractor**

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

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

66 Authority to Commit and Variation

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

67 Service of Notices

- 67.1 Any notice or consent which the Authority is required to give to the Contractor under the terms of the Contract shall be sufficiently given if it is sent by recorded or registered post addressed to the Contractor at his registered office. Such notice or consent shall be deemed to have been given at the time at which that letter would in the ordinary course of post be delivered, save where there is express contractual provision to the contrary.
- 67.2 Any notice or consent which the Contractor is required to give to the Authority under the terms of the Contract shall be sufficiently given if it is sent by recorded or registered post addressed to the Contracts and Competition Group of HM Prison Service or its successors. Such notice or consent shall be deemed to have been given at the time at which that letter would in the ordinary course of post be delivered, save where there is express contractual provision to the contrary.

68 Race and Sex Discrimination

- 68.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, or the Sex Discrimination Acts 1975 and 1986.
- 68.2 The Contractor shall take all reasonable steps to secure that all servants, agents and Sub-contractors do not unlawfully discriminate within the meaning and scope of the above-mentioned Legislation.

68A Equality and Non-Discrimination

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

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

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

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

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

68A.3 The Contractor shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68A.12.5.1 take all reasonable steps to eliminate such unlawful discrimination and shall otherwise comply with all the requirements and recommendations of such Relevant Authority; and

68A.12.5.2 as soon as reasonably practicable, provide the Authority with details of such requirements and (if any) recommendations and the remedial steps to be taken by the Contractor.

68A.13 For the avoidance of doubt, this Clause 68A shall not apply to the Houseblock Construction Subcontractor.

68A.14 The Contractor's obligations above remain at all times subject to the provisions of the Data Protection Act 1998; in the event of the Contractor providing any information to the Authority, the Authority undertakes to use such information appropriately and properly (including with regard to the provision of any information to any third party) so as to not disclose any information in a way that would, by such disclosure, breach the Authority's obligations under the Data Protection Act 1998 or its express or implied contractual duties or obligations to its staff or potential staff or candidates.

69 Data Protection

69.1 The Contractor shall not disclose or allow access to any Personal Data provided by the Authority, or acquired by the Contractor during the course of executing his obligations under the Contract, other than to a person employed or engaged by the Contractor or Sub-contractor.

69.2 Any disclosure or access to Personal Data allowed under **Clause 69.1 (Data Protection)** shall be made in confidence and shall extend only so far as necessary for the purpose of the Contract.

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

70 Health and Safety

70.1 All plant, fixtures, fittings, furniture chattels and other equipment supplied by the Contractor and the Authority in performance of the Contract shall comply with all provisions of any Legislation relating to health and/or safety from time to time in force. Crown Immunity will not apply to the

- 70.2 The Contractor shall be responsible for the observance by itself, its staff and Sub-contractors of all current and relevant health and safety precautions necessary for the protection of itself, its staff, Sub-contractors and any other persons invited onto or visiting the Site, including all precautions required to be taken by or under any Legislation.
- 70.3 The Contractor shall be responsible for the observance by itself, its staff and Sub-contractors of all current and relevant rules, regulations and requirements of statutory or regulatory authorities concerning building works and fire prevention.

71 **Duty of Care**

The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the obligations of the Contract.

72 **Waiver**

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

73 **Severability**

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

74 **Legislation of the Contract and Jurisdiction**

The Contract is governed by and shall be construed in accordance with the laws of England, and the parties hereby submit to the irrevocable jurisdiction of the courts of England and Wales.

75 **Dispute Resolution**

- 75.1 Except in the case of any dispute in respect of matters referred to in Clauses 10 (***Change to Services Required***) (other than any decision of the Authority relating to changes to the Works or their design which do not result in the possibility of a variation of the Contract Price pursuant to **Clause 10.5 (*Change to Services Required*)**), **42.2 (*Variation of***

75.2 The Expert nominated to consider a dispute referred to him under **Clause 75.1 (*Dispute Resolution*)** shall be selected on a strictly rotational basis from the panel of experts. Within seven (7) Days of appointment in relation to a particular dispute, the Expert shall require the parties to submit in writing their respective arguments. The Expert shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the dispute, and shall in any event within fourteen (14) Days of the appointment, provide to both parties his written decision on the dispute. The Expert shall not state any reasons for his decision, and it shall be binding on both parties. The Expert's costs of any reference shall be borne as the Expert shall specify or, in default, equally by the parties.

75.3 In the case of:

- (a) any dispute in respect of matters referred to in **Clause 6.10 (*Insurance*)**, **Clause 10 (*Change to***

- (b) either party being dissatisfied with or otherwise wishes to challenge the Expert's decision made in accordance with **Clause 75.2 (*Dispute Resolution*)**; or
- (c) both parties agreeing so to do;

either party may (within fourteen (14) Days of receipt of the Expert's decision, where appropriate), notify the other party of its intention to refer the dispute to arbitration before a sole arbitrator appointed in accordance with the terms of this clause. The sole arbitrator shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than ten (10) Years' standing (the "**Arbitrator**"). If the parties are unable within fourteen (14) Days to agree the identity of the Arbitrator either party may request the President of the Law Society to make the appointment. The Arbitrator shall have the power to vary or cancel the decision of the Expert and, where appropriate, to order financial compensation to be paid by one party to the other or to adjust the terms of, or the amounts payable under, the Contract.

- 75.4 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary. The Arbitrator shall deliver his decision on any matter referred to him within twenty-eight (28) Days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) months or such other period as the parties may agree of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both parties. The costs of the arbitration will be in the discretion of the Arbitrator.

76 **Precedence of Terms**

In the event of any discrepancy arising between the provisions of Parts I to VIII of the Contract and the Schedules, Appendices and any other document forming part of the Contract, the provisions of Parts I to VIII shall prevail, unless the inconsistent provision is expressed to be, or if the Contract indicates it to be, an amendment of the Parts I to VIII, in accordance with **Clause 66 (*Authority to Commit and Variation*)**.

77. **Third Party Rights**

Without prejudice to the Third Party Lenders' rights under the Financing Agreements and the Direct Agreement, the parties to this Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999.

SIGNED by)
for and on behalf of)
BRIDGEND CUSTODIAL SERVICES)
LIMITED)

SIGNED by)
for and on behalf of)
H.M. PRINCIPAL SECRETARY)
OF STATE FOR THE HOME)
DEPARTMENT)