

Dated**2013****(1) The Secretary of State for Justice****(2) Sodexo Limited****Contract for the provision of a custodial service at HMP Northumberland**



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THIS CONTRACT is made on 2013

BETWEEN:

- (1) **The Secretary of State for Justice** (the "**Authority**"); and
- (2) **Sodexo Limited**, registered in England and Wales as company number 00842846 of One Southampton Row, London, England WC1B 5HA (the "**Contractor**"),

each one "a Party" and together "the Parties".

BACKGROUND

- (A) The Authority wishes to enter into a contract for the provision of the Custodial Service at HMP Northumberland.
- (B) Accordingly, the Authority invited tenders from interested persons for the provision of custodial services and advertised this competition in the Official Journal of the European Union as number 2011/S 206-336076.
- (C) Proposals were submitted on behalf of the Contractor in response to the Authority's invitation. The Authority wishes to enter into this Contract with the Contractor for the purpose of, or in connection with, the provision of custodial services.

PART I – PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Contract and in the Background, unless the context otherwise requires:

"4Projects System" means the online document management system hosted by 4Projects on behalf of the Authority providing online management, collaboration and control of documents relating to custodial property to which the Contractor has access for the purposes of this Contract;

"ACSDP Approval Certificate" has the meaning given to it in **clause 30.2.1.1 (Approval of Annual Custodial Service Delivery Plan)**;

"ACSDP Notice of Non- Compliance" has the meaning given to it in **clause 30.2.1.2 (Approval of Annual Custodial Service Delivery Plan)**;

"ACSDP Reports" has the meaning given to it in **clause 30.3.1 (Updates to the Annual**

Custodial Service Delivery Plan);

"Actual Prisoner Work Hours Percentage"	means the actual number of Prisoner Work Hours in a Month expressed as a percentage of the Maximum Prisoner Work Hours;
"Adjoining Property"	means any land and/or property adjoining or in the neighbourhood of the Site and each and every part of such land and/or property including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;
"Affected Party"	has the meaning given to it in the definition of Force Majeure Event;
"Affiliate"	means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company;
"Annual Custodial Service Delivery Plan"	has the meaning given to it in clause 30.1.1 (Delivery of Annual Custodial Service Delivery Plan) ;
"Annual Interventions Cost"	has the meaning given to it in Schedule 5 (Payment Mechanism) ;
"Annual Interventions Plan"	has the meaning given to it in Schedule 29 (Interventions) ;
"Annual Resourcing Plan"	means a plan produced by the Contractor complying with the requirements of clauses 41.11.2.1 and 41.11.2.2 showing sufficient resourcing levels for delivering the Custodial Service over a Contract Year to ensure that the Prison is a safe, secure and decent environment;
"Approved Purposes"	has the meaning given to it in clause 75.1 (Custodial Service Data) ;
"Approved Sub-Contract"	means any Sub-Contract identified as such in Appendix A to Schedule 2 (Contractor's Proposals) ;
"Arbitration"	means an arbitration conducted under clause 74.14 (Arbitration) ;
"Arbitrator"	has the meaning given to it in clause 74.14 (Arbitration) ;

"Asbestos"	has the meaning given to it in the Control of Asbestos Regulations 2012;
"Asbestos Register"	means the register of actual or potential asbestos at the Prison created pursuant to the Control of Asbestos Regulations 2012;
"ASBO"	means anti-social behaviour order (as defined in the Crime and Disorder Act 1998);
"Asset and Contract Transfer Contract"	means the contract between the Authority and the Contractor (or such other parties which may be relevant with respect to the Legacy Contracts and Legacy Assets) in the form set out in Schedule 30 (Asset and Contract Transfer Contract) dealing with the identification and transfer of Legacy Contracts and Legacy Assets;
"Asset Condition Schedule"	means the document maintained by the Contractor (which shall initially be based upon the Asset Management Records) identifying the standard of the Built Environment and M&E Assets;
"Asset Forward Maintenance Plan"	means the plan relating to the Built Environment and M&E Assets for the Site to be prepared by the Contractor pursuant to Part 2 of Schedule 1 (Authority's Requirements) as referred to in clause 25.1.5 (Built Environment and M&E Assets Condition Verification) ;
"Asset Forward Replacement Plan"	means the plan to be prepared by the Contractor pursuant to Part 2 of Schedule 1 (Authority's Requirements) in clause 25.1.5 (Built Environment and M&E Assets Condition Verification) ;
"Asset Management Records " or "AMRs"	means the records scheduling the condition of the Prison and the Site (Built Environment and M&E Assets) maintained by the Authority prior to the Commencement Date;
"Asset Refresh Plan"	means the Controlled Document with this title to be maintained by the Contractor and reviewed annually in accordance with clause 21.6.2 (Maintenance of Assets and Asset Refresh Plan) which, for the avoidance of doubt, is in addition to the Asset Forward Maintenance Plan;
"Assets"	means Authority Assets and/or Contractor Assets;
"Authority Assets"	means the physical assets owned by the Authority or other Government Department or other third party and which are made

available by the Authority to the Contractor on the terms set out in **clause 21.5 (Contractor's Use of Authority Assets);**

"Authority Change"

means a Change to the Custodial Service or the scope thereof or to the manner in which they are provided or to any of the terms of this Contract proposed by the Authority pursuant to **Schedule 8 (Change Protocol)**, and which is not required by a Change in Law;

"Authority Contamination"

means Contamination which is present in or under the Site at or before the Commencement Date except for Contractor Contamination;

"Authority Damage"

means any damage to the Prison the cost of which is the responsibility of the Authority pursuant to **clause 73.1 (Responsibility for Damage);**

"Authority Default"

means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the Contractor Assets by the Authority or other Relevant Authority;
- (b) a failure by the Authority to make payment of any amount of money exceeding **XXX** (Indexed) that is due and payable by the Authority under this Contract within thirty (30) Days after service of a formal written demand by the Contractor, where that amount fell due and payable two (2) (or more) Months prior to the date of service of the written demand;
- (c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of two (2) Months; or
- (d) a breach by the Authority of **clause 76.1 (Restrictions on Transfer of this Contract by the Authority)** occurs;

"Authority Policies"

means those policies of the Authority referred to in **Schedule 12 (Authority Policies)**, in the form in force on the Commencement Date;

"Authority Related Party"	means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Authority acting in the course of his or her office or employment or appointment (as appropriate), but excluding in each case the Contractor and any Contractor Related Party;
"Authority's Cabling Specification"	means the cabling specification provided by the Authority;
"Authority's ICT System"	means any part of the ICT System owned by the Authority and/or licensed to the Authority by a third party and which interfaces with the Contractor's ICT System or which is provided by the Authority to the Contractor in connection with this Contract;
"Authority's Representative"	means the representative appointed by the Authority pursuant to clause 83.1 (Representatives of the Authority) ;
"Authority's Representative's Approval"	means the prior written approval of the Authority's Representative;
"Authority's Requirements"	means the requirements of the Authority in respect of the Custodial Service set out in all Parts of Schedule 1 (Authority's Requirements) ;
"Authority Third Party Contracts"	means the contracts between the Authority and specified third parties as set out in Schedule 25 (Authority Third Party Contracts) ;
"Authority Transferring Employee"	has the meaning given to it in Schedule 17 (TUPE, Employees and Pensions) ;
"Available Prisoner Place"	means a Prisoner Place that complies with the requirements set out in paragraph 5.2 of Schedule 5 (Payment Mechanism) ;
"Base Case"	means, subject to clause 42.2 (TUPE and Employees) , the financial model agreed between the Parties on or before the Commencement Date (with file name "SDX_Financial_Model_Sub B_14MAR2013_CORRECTION FOR YR1 CAP.xlsx" dated 14 March 2013) and contained in the CD-ROM entitled "Base Case and Pension Change Base Case" signed by the Parties and dated as at the Commencement Date (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other

	things, calculating the Contract Price;
"Benchmarking Exercise"	means an exercise carried out under clause 34.2 (Benchmarking) ;
"Benchmarking Review Date"	means the date stated by the Authority in the notice to the Contractor under clause 34.2 (Benchmarking) specifying that it intends to undertake a Benchmarking Exercise;
"Building"	means any building or other erection at the Site;
"Built Environment and M&E Assets"	means any plant, building fabric, grounds, hard standings, security systems, street furniture, alarms, lighting and systems and like assets relating to the Prison and the Site;
"Built Environment and M&E Assets Condition Verification Report"	has the meaning given to it in clause 25.1.1 (Built Environment and M&E Assets Condition Verification) ;
"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 which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;
"Capital Works"	means any construction works and/or replacement of items of plant or equipment in respect of which the Contractor has included Planned Capital Expenditure in the Base Case, where the relevant construction works and items of plant or equipment are expressly itemised and identified under the heading of 'Major Capital Refit and Replacement' in the Base Case;
"Care and Separation Unit"	means the areas identified as such on the Site Plans;
"Case Summary"	means a summary of each Party's position prepared for the purpose of any Mediation called by the Authority to seek to resolve a Dispute;
"Category 'A' Prisoner"	means a prisoner who in accordance with the security classifications set out in PSO 0900, is classified by the Authority as a category 'A'

	prisoner;
"Category 'A' Prisoner Day"	means a 24 hour period during which a Category 'A' Prisoner is accommodated at the Prison pursuant to clause 24.5 (Special Category Prisoners) ;
"CDM Regulations"	means the Construction (Design & Management) Regulations 2007;
"Cell Certificate"	means a certificate issued in accordance with clause 17 (Cell Certificates) or paragraph 6 of Schedule 5 (Payment Mechanism) ;
"Cell Certificate Requirements"	means the requirements with which a Prison Cell must comply, as set out in PSO 1900;
"Cell Certificate Schedule"	means a cell certificate schedule in the form specified by the Authority in PSO 1900 Annex D as at the Services Commencement Date;
"Cell Certificate Schedule Summary Sheet"	means a cell certificate summary sheet in the form specified by the Authority in PSO 1900 Annex D as at the Commencement Date;
"Cessation of Suspension Notice"	has the meaning given to it in clause 41.8.4 (Suspension of Staff) ;
"Change"	has the meaning given to it in Schedule 8 (Change Protocol) ;
"Change in Costs"	in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor including, as relevant, the following: (a) the reasonable costs of complying with the requirements of clauses 15 (Compensation Events), 62 (Changes in Law), 63 (Financial Adjustments), and/or 64.4 (Step-In without Contractor Breach), including the reasonable costs of preparation of design and estimates; (b) the costs of continued employment of, or making redundant, staff who are no longer required; (c) the costs of employing additional staff; (d) reasonable professional fees;

- (e) the costs to the Contractor of financing any Relevant Event (and the consequences of it) including commitment fees and capital costs, interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Contract Price;
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (g) operating costs, or life cycle, maintenance or replacement costs;
- (h) Capital Expenditure;
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (j) Direct Losses, including reasonable legal expenses on an indemnity basis;

"Change in Law" means the coming into effect after the date of this Contract of:

- (a) Legislation, other than any Legislation which on the date of this Contract has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union;

	(b) any Guidance;
	(c) any applicable judgment of a relevant court of law which changes a binding precedent; or
	(d) a change to the Authority Policies;
"Change Notice"	has the meaning given to it in Schedule 8 (Change Protocol) ;
"Change of Control"	means: (a) a Contractor Change of Control; and/or (b) a Guarantor Change of Control;
"Clinical Commissioning Group" or "CCG"	means NHS Northumberland clinical commissioning group;
"Code of Practice"	means, in connection with Schedule 26 (Prison Industries) , the Authority's document named as such (as published from time to time) which addresses the question of fair competition in relation to industries within prisons, setting out how prisons and Prison Industries will operate in the market;
"Commencement Date"	means the date of this Contract;
"Commercial Conditions"	means the Standard Commercial Property Conditions (Second Edition);
"Commercial Insurer"	has the meaning given to it in clause 72.17.2.2 (Riot (Damages) Act 1886) ;
"Commercially Sensitive"	has the meaning given to it in clause 59.3.3 (Duty to Co-operate) ;
"Commercially Sensitive Information"	means the sub-set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 14 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 14 (Commercially Sensitive Information) ;
"Compensation Event"	means:

(a) a breach by the Authority of any of its obligations under this Contract; or

(b) a postponement of the Services Commencement Date pursuant to **clause 19.3 (Services Commencement)**,

which shall be dealt with in the manner set out in **clause 15 (Compensation Events)**;

"Comptroller and Auditor General"

means the head of the National Audit Office;

"Computer Aided Facilities Management System"

means the computer aided facilities management system to be provided by the Authority (as at the Commencement Date, PlanetFM);

"Condition Precedent"

has the meaning given to it in **clause 1.9.1 (Condition Precedent)**;

"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

(b) Commercially Sensitive Information;

"Consents"

means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor's obligations under this Contract, whether required in order to comply with Legislation or as a result of the rights of any third party;

"Construction Contractor Good Industry Practice"

means the exercise of that degree of skill, care, prudence and foresight and practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced construction contractor under the same or similar circumstances;

"Contamination"

means any and all pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid

	form or a gas or vapour);
"Continued Suspension Notice"	has the meaning given to it in clause 41.8.5 (Suspension of Staff) ;
"Contract"	means this contract (including its Schedules and the Controlled Documents);
"Contract Delivery Indicator"	has the meaning given to it in paragraph 1 of Schedule 6 (Performance Management and Management Information Reporting) ;
"Contract Delivery Management Information"	has the meaning given to it in Schedule 6 (Performance Management and Management Information Reporting) ;
"Contract Objectives"	means the objectives set out in clause 1.10.1 (Contract Objectives) ;
"Contract Price"	means the fee payable by the Authority in consideration of the obligations performed by the Contractor under this Contract calculated in accordance with Schedule 5 (Payment Mechanism) ;
"Contract Review Meeting"	means the meetings described in paragraph 3.2.1 of the Custodial Service Specification;
"Contract Year"	means a period of twelve (12) Months commencing on 1 April, provided that: (a) the first Contract Year shall be the period commencing on the Services Commencement Date and ending on the immediately following 31 March; and (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the Expiry Date or the Termination Date (as the case may be) and ending on the Expiry or Termination Date (as the case may be), whichever is earlier;
"Contractor Assets"	means all physical assets owned by the Contractor or any Sub-Contractor and used in connection with the Contract (including with respect to the Prison Industries), including: (a) any equipment, hardware, cabling and other infrastructure; (b) any books and records (including Operating Procedures,



the Operating Manual, the Prescribed Documentation operating and maintenance manuals, health and safety manuals and other know how); and

- (c) any spare parts, tools, consumables and other assets;

**"Contractor
Breakage Costs"**

means:

- (a) loss of profits limited to an amount equivalent to the Contractor's projected loss of profits for the period from the Termination Date to the earlier of the Expiry Date and the date falling twelve (12) Months after the Termination Date;
- (b) Direct Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract, but only to the extent that:
 - (i) the Direct Losses are incurred in connection with the Contract and in respect of the provision of the Custodial Service, including:
 - i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Direct Losses being incurred;
 - ii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Contract; and
 - iii) statutory redundancy payments;
 - (ii) the Direct Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms;
 - (iii) the Contractor and any relevant Sub-Contractor has used its reasonable endeavours to mitigate the Direct Losses; and
- (c) an amount equal to the Contractor's Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition

and Transformation Costs if and to the extent that:

- (i) all relevant Capital Works have been carried out and completed at the Termination Date; and
- (ii) such Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition and Transformation Costs have not been recovered through the Monthly Payments as at the Termination Date; and
- (iii) in relation to any capital investment in respect of Prison Industries, to the extent such investment is agreed by the Parties in accordance with **Schedule 26 (Prison Industries)** and the associated works have been carried out and completed at the Termination Date;

"Contractor Change"

means a change to the Custodial Service proposed by the Contractor in accordance with **Schedule 8 (Change Protocol)** which is not required by a Change in Law;

"Contractor Change of Control"

means, in relation to the Contractor, any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the capital of the Contractor which results in that body corporate being Controlled by a person who does not (or persons acting in concert who do not), at the Commencement Date, have such Control, or any other arrangement or arrangements that have or may have or which result in the same effect;

"Contractor Contamination"

means:

- (a) Contamination in any buildings, structures or other man made infrastructure at, on, in or under the Site; and/or
- (b) Contamination which is first present in or under the Site after the relevant Services Commencement Date; and/or
- (c) any Contamination of which the Contractor or any Sub-Contractor is aware or of which it or a Sub-Contractor ought reasonably to have been aware and which is exacerbated or disturbed by the Contractor or a Sub-



Contractor or any person acting for or on behalf of the Contractor or such Sub-Contractor;

"Contractor Default"

means any one or more of the following:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Custodial Service;
- (b) a Persistent Breach occurs;
- (c) a court makes an order that the Contractor be wound up or a resolution for a voluntary winding-up of the Contractor is passed;
- (d) any receiver or receiver manager in respect of the Contractor is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor;
- (f) an administration order is made, or an administrator is appointed in respect of the Contractor;
- (g) failure to comply with **clause 76.2 (Restrictions on Transfer of this Contract by the Contractor)**;
- (h) failure by the Contractor to provide a Parent Company Guarantee in favour of the Authority substantially in the form set out in **Schedule 20 (Parent Company Guarantee)** or, in circumstances where the Guarantor ceases to be the Contractor's ultimate Holding Company, the Contractor's new ultimate Holding Company does not execute a Parent Company Guarantee in the prescribed time where required to do so under **clause 3.2 (Parent Company Guarantee)**;
- (i) in circumstances where the Contractor is required to provide up to (and including) the Maximum Available

Prisoner Places, a failure to provide any one (1) or more Available Prisoner Place for a continuous period exceeding thirty (30) Days at any time after the Services Commencement Date;

- (j) failure by the Contractor to submit, carry out or complete an acceptable Rectification Plan pursuant to **paragraph 13 (Rectification) of Schedule 6 (Performance Management and Management Information Reporting)**;
- (k) the accumulation of three thousand and twenty-five (3,025) or more Performance Points in any Performance Quarter or the accumulation of twelve thousand one hundred (12,100) or more Performance Points in any Contract Year;
- (l) not used;
- (m) subject to **clause 72.14 (Uninsurable Risks)** and **clause 72.16 (Insurance Renewal)**, a breach of **clause 72.1 (Obligation to Maintain)** occurs;
- (n) the Contractor committing a material breach of its obligations under this Contract (other than as a consequence of a breach by the Authority of its obligations under this Contract) which results in the criminal investigation, prosecution and conviction of the Contractor or any Contractor Related Party or the Authority under the Health and Safety Regime (for the purposes of this paragraph (n) an "H&S Conviction") provided that an H&S Conviction of a Contractor Related Party or the Authority shall not constitute a Contractor Default if, within forty (40) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Contract of each relevant Contractor Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Contractor Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Contractor in accordance with **clause 76 (Sub-Contracting and Assignment)** provided always that in

determining whether to exercise any right of termination or right to require the termination of the engagement of a Contractor Related Party under this paragraph (n), the Authority shall:

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (ii) give all due consideration, where appropriate, to action other than termination of this Contract;
- (o) the accumulation of Working Prison Deductions in the amount of **XXX** or more in any Performance Quarter or the failure to achieve the Working Prison Contract Delivery Indicator in any five (5) or more Months within a rolling six (6) Month period;
- (p) a Change of Control occurs without the Authority's prior written consent and the Authority in good faith and acting reasonably determines that the Change of Control has resulted, may result or may have resulted in a person who is an Unsuitable Third Party Controlling the Guarantor;
- (q) a Participation Agreement to which the Contractor or any of its Sub-Contractors is a party in respect of any Authority Transferring Employees is terminated by the Minister for the Civil Service by reason of the circumstances set out in **clauses 10.1.1, 10.1.2 and/or 10.1.3** of the **Participation Agreement** unless the Authority has first served a notice under paragraph **3.7.1(b)** of **Schedule 17 (TUPE, Employees and Pensions)** requiring the Contractor and/or relevant Sub-Contractor to provide a broadly comparable scheme and the Contractor and/or relevant Sub-Contractor (as the case may be) has complied with the provisions of the notice in accordance with such paragraph;

**"Contractor
Delivery Indicator"**

means a specific PRS Measure identified as such in the table in **Appendix B (PRS Measures and Contract Delivery Indicators)** to **Schedule 6 (Performance Management and Management**

Information Reporting);

"Contractor Prisoner Escorts"	means the escorts provided by the Contractor pursuant to the Custodial Service Specification;
"Contractor Related Party"	means: (a) an officer, servant or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant or agent of such a person; (b) any Sub-Contractor and any of their officers, servants or agents; and (c) any person on or at the Prison at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party);
"Contractor Termination Notice"	has the meaning given to it in clause 48.1.1 (Termination on Authority Default) ;
"Contractor's ICT System"	means any part of the ICT System which is owned by the Contractor and/or licensed to the Contractor by a third party and which is operated by the Contractor or its Sub-Contractors in connection with the provision of the Custodial Service, but excluding the Authority's ICT Systems;
"Contractor's Proposals"	means the proposals of the Contractor for satisfying the Authority's Requirements, as set out in Schedule 2 (Contractor's Proposals) and as amended pursuant to the provisions of this Contract, including: (a) the Contractor's proposals for the Custodial Service; (b) the Contractor's operational proposals for the providing the Custodial Service; (c) the Contractor's resourcing proposals; and (d) the Contractor's proposals for innovations and improvements, but not including the Initial Operating Procedures, the Operating Procedures, or the Contractor's proposals for testing the Initial

	Operating Procedures or the Operating Procedures pursuant to clause 16.6.2.3 (Testing of Operating Procedures) ;
"Contractor's Representative"	means a representative appointed by the Contractor pursuant to clause 83.2 (Representatives of the Contractor) ;
"Contractor's Staff"	means all persons used by the Contractor, including its employees, agents, any Sub-Contractors, or anyone acting on its or their behalf to provide the Custodial Service;
"Contractor's Staff Information"	has the meaning given to it in clause 16.7.1 (Contractor's Staff Information) ;
"Control"	means possessing (i) an interest or interest in shares carrying in aggregate 30% or more of the voting rights that are generally exercisable at a general meeting or (ii) control over the right to appoint or remove a majority of the directors or (iii) the right to receive 30% or more of the profits available for distribution and "Controlled" and "Controlling" shall be construed accordingly;
"Controlled Document"	means a document (which may be held on CD-Rom or in any other format) which is identified in this Contract as a "Controlled Document" and that may only be amended through the Document Change Procedure;
"Controller"	means the person or persons from time to time appointed in respect of the Prison by the Authority under section 85(1)(b) of the Criminal Justice Act 1991;
"Conviction"	means, other than in relation to any minor road traffic offences, any prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023);
"co-operate"	has, in connection with its use within clause 59.3 (Duty to Co-operate) , the meaning given to it in such clause;
"COSHH"	means the Control of Substances Hazardous to Health Regulations 2002;
"CRC EES"	means the Carbon Reduction Commitment Energy Efficiency

	Scheme published by the Government from time to time (or any replacement scheme);
"Criminal Records Bureau"	means the bureau established pursuant to Part V of the Police Act 1997;
"Crown"	means Her Majesty's Government which shall be deemed to include any government department, office or agency and any Secretary of State;
"Custodial Duties"	means "custodial duties" at the Prison as defined in section 86(3) of the Criminal Justice Act 1991;
"Custodial Service"	means the service required to satisfy the Authority's Requirements and the Authority's requirements set out in Schedule 26 (Prison Industries) ;
"Custodial Service Data"	means: (a) all Operational Data; (b) any other materials, documents or data acquired or brought into existence or used in relation to the Custodial Service or this Contract, in each case that is used by or on behalf of the Contractor and/or its Sub-Contractors in connection with the provision of the Custodial Service or the performance of the Contractor's obligations under this Contract;
"Custodial Service Period"	means the custodial service period of the Prison and means the period from the Services Commencement Date until and including the earlier to occur of the Termination Date and the Expiry Date;
"Custodial Service Provider"	means a person providing custodial services to the Authority or the Secretary of State for Justice, including (as the context so requires) the Contractor;
"Custodial Service Specification"	means the NOMS custodial service specifications contained in Part 1 of Schedule 1 (Authority's Requirements (Custodial Service Specification)) ;
"Daily Report"	means the daily report which shall be substantially in the form set

out in **Schedule 16 (Daily Report)**;

"Damage Funding" has the meaning given to it in **clause 73.7.1 (Programmed Maintenance Costs)**;

"Data Protection Legislation" Data Protection Act 1998 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"Day" means a calendar day, unless otherwise specified;

"Deductions" means any or all (as the case may be) of Unavailability Deductions, Performance Point Deductions or Working Prison Deductions;

"Deputy Site Facilities Manager" means the deputy site facilities manager appointed pursuant to **clause 8.9 (Site Facilities Manager)**;

"Directive" means EC Council Directive 2001/23/EC;

"Direct Losses" means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law but excluding Indirect Losses;

"Director" means the person appointed by the Contractor to carry out such functions as are conferred on him by the Criminal Justice Act 1991 or as may be conferred on him by the Prison Rules in respect of the Prison, and approved by the Authority under **clause 39 (The Director)** and section 85(1)(a) of the Criminal Justice Act 1991;

"Disclosed Data" means information relating to the delivery of the Custodial Service disclosed to the Contractor and its advisers before the date of this Contract, including:

- (a) the ITN Stage 1;
- (b) the ITN Stage 2;
- (c) Not used;
- (d) information provided via the Emptoris portal / electronic

	data room;
	(e) the results of any investigations and surveys carried out at the Site or any Buildings, whether carried out by or on behalf of the Contractor or the Authority; and
	(f) Reports on Title;
"Discriminatory Change in Law"	means a Change in Law, the terms of which apply expressly to: (a) the Custodial Service and not to similar services; and/or (b) custodial services providers in the contracted out prisons sector and not to other persons; and/or (c) the Contractor and not to other persons;
"Dispute"	means any disagreement between the Parties arising in relation to their respective rights or obligations under this Contract;
"Disputed Amount"	has the meaning given to it in clause 44.5.2 (Disputed Amounts) ;
"Dispute Resolution Procedure"	means the procedure for the resolution of disputes set out in clause 74 (Dispute Resolution) ;
"Document Change Procedure"	has the meaning given to it in Schedule 8 (Change Mechanism) ;
"Documents"	includes any written or printed work, photograph or any work produced by electronic means, including any tapes, disks, CD-ROMs or other recorded matter;
"Double Prison Cell"	means a Prison Cell designed for double occupancy with a floor area in excess of nine point eight square metres (9.8m ²) or, if a shower area is to be incorporated within the Prison Cell, a floor area in excess of eleven square metres (11m ²), such areas to include a toilet compartment or suitable modesty screening around a toilet;
"DPA"	means the Data Protection Act 1998;
"Early Termination Date"	means the early termination date of the Custodial Service at the Prison and the date seven (7) Years after the Services Commencement Date;
"Education"	means learning and skills providers (including Manchester College)

Provider"	or such other person appointed by the SFA from time to time to provide the Education Services at the Prison;
"Education Services"	means the information, advice, learning and skills services commissioned by the SFA and provided by the Education Provider;
"EEA "	means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;
"Emergency Services"	has the meaning given to it in clause 21.2 (Disclosure of Information to Emergency Services) ;
"Enablers Specification"	means the enablers specification contained in Part 1 of Schedule 1 (Authority's Requirements (Custodial Service Specification)) ;
"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;
"Equality Duties"	has the meaning given to it in clause 35.4 (Equality Duties) ;
"Equality Impact Assessment or EIA"	means any required assessment made by the Contractor in accordance with guidance issued by the Authority that will permit the Authority to comply with its legal obligations in furnishing EIAs for any change in policy delivered by, or affected by the Custodial Service delivered by the Contractor;
"Equipment Register"	means the Controlled Document with this title containing a register of equipment used by the Contractor to provide the Custodial Service, including the Authority Assets and the Contractor Assets, to be maintained by the Contractor in accordance with and in the form set out in Schedule 4 (Equipment Register) ;
"Escape"	means: (a) a Prisoner unlawfully gains his or her liberty by breaching the perimeter of the Prison (including the outside wall or boundary of the Prison); or

	(b) a Prisoner unlawfully gains his or her liberty while being escorted outside the Prison by the Contractor by passing beyond the control of the accompanying Prisoner Custody Officer;
"EU ETS"	means the European Union Emissions Trading Scheme published from time to time (or any replacement scheme);
"Exit Plan"	means the Controlled Document with this title to be maintained by the Contractor in accordance with Schedule 28 (Exit Management) ;
"Expiry Date"	means the date fifteen (15) years from and including the Services Commencement Date, subject to the provisions of clause 2.2 (Duration of Contract) ;
"Fees Regulations"	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
"Final Warning Notice"	has the meaning given to in clause 49.1.2 (Persistent Breach) ;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;
"Force Majeure Event"	means the occurrence after the date of this Contract of: (a) war, civil war, armed conflict or terrorism; (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach by the Contractor or its Sub-Contractors; or (c) pressure waves caused by devices travelling at supersonic speeds, which directly causes either Party (the "Affected Party") to be unable to comply with all or a material part of its obligations under this Contract;

"Force Majeure Termination Sum"	has the meaning given to it in clause 50.2.1 (Compensation on Termination on Force Majeure) ;
"FReM"	means the Financial Reporting Manual published by the Government from time to time (or its replacement);
"General Change in Law"	means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;
"Good Industry Practice"	means the exercise of that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or provider of custodial services or any Sub-Contractor under the same or similar circumstances;
"Governor"	means a Crown servant appointed by the Authority under Section 88;
"Guaranteed Prisoner Work Hours Percentage"	means: in respect of Price Year 1, Price Year 2 and Price Year 3, the relevant monthly percentage as set out in Appendix D to Schedule 6 (Prisoner Work Targets); in respect of Price Year 4 and Price Year 5, XX and in respect of Price Year 6 and each Price Year thereafter, XX of the Maximum Prisoner Work Hours in a Month, expressed as a percentage of the Maximum Prisoner Work Hours;
"Guarantor"	means the Contractor's guarantor under the Parent Company Guarantee;
"Guarantor Change of Control"	means, in relation to the Guarantor, any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the capital of such Guarantor which results in that body corporate being Controlled by a person who does not (or persons acting in concert who do not), at the Commencement Date, have such Control, or any other arrangement or arrangements that have or may have or which result in the same effect;
"Guidance"	means any applicable guidance or directions with which the

Contractor is bound to comply, which for the purposes of this Contract shall exclude the Authority Policies;

"Health and Safety File"	has the meaning given to it in the CDM Regulations;
"Health and Safety Regime"	means the Corporate Manslaughter and Corporate Homicide Act 2007, Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc Act 1974 (and associated regulations), the Regulatory Reform (Fire Safety) Order 2005, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;
"Healthcare Provider"	means Care UK or such other person appointed by the CCG from time to time to provide the Healthcare Services at the Prison;
"Healthcare Services"	means the healthcare services commissioned by the CCG and provided by the Healthcare Provider;
"Healthcare Unit"	means the area identified as such on the Site Plans;
"Holding Company"	shall have the meaning given to it in section 1159 of the Companies Act 2006 and, for the purposes only of the membership requirement in subsections 1159(1)(b) and (c), a company (the "first company") shall be treated as a member of another company (the "second company") if the shares in the second company are registered in the name of (a) another person (or its nominee), where the shares are held by such other person (or its nominee) by way of security or in connection with the taking of security from the first company, or (b) a nominee for the first company;
"ICSDP Approval Certificate"	has the meaning given to it in clause 16.2.1.1 (Approval of the Initial Custodial Service Delivery Plan) ;
"ICSDP Report"	has the meaning given to it in clause 16.3.1.1 (Approval of the Initial Custodial Service Delivery Plan) ;
"ICSDP Notice of Non-Compliance"	has the meaning given to it in clause 16.2.1.2 (Approval of the Initial Custodial Service Delivery Plan) ;
"ICT System"	means the computing environment (consisting of hardware, software, telecommunications and/or data networks, interfaces, devices, equipment, infrastructure, ducts, cabling and ancillary fixtures and

fittings and power supplies) used by the Authority and/or the Contractor in connection with this Contract;

"Indemnified Party"	has the meaning given to it in clause 70.4 (Notification of Claims) ;
"Indemnifying Party"	has the meaning given to it in clause 70.4 (Notification of Claims) ;
"Independent Monitoring Board"	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;
"Independent Safeguarding Authority"	means the non-departmental public body sponsored by the Home Office set up under the provisions of the Safeguarding Vulnerable Groups Act 2006 and which is responsible for the decision making and maintenance of two lists covering the children's and vulnerable adults' sectors;
"Indexation Base Month"	means December 2013;
"Indexation Review Date"	has the meaning given to it in Schedule 5 (Payment Mechanism) ;
"Indexed"	has the meaning given to it in clause 1.4 (Indexation) ;
"Indirect Losses"	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature, but excluding any of the same that relate to loss of revenue or other income committed from third parties;
"Information"	has the meaning given to it under section 84 of the FOIA;
"Initial Availability Requirements"	means that in respect of each Prisoner Place: (a) the ICSDP Approval Certificate has been issued in accordance with clause 16.2 (Approval of Initial Custodial Service Delivery Plan); and (b) an Operating Procedure Approval Certificate has been issued in respect of each Operating Procedure in accordance with clause 16.5 (Approval of Operating Procedures);

"Initial Custodial Service Delivery Plan"	has the meaning given to it in clause 16.1.1 (Initial Custodial Service Delivery Plan) ;
"Initial Operating Procedure"	means the Initial Operating Procedure provided by the Contractor in accordance with clause 16.4 (Initial Operating Procedures and Operating Procedures) ;
"Initial Service Delivery Documents"	means: (a) the Initial Custodial Service Delivery Plan; and (b) the Initial Operating Procedures;
"Insurance Term"	means any terms and/or conditions required to be included in a policy of insurance by clause 72 (Insurance) and/or Schedule 7 (Required Insurances) but excluding any risk;
"Insurance Undertaking"	has the meaning given to it in the rules from time to time of the Financial Service Authority (or any successor body or bodies carrying out its functions);
"Intellectual Property Rights"	means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information, discovery, invention, process, formula, specification, improvement, technique and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Contractor or any Contractor Related Party for the purposes of providing the Custodial Service and/or otherwise for the purposes of this Contract;
"Interventions"	has the meaning given to it in paragraph 1.1 of Schedule 29 (Interventions) ;
"Irrecoverable VAT"	has the meaning given to it in clause 62.8 (Payment of Irrecoverable VAT) ;
"Joint Insurance Account"	means the joint bank account (in accordance with clause 72.13.2 (Reinstatement)) in the names of both the Authority and the Contractor;

"Latest Custodial Service Element"	means the element within the Base Case as the costs of providing the Tested Custodial Service (as such element may have been adjusted as a result of being Indexed or as a result of previous adjustments made pursuant to clauses 34 (Benchmarking and Value Testing) and/or 61 (Change to Custodial Service));
"Leases"	means any and all of the Main Operational Leases and/or Supplemental Leases relating to the Site to be granted by the Authority to the Contractor substantially in the form(s) set out in Schedule 23 (Leases) together with such amendments agreed between the Parties both acting reasonably;
"Lease Declaration"	has the meaning given to it in clause 7.4.2 (Exclusion of Security) ;
"Legacy Assets"	means the assets belonging to the Authority or an Authority Related Party that are to be transferred to the Contractor or its Sub-Contractor pursuant to an Asset and Contract Transfer Contract for the purposes of this Contract;
"Legacy Contracts"	means the contracts to which the Authority or an Authority Related Party is a party that are to be transferred to the Contractor or its Sub-Contractor pursuant to an Asset and Contract Transfer Contract for the purposes of this Contract;
"Legal Proceedings"	has the meaning given to it in clause 5.2.1.1 (Contractor Undertakings) ;
"Legislation"	means any one or more of the following: (a) any Act of Parliament, including the Offender Management Act 2007; (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978; (c) any exercise of the Royal Prerogative; and (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom;
"Longstop Date"	has the meaning given to it in clause 1.9.2 (Condition Precedent) ;

"Losses"	means Direct Losses and Indirect Losses;
"Main Operational Lease"	means a Lease named as such relating to an individual Prison;
"Malicious Software"	means any software program or code intended to destroy, interfere with, corrupt or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"Market Costs"	means the charges made by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Tested Custodial Service;
"Maximum Available Prisoner Places"	has the meaning set out in paragraph 1 of Schedule 5 (Payment Mechanism) ;
"Maximum Contract Price"	means, in respect of a Month, the Contract Price payable during that Month assuming that the Contractor had provided all of the Prisoner Places required in that Month and such Prisoner Places were Available Prisoner Places during that Month, before deductions but allowing for Indexation under clause 1.4 (Indexation) ;
"Maximum Prisoner Work Hours"	has the meaning given to it in Schedule 6 (Performance Management and Management Information Reporting) ;
"Mediation"	means a mediation conducted under clause 74.4 (Mediation) ;
"Mediator"	has the meaning given to it in clause 74.8 (Mediation) ;
"Minimum Requirements"	means, in relation to a Prisoner Place, the requirements so described as set out in Schedule 1 Part 1 (Authority's Requirements) (Custodial Service Specification) ;
"Mobilisation, Transition and Transformation Costs"	means the costs arising out of the implementation by the Contractor of its Mobilisation and Transition Plan and Transformation Plan that are not included in Restructuring Costs or Planned Capital Expenditure and that are expressly itemised and identified under the heading of 'Total Other Mobilisation and Costs' in the Base Case;
"Mobilisation and	means the Controlled Document with this title specifying the

"Transition Plan"	Contractor's obligations, from the Commencement Date, for (a) the ramp-up and mobilisation of its staff and for its preparations to comply with its obligations under this Contract to deliver the Custodial Service from the Services Commencement Date; (b) the take over of the delivery of the Custodial Service at and from the Services Commencement Date, the version agreed as at the Commencement Date being attached at Appendix A to Schedule 24 (Mobilisation and Transition Plan and Transformation Plan);
"Month"	means a calendar month;
"Monthly Contract Price"	has the meaning given to it in Schedule 5 (Payment Mechanism) ;
"Monthly Payment"	has the meaning given to it in Schedule 5 (Payment Mechanism) ;
"Montreal Protocol Substances"	means the substances listed in Schedule 10 (Montreal Protocol Substances) ;
"Monthly Service Payment"	has the meaning given to it in Schedule 5 (Payment Mechanism) ;
"Multi Agency Public Protection Arrangements" or "MAPPA"	means those arrangements as established under the Criminal Justice and Court Services Act 2000 and as subsequently amended by the Criminal Justice Act 2003, which require the police, prison and probation services to establish, review and monitor arrangements for assessing and managing the risks posed by serious and violent offenders;
"Mutual Aid"	means a national plan for providing support arrangements between all prisons in England and Wales, including in the event of a serious incident requiring a reinforcement of staff trained to use control and restraint techniques;
"New Contractor"	means any person who has entered or who will enter into a new contract with the Authority for the provision of all or any part of the Custodial Service or any similar provision of such a service (and "New Contractor" shall include the Authority or any other Government Department where such provision will be made by the

	Authority or such Government Department);
"NOMS"	means the National Offender Management Service, an executive agency of the Ministry of Justice;
"Non-Compliance Notice"	means a notice from the Authority to the Contractor stating that a Prison Cell does not comply with the Cell Certificate Requirements and specifying any outstanding matters that must be attended to before a Cell Certificate can be issued in respect of the relevant Prison Cell;
"Notice of Dispute"	has the meaning given to it in clause 74.2 (Notice of Dispute) ;
"Notice of Arbitration"	has the meaning given to it in clause 74.14.1 (Arbitration) ;
"Offender"	means any person who has been found guilty by a court and who has received a community sentence or a custodial sentence from a court;
"Offender Assessment System (or OASys)"	means the Authority's risk management system, being: (a) the application developed jointly by the prison and probation service; and (b) any successor(s) to such system as are applicable to the delivery of the Custodial Service (including without limitation the single national replacement system OASys-R to be delivered by the Authority's supply partner, HP Enterprise Solutions, to introduce greater consistency across probation and prison services);
"Operating Manual"	has the meaning given to it in clause 31.1 (Maintenance of Manual) ;
"Operating Procedures"	means operating procedures described as such in the Custodial Service Specification, and " Operating Procedure " shall be construed accordingly;
"Operating Procedure Approval Certificate"	has the meaning given in clause 16.5.1.1 (Approval of Operating Procedures) ;
"Operating Procedure Notice of Non-Compliance"	has the meaning given in clause 16.5.1.2 (Approval of Operating Procedures) ;

"Operating Procedure Test"	has the meaning given in clause 16.6 (Testing of Operating Procedures) ;
"Operational Data"	means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the operation of the Prison in each case that is used by or on behalf of the Contractor and/or its Sub-Contractors in connection with the provision of the Custodial Service or the performance of the Contractor's obligations under this Contract;
"Option Period"	has the meaning given to it in clause 72.14.4 (Uninsurable Risks) ;
"Order"	has the meaning given to it by clause 7.4.1 (Exclusion of Security) ;
"Outstanding Work"	has the meaning given to it in clause 58.4 (Maintenance Work) ;
"Parent Company Guarantee"	means the guarantee to be entered into in accordance with the terms of this Contract and detailed in Schedule 20 (Parent Company Guarantee) ;
"Participation Agreement"	has the meaning set out in Schedule 17 (TUPE, Employees and Pensions) ;
"Pension Change Base Case"	means the financial model proposed by the Contractor before the Commencement Date (with file name "SODEXO_Financial Model_Submission A_12MAR2013.xlsx", dated 12 March 2013 and contained in the CD-ROM entitled "Base Case and Pension Change Base Case" signed by the Parties and dated as at the Commencement Date) for the purpose of calculating the Contract Price in the circumstances described in clause 42.2 (TUPE and Employees) ;
"Pension Change Date"	has the meaning given in clause 42.2 (TUPE and Employees) ;
"Pension Change Event"	means a determination by the Authority following the Commencement Date but prior to the Services Commencement Date that the government may fail or will have failed to implement its proposed reforms to Fair Deal (as outlined in HM Treasury's Consultation on the Fair Deal policy dated November 2012) by the planned Services Commencement Date (notwithstanding any postponement of such date by the Authority under clause 19.3 (Services Commencement) or otherwise);

"Pension Change Notice"	means a notice served by the Authority pursuant to clause 42.2 (TUPE and Employees) ;
"Performance Point"	means a point accruing on the occurrence of a Contract Delivery Indicator as defined in Schedule 6 (Performance Management and Management Information Reporting) ;
"Performance Point Deduction"	means a deduction to the Contract Price made as a result of the occurrence of a Contract Delivery Indicator and in accordance with Schedule 5 (Payment Mechanism) ;
"Performance Quarter"	means each of the successive four (4) periods of three (3) Months during the Contract Year ending on 31 March, 30 June, 30 September and 31 December, provided that: (c) in the first Contract Year, if the number of Months is not divisible by three (3), the first Performance Quarter shall start on the Services Commencement Date and shall end on the next to occur of 31 March, 30 June, 30 September or 31 December; and (d) in the last Contract Year, if the number of Months is not divisible by three (3), the last Performance Quarter shall be the period commencing on the 1 April, 1 July, 1 October or 1 January immediately preceding the last Day of the Custodial Service Period and ending on the last day of Custodial Service Period;
"Permitted Level"	has the meaning given to it in paragraph 1 of Schedule 5 (Payment Mechanism) ;
"Persistent Breach"	means, pursuant to clause 49.1 (Persistent Breach) , a breach for which a Final Warning Notice has been issued, which has continued for more than fourteen (14) Days or recurred in two (2) or more Months within the six (6) Month period after the date on which such Final Warning Notice is served on the Contractor;
"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 providing the Custodial Service;
"Physical and Special Security"	means the Physical and Special Security Guides in the 4Projects

Guides"	System, as may be amended or updated from time to time;
"Physical Damage Policies"	has the meaning given to it in clause 72.13.1 (Reinstatement) ;
"Planned Capital Expenditure"	means the cost of Capital Works as expressly itemised and identified under the heading of 'Major Capital Refit and Replacement' in the Base Case;
"Police Authority"	has the meaning given to it in clause 72.17.2.1 (Riot (Damages) Act 1886) ;
"Prescribed Documentation"	has the meaning given to it in clause 68.8 (Prescribed Documentation) ;
"Prescribed Documentation Security Officer"	has the meaning given to it in clause 68.9.6 (Security and Confidentiality of Prescribed Documentation) ;
"Prescribed Rate"	means two per cent (2%) above the base rate from time to time of The Royal Bank of Scotland plc;
"Price Year"	means a year commencing on the Services Commencement Date or an anniversary of the Services Commencement Date;
"Prison"	means the buildings and other facilities and equipment to be operated and maintained at the Site in accordance with this Contract;
"Prisons and Probation Ombudsman"	means the independent individual for the time being appointed by the Justice Secretary to investigate complaints from Prisoners;
"Prison Cell"	means a secure unit of accommodation for occupation by a Prisoner or Prisoners (including the Care and Separation Unit and the areas for occupation by a Prisoner or Prisoners in the Healthcare Unit of the Prison);
"Prison Industries"	means the industries described in Schedule 26 (Prison Industries) ;
"Prison NOMIS"	means the primary, centralised, cross authority Prison management system used in public prisons, and from early 2012 all private prisons (including the Prison) and includes all successor(s) to such system as are applicable to the delivery of the Custodial Service;
"Prison Population"	means the number of Prisoners occupying the Prison at any given

	time;
"Prison Rules"	means the Prison Rules 1999, Statutory Instrument 1999, no. 728 and, where applicable, the YOI Rules;
"Prisoner"	means, as the case may be: (a) an Offender; or (b) a Remand Prisoner, who is accommodated at the Prison;
"Prisoner Accommodation (Operational Availability) document"	means a prisoner accommodation (operational availability) document in the form specified by the Authority in PSO 1900 Annex E as at the Commencement Date;
"Prisoner Accommodation (Notification of Change) document"	means a prisoner accommodation (notification of change) document in the form specified by the Authority in PSO 1900 Annex E as at the Commencement Date;
"Prisoner Custody Officer" or "PCO"	means a person, as defined in section 89(1) of the Criminal Justice Act 1991 (as amended), in respect of whom a certificate is for the time being in force certifying that such person has been approved by the Authority for the purpose of performing Custodial Duties in accordance with clause 40 (Certification as Prisoner Custody Officers) ;
"Prisoner Escort Services"	has the same meaning as "prisoner escort arrangements" in section 80 of the Criminal Justice Act 1991 (as amended by section 93 of the Criminal Justice and Public Order Act 1994) and shall be in respect of the Prison;
"Prisoner Place"	means a unit of accommodation for occupation by a Prisoner in a Prison Cell (other than in a Prison Cell which is a Care and Separation Unit or is within the Healthcare Unit) at the Prison;
"Prisoner Work Hours"	has the meaning given to it in Schedule 6 (Performance Management and Management Information Reporting) ;
"Proceedings"	has the meaning given to it in clause 87 (Governing Law and Jurisdiction) ;

"Prohibited Act"

means:

- (a) offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;
- (b) entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Authority;
- (c) committing any offence:
 - (i) under the Bribery Act 2010 or under the Prevention of Corruption Acts 1889-1916 (before they were revoked);
 - (ii) under Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Crown;

**"Prohibited
Equality and
Diversity Act"**

means any act which results in a finding of any unlawful discrimination (whether in relation to race, gender, age, disability, religious belief, sexual orientation or otherwise) by any Relevant

	Authority against the Contractor or any of its Sub-Contractors or any of its or their agents or shareholders in relation to the Contract;
"Project Documents"	means the agreements entered into by the Contractor for the performance of the obligations under this Contract in the agreed form which are listed in Schedule 11 (Project Documents) ;
"Prolific and Priority Offenders"	means those offenders who meet the prolific and priority criteria for special attention by the criminal justice system;
"Qualifying Change in Law"	means: (a) a Discriminatory Change in Law; (b) a Specific Change in Law; or (c) a change to an Authority Policy; which has a material impact on the Contractor's costs of providing the Custodial Service and which was not foreseeable at the date of this Contract;
"Quality Management Officer"	has the meaning given to it in clause 32.2 (Quality Management Officer) ;
"Quantum"	means the HMPS ICT system (which shall be deemed to include any replacement system or systems);
"Recipient"	has the meaning given to it in clause 45.1.2 (Value Added Tax) ;
"Rectification Costs"	means, for the purposes of any Termination Date that occurs during the Custodial Service Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular Month or part of a Month in ensuring that the Custodial Service is available;
"Rectification Period"	has the meaning given to it in Schedule 5 (Payment Mechanism) ;
"Reinstatement Plan"	has the meaning given to it in clause 72.13.3.1 (Reinstatement) ;
"Reinstatement Works"	has the meaning given to it in clause 72.13.3.1 (Reinstatement) ;
"Relevant Amount"	has, for the purpose of clause 70.8 (Limitation of Liability under clause 70.1.1.5) only, the meaning given to it in clause 70.8.6

(Limitation of Liability under clause 70.1.1.5);

"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 Data"	has the meaning given to it in clause 10.2 (Ownership and Use of Authority's ICT System) ;
"Relevant Event"	means any: (a) Authority Change; (b) Qualifying Change in Law; (c) Compensation Event; or (d) matter in respect of which the Parties expressly agree in writing to, or there is express provision in the Contract for, an adjustment to the Contract Price in accordance with clause 63 (Financial Adjustments);
"Relevant Incident"	has the meaning given to it in clause 72.13.3 (Reinstatement) ;
"Relevant Organisation"	means any of the following (including their successor bodies from time to time): (a) relevant Probation Boards; (b) Police Forces; (c) Local Criminal Justice Board; (d) the Department for Education; (e) Local Authorities; (f) the Department of Health; (g) clinical commissioning groups; (h) the Skills Funding Agency; (i) the Department for Business Innovation and Skills;

- (j) Crime and Disorder Reduction Partnerships;
- (k) Drug and Alcohol Action Teams;
- (l) the UK Border Agency;
- (m) Local Safeguarding Childrens Boards; and
- (n) other Custodial Service Providers;

"Relevant Payment"	has the meaning given to it in clause 72.14.4 (Uninsurable Risks);
"Relevant Proceeds"	has the meaning given to it in clause 72.13.3.2(c) (Reinstatement);
"Relevant Person"	means an Affiliate;
"Relevant Vesting Day"	has the meaning given to it in Schedule 17 (TUPE, Employees and Pensions);
"Relief Event"	means: (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event) and earthquakes; (b) riot, acts of concerted indiscipline, public disorder and/or civil commotion, provided that the Contractor: (i) has complied in all material respects with all procedures and protocols relating to safety and security at the Prison and incidents of riot during a reasonable period before, during and after the incident of riot, act of concerted indiscipline, public disorder and/or civil commotion; and (ii) has not, and a Sub-Contractor has not, by its acts or omissions caused or contributed to such riot, acts of concerted indiscipline, public disorder and/or civil commotion: (aa) unless such acts or omissions are



in accordance with the provision
of the Custodial Service in
accordance with this Contract; or

- (bb) except to the extent that the Contractor is acting on the written instruction of the Authority;
- (c) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;
- (d) any accidental loss or damage to the Site or any roads servicing it;
- (e) any failure or shortage of power, fuel or transport;
- (f) any blockade or embargo which does not constitute a Force Majeure Event;
- (g) any:
 - (i) official or unofficial strike;
 - (ii) lockout;
 - (iii) go-slow; or
 - (iv) other dispute,generally affecting the custodial service industry (which for the avoidance of doubt shall include contracted-out prisons) and/or the facilities management industry or a significant sector of any of them;
- (h) in accordance with **clauses 8.2.2B.2 (Site Matters), 8.2.3.1 (Site Matters), 8.2.3.2 (Site Matters) or 8.2.4.1 (Site Matters)**, any matter referred to as such in those clauses;

unless any of the events listed in paragraphs (a) to (h) of this definition (inclusive) arises (directly or indirectly) as a result of any wilful default or wilful act of the Contractor or any Contractor

Related Party;

"Remand Prisoner" means any person who has been:

- (a) remanded in custody by a court pending a further court appearance; or
- (b) found guilty by a court, but has been remanded in custody pending sentencing;

"Repair Cost" means the cost of any repair or replacement needed to ensure that following any incident of damage the Prison is returned to the standard required in accordance with this Contract;

"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);

"Required Action" has the meaning given to it in **clause 64.3.1 (Action by Authority)**;

"Required Condition Standard" has the meaning given to it in **clause 58.1 (Final Survey)**;

"Required Insurance" means any of the insurances set out in **Schedule 7 (Required Insurances)**;

"Restructuring Costs" means:

- (a) the consultation costs;
- (b) the notice period and/or Payment In Lieu Of Notice (PILON) costs; and
- (c) the contractual redundancy costs in respect of Authority Transferring Employees and / or statutory redundancy costs in respect of other employees,

arising out of the implementation in the first Contract Year by the Contractor of its Mobilisation and Transition Plan and Transformation Plan, which are expressly itemised and identified under the heading of 'Total Transition Redundancy Costs' in the Base Case;

"Retention Fund Account"	has the meaning given to it in clause 58.5 (Retention Fund) ;
"Review Procedure"	means the procedure set out in Schedule 9 (Review Procedure) ;
"Riot"	shall be construed in accordance with sections 1 and 10 (Part 1) of the Public Order Act 1986 and as amended;
"RPIx"	means the index published in Table RP05 (RPI all items excluding mortgage interest payments) reference CHMK published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;
"RRAPP Band Activation Notice"	has the meaning given to it in Schedule 5 (Payment Mechanism) ;
"RRAPP Band Deactivation Notice"	has the meaning given to it in Schedule 5 (Payment Mechanism) ;
"Section 88"	means section 88 of the Criminal Justice Act 1991 (as amended by section 101 of the Criminal Justice and Public Order Act 1994);
"Senior Employee"	has the meaning given to it in clause 41.15.3 (Contractor's Key Staff and Senior Managers) ;
"Service Delivery Documents"	means: (a) the Mobilisation and Transition Plan; (b) the Transformation Plan; (c) the Asset Refresh Plan; (d) Asset Forward Maintenance Plan; (e) Asset Forward Replacement Plan; and

(f) the Annual Custodial Service Delivery Plan;

"Services Commencement Date"	means, subject to the provisions of this Contract, the date on which the Contractor commences provision of the Custodial Service in accordance with the terms of this Contract, which shall be 1 December 2013 or such other date as is agreed by the Parties in writing;
"Services Media"	means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus;
"SFA"	means the Skills Funding Agency or any successor body or bodies carrying out its functions;
"Single Prison Cell"	means a Prison Cell designed for single occupancy with a floor area in excess of six point eight square metres (6.8m ²) or, if a shower area is to be incorporated within the Prison Cell, a floor area in excess of eight point five square metres (8.5m ²), such areas to include a toilet compartment or suitable modesty screening around a toilet;
"Site"	means the area edged red on the Site Plans together with the Buildings and the Services Media for all utilities and services serving the Buildings;
"Site Facilities Manager"	means the site facilities manager appointed pursuant to clause 8.9 (Site Facilities Manager) ;
"Site Plans"	means the plans of the Site set out in Schedule 18 (Site Plans) ;
"Specific Change in Law"	means any Change in Law which specifically refers to the provision of services the same as or similar to the Custodial Service;

**"Statutory
Certificates"**

means, in respect of the Prison:

- (a) asbestos register / management plan;
- (b) COSHH register indexes;
- (c) registers relating to portable appliance testing (PAT);
- (d) automatic heat and smoke detector test records;
- (e) air hygiene risk assessment / LEV report records;
- (f) fire alarm system test records;
- (g) emergency generator test log;
- (h) emergency lighting test records;
- (i) fire extinguisher inspection sheets;
- (j) fixed wiring test records;
- (k) gas system service / test records;
- (l) insurance inspections;
- (m) legionella testing records (L8);
- (n) water hygiene risk assessments;
- (o) water hygiene test reports;
- (p) lift maintenance and test results;
- (q) lighting protection system and earthing test results;
- (r) pressure vessel inspection records; and
- (s) smoke ventilation and sprinkler test records,

insofar as the Authority is required by law to ensure that such certificates are current and valid;

"Step-Out Date"

has the meaning given to it in **clause 64.7.1 (Step-Out)**;

"Step-Out Notice"

has the meaning given to it in **clause 64.7.1 (Step-Out)**;

"Sub-Contract"	means a contract between the Contractor and a Sub-Contractor (or between a Sub-Contractor and its Sub-Contractor);
"Sub-Contractor"	means any person engaged by the Contractor or any Sub-Contractor from time to time to procure the provision of the Custodial Services or deliver any other aspect of the Contractor's obligations under this Contract. References to Sub-Contractors means sub-contractors of any tier of the Contractor;
"Subject Access Request"	means a request by a Prisoner, the Contractor or the Authority for a copy of his or her Personal Data;
"Subsidiary"	shall have the meaning given to it in section 1159 of the Companies Act 2006 and, for the purposes only of the membership requirement in subsections 1159(1)(b) and (c), a company (the "first company") shall be treated as a member of another company (the "second company") if the shares in the second company are registered in the name of (a) another person (or its nominee), where the shares are held by such other person (or its nominee) by way of security or in connection with the taking of security from the first company, or (b) a nominee for the first company;
"Suitable Third Party"	means any person other than the Authority or the Contractor who is not an Unsuitable Third Party;
"Supplemental Lease"	means a Lease named as such relating to an individual Site;
"Supplier"	has the meaning given to it in clause 45.1.2 (Value Added Tax) ;
"Suspended Member of Staff"	has the meaning given to it in clause 41.8.1 (Suspension of Staff) ;
"Sustainability Reporting Requirements"	means the completion and delivery of reports by the Contractor which shall be substantially in the form set out in Schedule 13 (GGC Reporting and FReM) , containing all sustainability data to be measured and collected by the Contractor and including information as required by the Authority for the Sustainability Reporting Return;
"Sustainability Reporting Return"	means the sustainability information required to be delivered by the Authority by any Relevant Authority;
"Tax"	means any kind of tax, duty, levy or other charge (other than VAT)



	whether or not similar to any in force at the date of this Contract and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;
"Technical Standards"	means the technical standards in the 4Projects System, as may be amended or updated from time to time;
"Termination Date"	means the date of early termination of this Contract in accordance with Part X (Expiry and Termination) of this Contract;
"Termination Notice"	means a notice of termination issued in accordance with this Contract;
"Termination Sum"	means any compensation payable by either Party to the other Party on an early termination of this Contract under Part X (Expiry and Termination) of this Contract;
"Tested Custodial Service"	means all of the Custodial Service excluding the Building maintenance services provided by the Contractor in order to comply with its obligations under clause 25 (Maintenance of the Prison) ;
"Third Party Claim"	has the meaning given to it in clause 70.4 (Notification of Claims) ;
"Title Matters"	means the matters referred to as "Title Matters" in the Leases;
"Transformation Plan"	means the Controlled Document with this title produced by the Contractor specifying how the Contractor will take over and transform the provision of the Custodial Service and how the Custodial Service will be delivered during the period from the Services Commencement Date to the date on which the transformation process is scheduled to be completed and "steady state" achieved, as stated in the said plan, the version agreed as at the Commencement Date being attached at Appendix B to Schedule 24 (Mobilisation and Transition Plan and Transformation Plan) ;
"Transferring Employees"	has the meaning given to it in Schedule 17 (TUPE, Employees and Pensions) ;
"TPL Risk"	means a risk which is required to be insured under the third party liability insurance policy;
"TUPE"	means the Transfer of Undertakings (Protection of Employment)

Regulations 2006 (SI No 246) as amended from time to time;

"Unavailability Deduction" means any amount not paid to the Contractor as a result of any Prisoner Place not being an Available Prisoner Place;

"Unavailable" has the meaning given to it in **Schedule 5 (Payment Mechanism)**;

"Uninsurable" means, in relation to a risk, either that:

- (a) insurance is not available to the Contractor in respect of the Contract in the worldwide insurance market with reputable insurers of good standing in respect of that risk; or
- (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the worldwide insurance market with reputable insurers of good standing by contractors in the United Kingdom;

"Uninsured Losses" has the meaning given to it in **clause 70.7.2 (Limitation of Liability)**;

"Unsuitable Third Party" means any person:

- (a) whose activities do or could, in the reasonable opinion of the Authority, pose a threat to national security, provided that the Authority's opinion shall be deemed to be reasonable if personally confirmed to the Contractor by a director of NOMS (or equivalent grade) or above;
- (b) whose activities are, in the reasonable opinion of the Authority, incompatible with any operations or activities carried out by the Authority for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions; and/or
- (c) who is, in the reasonable opinion of the Authority, inappropriate because the Authority has received specific information from the Crown, the Serious Fraud Office or the Crown Prosecution Service about the unsuitability of the proposed new third party to act in relation to the Contract;

"Value Testing" means an exercise carried out pursuant to **clause 34.4 (Value**

Exercise"	Testing Option);
"Value Testing Service"	has the meaning given to it in clause 34.4.1 (Value Testing Option);
"Vetting and Barring Scheme"	means the scheme set up under the provisions of the Safeguarding Vulnerable Groups Act 2006;
"VAT"	means any value added taxes;
"Working Prison Contractor Delivery Indicator"	means Contract Delivery Indicator twelve (12) relating to the Actual Prisoner Work Hours Percentage;
"Working Prison Deduction"	means the amount calculated in accordance with paragraph 2.14 (Adjustment for Working Prison Deduction) of Schedule 5 (Payment Mechanism);
"Year"	means calendar year unless otherwise specified; and
"YOI Rules"	means the Young Offender Institution Rules 2000, as amended.

1.2 Interpretation

In this Contract, except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference in this Contract to any clause, sub-clause, paragraph or Schedule is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph or schedule of this Contract;
- 1.2.4 save where otherwise provided in this Contract, any reference to this Contract or to any other Document shall include any permitted variation, amendment, or supplement to such Document;
- 1.2.5 any reference to any enactment, order, regulation, code or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.6 any references to Documents being "in the agreed form" means such Documents have been initialled by or on behalf of each of the Parties for the purpose of identification;

- 1.2.7 any reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.8 headings are for convenience of reference only;
- 1.2.9 words preceding "include", "including" and "included" shall be construed without limitation by the words which follow those words;
- 1.2.10 any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and
- 1.2.11 subject to any express provisions of this Contract to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense.

1.3 Schedules

The Schedules to this Contract form part of this Contract.

1.4 Indexation

In this Contract, except where otherwise provided, references to amounts expressed to be "Indexed" are references to such amounts at Indexation Base Month prices multiplied by:

$$\frac{R_1}{R_2}$$

where R_1 is the value of RPIx most recently published prior to the relevant calculation date, and R_2 is the value of RPIx for the Indexation Base Month.

1.5 Precedence of Documentation

- 1.5.1 If there is any inconsistency between the provisions of the body of this Contract and the Schedules, the body of this Contract shall take precedence.
- 1.5.2 In the event of any inconsistency between **Schedule 1 (Authority's Requirements)** and **Schedule 2 (Contractor's Proposals)** or any documents produced in accordance with the provisions of this Contract (including the Initial Service Delivery Documents and the Service Delivery Documents), **Schedule 1 (Authority's Requirements)** shall take precedence.
- 1.5.3 In the event of any inconsistency between **Schedule 12 (Authority Policies)** and the other Schedules or any documents produced in accordance with the provisions of this Contract (including the Initial Service Delivery Documents and the Service Delivery Documents), **Schedule 12 (Authority Policies)** shall take precedence,

save that where there is any conflict or inconsistency between **Schedule 1 Part 1 ((Authority's Requirements) (Custodial Service Specification))** and **Schedule 12 (Authority Policies)**, if the relevant part of **Schedule 1 Part 1 ((Authority's Requirements) (Custodial Service Specification))** is listed as approved in **Schedule 27 (Approved Specifications)**, such part of **Schedule 1 Part 1 ((Authority's Requirements) (Custodial Service Specification))** shall take precedence.

- 1.5.4 The Authority may notify the Contractor of changes to the 'approved' status of any part of **Schedule 1 Part 1 (Authority's Requirements) (Custodial Service Specification)** as set out in **Schedule 27 (Approved Specifications)** from time to time in accordance with **clause 84 (Notices)**. Such notifications shall not constitute a Change pursuant to **clause 61 (Change to Custodial Service)**.
- 1.5.5 Any derogations from the Authority Policies which the Authority has approved in accordance with the provisions of **Schedule 8 (Change Protocol)** shall take precedence over the Authority Policies. For the avoidance of doubt, any request for such a derogation by the Contractor shall constitute a Contractor Change.
- 1.5.6 In the event of any inconsistency between **Schedule 2 (Contractor's Proposals)** and the Initial Service Delivery Documents or the Service Delivery Documents, **Schedule 2 (Contractor's Proposals)** shall take precedence.
- 1.5.7 In the event of any inconsistency between the provisions of this Contract (excluding the Controlled Documents) and any Controlled Document, the provisions of this Contract (excluding the Controlled Documents) shall take precedence.

1.6 **Responsibility for Related Parties**

Subject to the provisions of this Contract, the Contractor shall be responsible for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the Authority shall be responsible for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority. The Contractor shall be responsible for the selection of and pricing by any Contractor Related Party.

1.7 **Approval**

None of the following:

- 1.7.1 the giving of any approval or consent;
- 1.7.2 the examination, acknowledgement and/or knowledge of the provisions of any agreement or document; or

1.7.3 the review of any document or course of action, or the failure to do so,

by or on behalf of the Authority shall, unless otherwise expressly stated in this Contract, relieve the Contractor of any of its obligations under the Project Documents or the Contract or of any duty which it may have pursuant to this Contract to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.8 Succession

References to a public organisation (other than the Authority) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Authority) shall include their successors and assignees.

1.9 Condition Precedent

1.9.1 No Party shall be bound by its obligations and duties under this Contract other than those under **clauses 65 (Information and Confidentiality), 66 (Public Relations and Publicity), 67 (Advertisements), 74 (Dispute Resolution), 84 (Notices) and 87 (Governing Law and Jurisdiction)**, until the following (the "**Condition Precedent**") has occurred:

1.9.1.1 the Contractor has procured the execution of the Parent Company Guarantee in accordance with **clause 3.1 (Parent Company Guarantee)**.

1.9.2 If the Condition Precedent has not been satisfied before the date which falls two (2) Business Days following the Commencement Date (the "**Longstop Date**") then either:

1.9.2.1 this Contract shall terminate on the Longstop Date; or

1.9.2.2 the Parties may waive the Condition Precedent in accordance with **clause 1.9.3**.

1.9.3 If all of the Parties serve written notice on each other stating that the Condition Precedent is waived absolutely (which notice must include a reference to this clause and be signed by the managing director of the Party giving notice) then the Condition Precedent shall be waived with effect from the date of service of the last of such notices and (without prejudice to **clause 1.9.1**) the date on and from which the Parties shall be bound by their respective obligations and duties under this Contract shall be the next day following the date of service of the last of such

notices.

1.10 Contract Objectives

1.10.1 The Parties intend to conduct their relationship and operate this Contract in a manner consistent with an approach that will, for each Prison, deliver:

- o custodial services and prisoner places that provide value for money to the Authority for the full period of contract;
- o a flexible service that will deliver the Authority's Requirements for offender management, property and facilities management over the period of the Contract and respond to evolving regional and national priorities;
- o programmes to reduce re-offending, including working with the local community and with the third sector, private and statutory organisations to reduce re-offending and increase public confidence in the criminal justice system;
- o an operational service which focuses on the NOMS priorities of Offender Management and protecting the public and includes all aspects of prison life, from initial reception and induction, through to the time of transfer or release, and which will guarantee security and discipline, the provision of a safe and decent environment and care for prisoners including working to prevent suicide and self-harm;
- o managed interfaces with healthcare and education providers to facilitate their delivery;
- o a flexible approach and responsiveness to a potential change of function; and
- o optimum and appropriate risk transfer to the successful Bidder from the Authority, whilst still offering good value for money,

(the "**Contract Objectives**").

1.10.2 The provisions of this **clause 1.10 (Contract Objectives)** reflect the intent of the Parties and (without prejudice to the provisions of **clause 1.5 (Precedence of Documentation)**) shall be used as a guide to the interpretation of the other provisions of this Contract in the event of any conflict or inconsistency therein.

- 1.10.3 Subject to **clauses 1.10.1 and 1.10.2**, the Contract Objectives shall not be legally binding on the Authority or the Contractor and shall not constitute contractual obligations.

2. DURATION OF CONTRACT

- 2.1 This Contract and the rights and obligations of the Parties shall take effect on the date of this Contract and (subject to **clause 2.2 (Duration of Contract)** and the other provisions for early termination set out in this Contract) shall continue until the Expiry Date.
- 2.2 Not less than six (6) Months prior to the Early Termination Date, the Authority may serve a written notice upon the Contractor the effect of which shall be to terminate the Contract on the Early Termination Date.
- 2.3 Where the Contract is terminated pursuant to **clause 2.2 (Duration of Contract)**, the Authority shall pay the Contractor an amount equal to the Contractor's Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition and Transformation Costs if and to the extent that:
- 2.3.1 all relevant Capital Works have been carried out and completed at the Early Termination Date, and
- 2.3.2 such Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition and Transformation Costs have not been recovered through the Monthly Payments as at the Early Termination Date.
- 2.4 On termination pursuant to **clause 2.2**, the Contractor shall, if so required by the Authority, transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 28 (Exit Management)**.

3. PARENT COMPANY GUARANTEE

- 3.1 The Contractor shall procure the execution on the date of this Contract of a Parent Company Guarantee in favour of the Authority in the form set out in **Schedule 20 (Parent Company Guarantee)** to secure the due performance by the Contractor of its obligations to the Authority.
- 3.2 The Contractor shall notify the Authority forthwith in writing if at any time the Guarantor ceases to be its ultimate Holding Company. In such circumstances, the Contractor shall, within thirty (30) Days of a request by the Authority, procure that a replacement Parent Company Guarantee in the form set out in **Schedule 20 (Parent Company Guarantee)** is executed by the Contractor's new ultimate Holding Company together with, where the new Holding Company is incorporated outside of the United Kingdom, a legal opinion as to the enforceability of the Parent Company Guarantee in a form acceptable to the Authority from

an independent legal adviser qualified to practise in the jurisdiction in which such Holding Company is established and has its own office.

3.3 If the Authority makes a demand under the Parent Company Guarantee such that the Guarantor requires access to the Prison and/or Site in order to comply with the Parent Company Guarantee, the Contractor shall grant a licence to the Guarantor in accordance with the terms set out in paragraph 6 of the Parent Company Guarantee.

3.4 Any dispute under this **clause 3 (Parent Company Guarantee)** may be referred by either Party for determination under **clause 74 (Dispute Resolution)**.

4. DOCUMENTS AND CO-OPERATION

4.1 Delivery of Initial and Changed Project Documents

4.1.1 The Contractor has provided to the Authority copies of the Project Documents listed in Part 2 of **Schedule 11 (Project Documents)**.

4.1.2 Without prejudice to the provisions of **clause 4.2 (Changes to Project Documents)**, if at any time an amendment is made to any Project Document or the Contractor enters into a new Project Document (or any agreement which affects the interpretation or application of any Project Document), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days after the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.

4.2 Changes to Project Documents

The Contractor shall perform its obligations under, and observe all of the provisions of, the Project Documents and shall not:

4.2.1 terminate or agree to the termination of all or part of any Project Document;

4.2.2 make or agree to any material variation of any Project Document;

4.2.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Project Document; or

4.2.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document,

unless the proposed course of action (and any relevant Document) has been submitted to the Authority for review under the Review Procedure and there has been no objection under the Review Procedure within twenty (20) Business Days after receipt by the Authority of the submission of the proposed course of action (and any relevant Document), or such shorter period as may be agreed by the Parties, and, in the circumstances specified in **clause 4.2.1 (Changes to Project Documents)**, the Contractor has complied with **clauses 76 (Sub-Contracting and Assignment)**.

4.3 Authority Obligations

The Authority undertakes to the Contractor that it shall not and no Authority Related Party shall wilfully or negligently impede the Contractor in the performance of its obligations under this Contract (having regard always to the interactive nature of the activities of the Authority, the Authority Related Parties and of the Contractor and to the use of the Prison to provide the Custodial Service and any other operations or activities carried out by the Authority or any Authority Related Party on or at the Site for the purposes contemplated by this Contract or any other of the Authority's, the SFA's and/or the CCG's statutory duties or functions).

4.4 Co-operation

Without prejudice to each Party's own obligations to comply with the Contract, and subject to other co-operation clauses in this Contract, each Party agrees to co-operate at its own expense (but without being compelled to incur material expenditure) with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other's obligations under this Contract.

5. GENERAL WARRANTIES AND INDEMNITIES

5.1 Contractor Warranties

The Contractor warrants and represents to the Authority that on the date of this Contract:

- 5.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 5.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Contract and the Project Documents;
- 5.1.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Contract and the Project Documents has been taken or, in the case of any Project Document executed after the date of this Contract, will be taken before such execution;

- 5.1.4 the obligations expressed to be assumed by the Contractor under the Contract or the Project Documents are, or in the case of any Project Document or any amendment to the Contract executed after the date of this Contract will be, legal, valid, binding and enforceable to the extent permitted by law;
- 5.1.5 each of the Project Documents is or, when executed, will:
 - 5.1.5.1 be in full force and effect;
 - 5.1.5.2 be in the proper form for enforcement in England;
 - 5.1.5.3 constitute or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties to them, provided that the Contractor does not give the warranty set out in this **clause 5.1.5.3 (Contractor Warranties)** in respect of the obligations of the Authority;
- 5.1.6 the execution, delivery and performance by it of the obligations in the Contract or the Project Documents does not contravene any provision of:
 - 5.1.6.1 any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
 - 5.1.6.2 the Memorandum and Articles of Association of the Contractor;
 - 5.1.6.3 any order or decree of any court or arbitrator which is binding on the Contractor; or
 - 5.1.6.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.1.7 not used;
- 5.1.8 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
- 5.1.9 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
- 5.1.10 no proceedings or other steps have been taken and not discharged (nor, to the best

of the knowledge of the Contractor, threatened) for its winding up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and

- 5.1.11 the copies of the Project Documents which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents,

and the Authority relies upon such warranties and representations.

5.2 Contractor Undertakings

The Contractor undertakes with the Authority that for so long as this Contract remains in full force:

- 5.2.1 it shall:

5.2.1.1 upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority ("**Legal Proceedings**") may be threatened or pending and immediately after the commencement of such Legal Proceedings; or

5.2.1.2 in respect of Legal Proceedings which are against a Sub-Contractor, within twenty (20) Business Days after becoming aware that such Legal Proceedings may be threatened or pending or within twenty (20) Business Days after the commencement of such Legal Proceedings,

give the Authority notice of such Legal Proceedings which would adversely affect, to an extent which is material in the context of the Custodial Service, the Contractor's ability to perform its obligations under this Contract and/or the Project Documents;

- 5.2.2 it shall not, without the prior written consent of the Authority, (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Contractor to perform its obligations under this Contract or the Project Documents;

5.2.3 it shall not cease to be resident in the United Kingdom or transfer in whole or in part its undertaking, business or trade outside the United Kingdom;

5.2.4 it shall not undertake the performance of its obligations under this Contract for the provision of the Custodial Service otherwise than through itself or a Sub-Contractor.

5.3 Status of Warranties

All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Contractor in this Contract are cumulative and none shall be given a limited construction by reference to any other.

6. AUTHORITY WARRANTIES

6.1 No Warranty by Authority

Subject to **clause 6.3 (Fraudulent Statements)**, the Authority does not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Disclosed Data.

6.2 No Liability to Contractor

Subject to **clause 6.3 (Fraudulent Statements)**, neither the Authority nor an Authority Related Party shall be liable to the Contractor in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

6.2.1 any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Disclosed Data; or

6.2.2 any failure to make available to the Contractor any materials, documents, drawings, plans or other information relating to the Contract.

6.3 Fraudulent Statements

Nothing in this **clause 6 (Authority Warranties)** shall exclude any liability which the Authority or an Authority Related Party would otherwise have to the Contractor in respect of any statements made fraudulently before the date of this Contract.

6.4 Rights and Remedies

The provisions of this **clause 6 (Authority Warranties)** are without prejudice to the Contractor's express rights and remedies under or pursuant to this Contract.

6.5 Contractor's Due Diligence

The Contractor shall be deemed to have:

- 6.5.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract; and
- 6.5.2 gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it, including the quality of existing structures.

6.6 No Relief

Subject to **clause 6.3 (Fraudulent Statements)**, the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

PART II - NATURE OF LAND INTEREST**7. NATURE OF LAND INTEREST****7.1 Occupation prior to Grant of Leases**

On and from the Commencement Date the Contractor shall be entitled to occupy the Site for the purpose only of implementing the Mobilisation and Transition Plan. The right of the Contractor to enter and remain upon the Site shall be as licensee only and:

- 7.1.1 the Contractor shall comply with the covenants on its part contained in the Leases so far as they are capable of applying to entry under licence; and
- 7.1.2 the Authority shall have the same obligations to the Contractor and have the same rights and remedies in respect of any breach by the Contractor of its covenants contained in the Leases as if the Authority had granted the Leases on the Commencement Date; and
- 7.1.3 this **clause 7.1 (Occupation prior to Grant of Leases)** shall not be deemed to operate as a demise of the Site or give the Contractor any greater right in the Site than that of a licensee for the purposes only of implementing the Mobilisation and Transition Plan.

7.2 Grant of Leases

- 7.2.1 On the Services Commencement Date, the Authority shall grant to the Contractor, and the Contractor shall accept, the Leases in accordance (including as to timing) with this **clause 7 (Nature of Land Interest)**.
- 7.2.2 The term of the Leases shall commence on the Services Commencement Date.
- 7.2.3 Part 1 of the Commercial Conditions form part of this Contract so far as they are applicable to the letting of the Site and are consistent with the provisions of this Contract. Part 2 of the Commercial Conditions do not form part of this Contract.
- 7.2.4 Subject to **clause 7.2.6 (Grant of Leases)** the Authority has deduced title to the Site to the Contractor in accordance with Commercial Condition 6.1 and (except as referred to in **clause 7.2.6 (Grant of Leases)**) the Contractor is not entitled to raise any requisition or objection to the title.
- 7.2.5 The Site is let subject to and, to the extent that the Authority is able to grant them, with the benefit of the Title Matters.
- 7.2.6 The Contractor is to be treated as accepting the grant of the Leases with full

knowledge of the Title Matters and the matters referred to in **clause 7.3 (General Matters)** and will not raise any requisition or objection to them except in relation to any new title entries that have been registered after the date and time of the official copy entries referred to in schedule 3 of the Leases and prior to the date of completion of the Leases and which are revealed by the Contractor's Land Registry search carried out immediately prior to completion of the Leases.

7.3 General Matters

In addition to the provisions of **clause 7.2.5 (Grant of Leases)**, the Site is let subject to:

- 7.3.1 the matters contained or referred to in Commercial Condition 3.1.2;
- 7.3.2 any registered local land charges and any matter capable of being registered as a local land charge even if not so registered at the Commencement Date;
- 7.3.3 any notice, order or proposal given or made by any Relevant Authority, statutory undertaker or other competent body or person;
- 7.3.4 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Site and to any orders or regulations made under that or any other legislation;
- 7.3.5 all rates, charges and other outgoings which affect or are charged on the Site;
- 7.3.6 any unregistered interest that overrides the disposition effected pursuant to this Contract under Schedules 1, 3 or 12 of the Land Registration Act 2002;
- 7.3.7 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Site; and
- 7.3.8 all matters which either are revealed or would reasonably be expected to be revealed by inspection or by the searches and enquiries usually made by a prudent purchaser.

7.4 Exclusion of Security

The Contractor confirms that before it became contractually bound to enter into the tenancy created by the Leases pursuant to this Contract:

- 7.4.1 the Authority served on the Contractor a notice dated
in relation to the tenancy created by the Leases (the "**Lease Notice**") in a form complying with the requirements of Schedule 1 to the Regulatory Reform

(Business Tenancies) (England and Wales) Order 2003 (the "**Order**");

7.4.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Lease Notice made a statutory declaration (the "**Lease Declaration**") dated in a form complying with the requirements of Schedule 2 of the Order;

7.4.3 where the Lease Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Lease Declaration on the Contractor's behalf; and

7.4.4 the Authority and Contractor agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Leases.

7.5 Delivery of Engrossments

Within ten (10) Business Days before the Services Commencement Date, the Authority's Representative shall deliver an engrossment of the counterpart Leases to the Contractor. The Contractor shall execute and deliver the counterpart Leases as a deed to the Authority's Representative within a further five (5) Business Days after receipt. The Authority shall execute the original Leases as a deed and send the original Leases to the Contractor following completion of the Leases.

7.6 Registration

The Contractor shall apply for, and use reasonable endeavours to procure, registration of the Leases at the Land Registry as soon as reasonably practicable after the Leases are completed. The Authority shall use all reasonable endeavours to assist the Contractor in responding to any proper requisitions raised by the Land Registry of such documents that are in the Authority's possession relating to the freehold reversion as the Land Registry may request.

7.7 Provision of Copies

The Contractor shall provide to the Authority two (2) copies of the Leases upon request.

7.8 No Compensation

The Contractor shall not be entitled to any compensation in respect of any variation of the terms of the Leases or the unexpired part of its interest as tenant on determination of the Leases in accordance with this **clause 7 (Nature of Land Interest)**.

7.9 Compliance with the Title Matters

The Contractor shall procure that:

- 7.9.1 the provision of the Custodial Service by or on behalf of the Contractor shall be carried out in a manner that complies with and does not result in any breach of the Title Matters; and
- 7.9.2 in providing the Custodial Service, there shall be no action or omission to act by the Contractor or any Contractor Related Party, which shall give rise to a right for any person to obtain title to or any right or interest over the Site or any part of it (except in accordance with the provisions of this Contract).

7.10 Compliance with Leases

Each Party shall comply with its respective obligations under the Leases.

8. THE SITE

8.1 Access

If, at any time, the Contractor requires access to the Site or any interest in any land which does not form part of the Site or any additional rights beyond those which the Contractor has in relation to any part of the Site, the responsibility and cost of securing or acquiring such access or interest shall be entirely the responsibility of the Contractor and the Authority will provide reasonable assistance to the Contractor in this regard.

8.2 Site Matters

- 8.2.1 Subject to the other provisions of this Contract, the condition of the Buildings and maintenance requirements in respect of the Site shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract), the Contractor shall be deemed to have:
 - 8.2.1.1 inspected and examined the Buildings and the standard of maintenance of the Site;
 - 8.2.1.2 satisfied itself as to the nature of the Site and the risk of injury or damage to property at the Site;
 - 8.2.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Site);
 - 8.2.1.4 satisfied itself as to the possibility of interference by persons of any

description whatsoever (other than the Authority), with access to or use of, or rights in respect of the Site, with particular regard to the owners of any land adjacent to the Site; and

8.2.1.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference whether public or private, being caused to any third parties.

8.2.2 The Contractor accepts full responsibility for all matters referred to in this **clause 8.2 (Site Matters)** and the Contractor shall:

8.2.2.1 subject to **clause 6.3 (Fraudulent Statements)** and **clause 8.2.2A** and **8.2.4 (Site Matters)**, not be entitled to make any claim against the Authority of any nature whatsoever on any grounds including the fact that incorrect or insufficient information on any matter relating to the Buildings, the standard of maintenance of the Site, the presence of Contamination in or under the Site as at the Services Commencement Date was given to it by any person; and

8.2.2.2 subject to **clause 8.2.4 (Site Matters)** and **clause 8.7 (Asbestos)**, be responsible for, and hold the Authority harmless from, cleaning up or otherwise dealing with Contractor Contamination at the Site in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.2.2A Subject to **clause 8.2.2B (Site Matters)**, the Authority shall be responsible for and hold the Contractor harmless from cleaning up or otherwise dealing with Authority Contamination and the Authority shall have the right to access the Properties to carry out such surveys, investigations, works and/or monitoring as is required in order to comply with this **clause 8 (Site Matters)**. The Authority shall be responsible for any action required in order to comply with any applicable Legislation or any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor) in so far as it relates to such Authority Contamination.

8.2.2B Where the Authority is responsible for Authority Contamination then the following provisions shall apply:

8.2.2B.1 where any Authority Contamination is identified on or before the Services Commencement Date it shall be deemed to be a Compensation Event and any

work which is required or instructed to be done in consequence of it shall, without double counting, be deemed to be an Authority Change;

8.2.2B.2 where any Authority Contamination is identified after the Services Commencement Date it shall be deemed to be a Relief Event and no Deductions may be made which would otherwise arise as a result of such matter arising and any work or changes to the works or Custodial Service required or instructed to be done in consequence of it shall be deemed to be an Authority Change; and

8.2.2B.3 the Authority shall indemnify and keep indemnified in full the Contractor in respect of all Direct Losses incurred by the Contractor arising from such Authority Contamination and the Contractor shall in carrying out any works referred to in **clauses 8.2.2B.1 (Site Matters) and 8.2.2B.2 (Site Matters)** do so in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.2.3 To the extent that any part or parts of the Site suffer from or are affected by Contractor Contamination which arises from a source off Site (whether or not on adjacent land) except where the source is on land owned by the Authority where **clause 8.2.4 (Site Matters)** shall apply, the Contractor shall be responsible for cleaning up or otherwise dealing with such Contractor Contamination and for preventing the recurrence of such Contractor Contamination on the Site and the following provisions shall apply:

8.2.3.1 where any such matter arises on or before the Services Commencement Date, it shall be deemed to be a Relief Event for a reasonable period (to be agreed between the Parties acting reasonably) for the purposes of this Contract;

8.2.3.2 where any such matter arises after the Services Commencement Date it shall be deemed to be a Relief Event and no Deductions may be made which would otherwise arise as a result of such matter arising for a reasonable period (to be agreed between the Parties acting reasonably) but any work or change to the Custodial Service required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute an Authority Change;

8.2.3.3 on or after the Services Commencement Date, the Contractor shall:

(a) clean up, or otherwise deal with such Contractor Contamination,

and take steps reasonably necessary to prevent the recurrence of the same, all in accordance with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor); and

- (b) except where **clause 8.2.3.4 (Site Matters)** applies, indemnify and keep indemnified the Authority, its employees, agents and contractors against Direct Losses incurred by the Authority, its employees, agents and contractors arising from such Contractor Contamination;

8.2.3.4 the Authority shall, but only to the extent that the Contractor is able to demonstrate to the Authority that it does not have the right to take action against third parties in its own name to recover the Direct Losses suffered or incurred by the Contractor in cleaning up or otherwise dealing with such Contractor Contamination, at the Authority's option either take such action against third parties in its own name as the Contractor may (acting reasonably) direct or permit the Contractor to take such action in the name of the Authority at the Contractor's own expense in which case:

- (a) the Authority shall assist and co-operate with the Contractor in respect of such action and shall not, unless the Contractor has failed to resolve such action within a reasonable period, take any action to settle or prosecute such action;
- (b) the Contractor shall give reasonable security to the Authority for any cost or liability arising out of the conduct of such action by the Contractor;
- (c) the Contractor shall not settle such actions without the prior written approval of the Authority; and
- (d) the Contractor shall indemnify and keep indemnified in full the Authority in respect of all costs properly and reasonably incurred by the Authority in respect of such action; and

8.2.3.5 where the Authority takes action under **clause 8.2.3.4 (Site Matters)** (or where it is otherwise obliged to take action against third parties in respect of such Direct Losses), the Authority shall be liable to the Contractor for all Direct Losses suffered or incurred by the Contractor as a result of its obligations under this **clause 8.2.3**

(Site Matters), provided that the Contractor's entitlement in respect of any matter to which this **clause 8.2.3.5 (Site Matters)** applies shall be limited to the amount recovered by or in the name of the Authority from the relevant third party in respect of the Direct Losses referred to in **clause 8.2.3.4 (Site Matters)**.

8.2.4 To the extent that any part or parts of the Site suffer from or are affected by Contractor Contamination arising from a source off Site (whether or not on adjacent land) which is on land owned by the Authority, the Contractor shall be responsible for cleaning up or otherwise dealing with such Contractor Contamination and for preventing the recurrence of such Contractor Contamination on the Site; and

8.2.4.1 where any such matter arises it shall be a Relief Event and no Deductions may be made which would otherwise arise as a result of such matter arising and the Authority shall, without double counting, instruct any changes to the Custodial Service required in consequence of it as a Change in accordance with **Schedule 8 (Change Protocol)**; and

8.2.4.2 the Authority shall further hold the Contractor harmless from cleaning up or otherwise dealing with such Contractor Contamination and shall indemnify and keep indemnified in full the Contractor in respect of all Direct Losses incurred by the Contractor arising from such Contractor Contamination,

and the Contractor shall in carrying out any changes ensure that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.3 Consents

8.3.1 Subject to **clause 8.3.2 (Consents)**, the Contractor shall:

8.3.1.1 obtain and maintain all Consents which may be required for the performance of the Custodial Service;

8.3.1.2 use all reasonable endeavours to assist the Authority to obtain all Consents that, as a matter of law, the Contractor is not eligible to obtain;

- 8.3.1.3 be responsible for implementing each Consent (which it is required to obtain pursuant to this **clause 8.3 (Consents)**) within the period of its validity in accordance with its terms;
- 8.3.1.4 promptly supply, free of charge, to the Authority's Representative a copy of any application for a Consent (with two (2) copies of all accompanying drawings and other documents) and a copy of any Consent or other response obtained;
- 8.3.1.5 comply with the conditions attached to any Consents and procure that no such Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Custodial Service;
- 8.3.1.6 not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not), without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before, on or after the date of this Contract) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this **clause 8.3 (Consents)**, references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.

8.3.2 The Authority shall use its reasonable endeavours to assist the Contractor to obtain Consents required for the performance of the Contract where the Contractor would otherwise be unable to obtain such Consents.

8.4 No Warranty

Except as otherwise expressly provided in this Contract, the Contractor shall take the Site in its state and condition in all respects as at the date of this Contract and nothing in this Contract or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Site or any part of it for any purpose.

8.5 Third Party Rights

The Contractor shall observe and comply with any third party rights (including public rights) insofar as such rights affect the Site which may exist from time to time in respect of land comprising and adjoining the Site.

8.6 Fire Folder

8.6.1 The Contractor shall maintain an up to date fire folder for the Prison in accordance with the government guidance referring to the Fire Precautions Workplace Regulations 1997 and the general fire precautions for the Prison in accordance with the Regulatory Reform (Fire Safety) Order 2005 and in particular shall:

8.6.1.1 maintain maintenance / test records for the fire alarm systems and emergency lighting;

8.6.1.2 prepare and communicate the evacuation procedures including instructions to all persons at the Prison on the correct action when discovering a fire and on the correct action when the fire alarm is sounded;

8.6.1.3 prepare notices/signs reinforcing the evacuation procedures; and

8.6.1.4 ensure and maintain the safety and security of the Prison to prevent fires and deliberate and/or accidental activation of the system.

8.6.2 The Contractor shall undertake all maintenance procedures in relation to the sprinkler systems in compliance with BS5307 Part 2 and LPC Technical Bulletins (or their replacement standards), to the same standard and frequency as would be undertaken by an experienced and competent maintenance company and, in any event, in accordance with Good Industry Practice.

8.7 Asbestos

8.7.1 Subject to **clause 8.7.2 (Asbestos)**, the Contractor accepts full responsibility (including any financial and other consequences which result whether directly or indirectly) for any Asbestos at the Site from the Services Commencement Date for the period of this Contract and the Contractor has, as between the Contractor and the Authority, the sole duty to manage any Asbestos at the Prison under the Control of Asbestos Regulations 2012 (as may be amended from time to time).

8.7.2 In respect of any Asbestos the presence or potential presence of which is not recorded or indicated in the Asbestos Register or of which the Contractor is not aware or should not reasonably be aware (having regard to the nature and age of the Prison) then the Authority accepts full responsibility (including any financial and other consequences which result whether directly or indirectly) for such Asbestos and the Parties shall, acting reasonably, agree the appropriate measures to be taken to manage such Asbestos in accordance with the Control of Asbestos Regulations 2012 (as may be amended from time to time).

8.8 Fossils and Antiquities

- 8.8.1 As between the Parties, all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at the Site are or shall become, upon discovery, the absolute property of the Authority.
- 8.8.2 Upon the discovery of such item the Contractor shall:
- 8.8.2.1 immediately notify the Authority's Representative of such discovery;
 - 8.8.2.2 take all steps not to disturb the item and, if necessary, cease any activity in so far as the carrying out of such activity would endanger the object or prevent or impede its excavation; and
 - 8.8.2.3 take all necessary steps to preserve the item in the same position and condition in which it was found.
- 8.8.3 The Authority shall procure that the Authority's Representative promptly, and in any event within fifteen (15) Business Days after being notified of such discovery, issues an instruction to the Contractor specifying what action the Authority's Representative requires to be taken in relation to such discovery, provided that if no such instruction is forthcoming within such period the Contractor may continue to carry out the relevant activity.
- 8.8.4 The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in **clause 8.8.3 (Fossils and Antiquities)** at its own cost (except and to the extent that such instruction constitutes an Authority Change pursuant to **clause 8.8.6 (Fossils and Antiquities)** in which case the provisions of **Schedule 8 (Change Protocol)** shall apply).
- 8.8.5 If directed by the Authority's Representative, the Contractor shall allow representatives of the Authority to enter the Site for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the Authority complying with relevant safety procedures.
- 8.8.6 If any instruction referred to in **clause 8.8.3 (Fossils and Antiquities)** includes a requirement for the Contractor to suspend the provision of the Custodial Service (or a part of it) and/or carry out any works and/or other activities, such instruction to suspend and/or to carry out such works and/or other activities shall be deemed to be an Authority Change and the provisions of **Schedule 8 (Change Protocol)** shall apply.

- 8.8.7 The Authority shall act promptly and diligently in dealing with its obligations in this **clause 8.8 (Fossils and Antiquities)** in relation to any find so as to mitigate any effect on the Contractor, and/or the Custodial Service.

8.9 Site Facilities Manager

- 8.9.1 The Contractor shall nominate an experienced and competent person as Site Facilities Manager, and a competent Deputy Site Facilities Manager, to supervise all activities on the Site, whose duties shall include:

- 8.9.1.1 quickly to become familiar with the Site;
- 8.9.1.2 to ensure that all systems and functions are monitored in accordance with the requirements and the information so obtained is correctly analysed and interpreted for possible fault conditions and the appropriate action implemented;
- 8.9.1.3 to maintain an effective liaison between the Authority's Representative and the Contractor;
- 8.9.1.4 to ensure that all required records are maintained and kept up to date;
- 8.9.1.5 to provide monthly status reports;
- 8.9.1.6 to attend monthly meetings with the Authority's Representative; and
- 8.9.1.7 to receive and implement within the terms of the Contract all relevant instructions.

- 8.9.2 The Contractor shall give notice to the Authority's Representative of the names of the Site Facilities Manager and the Deputy Site Facilities Manager, and ensure that they, or replacements of comparable ability and qualification, are available at all times.

- 8.9.3 The Contractor agrees that any instructions given to the Site Facilities Manager by the Authority's Representative shall be deemed to be given to the Contractor.

8.10 Safety and Security on the Site

- 8.10.1 The Contractor shall ensure that its personnel and the personnel of any Sub-Contractor:

- 8.10.1.1 have adequate proof of identity in relation to their business at the

Site, and that they carry such identification at all times and produce it on demand; and

- 8.10.1.2 provide all such necessary documentation to comply with the security clearance requirements at the Site.
- 8.10.2 The Contractor shall prevent unauthorised persons being admitted to the Prison.
- 8.10.3 The Contractor shall immediately notify the Authority's Representative with full details of any incident on Site which requires the attendance of an emergency service, a utility company, an environmental health officer, the health and safety executive or any other competent authority.
- 8.10.4 The Contractor shall be responsible for providing and maintaining all security and protective barriers and warning notices in relation to the performance of the Custodial Service (including any construction works) necessary to protect all persons including owners and occupiers of Adjoining Property, members of the public, Prisoners, the Authority's staff and others from injury.
- 8.10.5 The Contractor shall only use petroleum products and other inflammable or vaporising liquids, gases, solids and hazardous chemicals in accordance with applicable Legislation. The Contractor shall ensure that when equipment and vessels containing those items are not in use they and their contents are removed to a safe place for storage.
- 8.10.6 The Contractor shall at all times keep the Site free from surplus materials, rubbish and debris and on completion of any construction works (and also on termination of the Contract) remove all Contractor's equipment and leave the Site in a clean and workmanlike condition to the satisfaction of the Authority's Representative.
- 8.10.7 The Contractor shall provide all safety signs and safe systems of work for all work, testing and inspection works.
- 8.10.8 The Contractor shall be responsible for all keys, locks, catches, doors, gates, barriers, fences, external lighting, security lighting, CCTV, intruder alarms, passes and any other electrical, electronic or mechanical security system or process both physical and other.
- 8.10.9 The Contractor shall be responsible for the ordering and safe storage of locks, lock spares and keys.
- 8.10.10 If the Prison serves a local Crown Court, the Contractor shall be responsible for the maintenance and replacement of the cell area locks and catches at that court.

- 8.10.11 In the event of a key or lock compromise resulting in a re-lock, the Contractor shall make appropriate arrangements to replace the compromised suite(s) and keys at its own cost.
- 8.10.12 The Contractor shall ensure full control of the security of the Prison at all times and manage all ingress and egress to and from the Site.
- 8.10.13 The Contractor shall manage the access to the Prison to allow any works to take place and provide assistance and protection to workers to enable them to carry out such works.
- 8.10.14 The Contractor shall ensure the CCTV management systems comply fully with the Data Protection Act 1998 and the CCTV Code of Practice as revised in 2008.

8.11 Utilities

- 8.11.1 The Contractor shall ensure that all necessary utilities are available at the Site.
- 8.11.2 The Contractor shall develop and maintain contingency plans in order to keep the Site operational in the event of any failure or disruption of utilities.
- 8.11.3 The Contractor shall ensure that all energy consumed is managed in order to ensure that there is minimum wastage and all plant and systems are operating efficiently.
- 8.11.4 The Contractor shall ensure that all controls and set points are set correctly and checked on a regular basis, and that all such set points and control settings are recorded on a regular basis.

8.12 Business Continuity and Disaster Recovery at the Site

- 8.12.1 The Contractor shall develop detailed business continuity and disaster recovery plans for the Site and shall submit such plans to the Authority's Representative for approval within the period of three (3) Months following the Commencement Date. The Contractor shall agree such plans with the Authority.
- 8.12.2 The Contractor shall test the agreed business continuity and disaster recovery plans on a regular basis as agreed with the Authority's Representative and include the emergency services as agreed with them.

PART III – ICT

9. [NOT USED]

10. **INFORMATION AND COMMUNICATIONS TECHNOLOGY**10.1 **Installation of Authority's ICT System**

10.1.1 The Authority shall supply, install, configure, test and commission the Authority's ICT System and any replacement, upgrade or modification as may from time to time be made to or incorporated into the Authority's ICT System (or any part of the Authority's ICT System).

10.1.2 The Authority shall be responsible for maintaining the Authority's ICT System.

10.2 **Ownership and Use of Authority ICT System**

10.2.1 Notwithstanding any other provision of this Contract, the Authority's ICT System, any equipment supplied by the Authority in relation to the Authority's ICT System and any and all information which is stored on or which is required as an input to or an output from the Authority's ICT System ("**Relevant Data**") shall remain the property of the Authority.

10.2.2 The Authority hereby grants the Contractor a non-exclusive, personal, revocable, royalty-free licence to use for the term of this Contract the Authority's ICT System and any and all Relevant Data solely and exclusively for the purpose of complying with its obligations under this Contract and for no other purpose whatsoever.

10.2.3 The Contractor warrants that neither it nor its employees agents or Sub-Contractors will use the Authority's ICT System or any Relevant Data for any purpose other than that stated in **clause 10.2.2 (Ownership and Use of Authority ICT System)** or cause any accidental or malicious damage to the Authority's ICT System or any Relevant Data, and shall indemnify the Authority against any Losses sustained or incurred by the Authority in connection with any breach of this warranty.

10.3 **Contractor's ICT Obligations**

The Contractor shall:

10.3.1 maintain all necessary infrastructure, ducts, cabling and ancillary fixtures and fittings and power supplies in accordance with the Authority's Requirements and the Authority's Cabling Specification for the purpose of maintaining, configuring,

and operating the Authority's ICT System;

10.3.2 at the Authority's reasonable request, make available appropriately qualified personnel to consult with the Authority, its nominated agents or their authorised engineers about the maintenance, operation, upgrading, modification or replacement of any Authority's ICT System;

10.3.3 ensure that the Authority has a reasonable opportunity before any Authority's ICT System is commissioned, to test such Authority's ICT System;

10.3.4 procure that the Authority and any representative of the Authority may, at reasonable times and upon giving reasonable notice enter the Prison in order to:

10.3.4.1 supply, install, configure, test and commission the Authority's ICT System and any replacement, upgrade or modification as may from time to time be made to or incorporated into the Authority's ICT System (or any part of the Authority's ICT System);

10.3.4.2 carry out inspections and audits of the Authority's ICT System;

10.3.4.3 undertake routine maintenance and fault resolution of the Authority's ICT System; and

10.3.5 not connect any device to the Authority's ICT System or network infrastructure and shall indemnify and keep indemnified in full the Authority from and against all costs incurred by the Authority in removing any such unauthorised device and rectifying any damage caused to the Authority's ICT System by the connection of such device.

10.4 Changes to ICT Systems

10.4.1 If the Authority wishes to change all or any part of the Authority's ICT System it shall be deemed to be an Authority Change and the provisions of **Schedule 8 (Change Protocol)** shall apply.

10.4.2 If the Contractor wishes to change all or any part of the Contractor's ICT System it shall be deemed to be a Contractor Change and the provisions of **Schedule 8 (Change Protocol)** shall apply.

10.5 Training

10.5.1 The Authority shall provide access to the following training (face to face or elearning as appropriate) for Contractor's Staff requiring access to the Authority's ICT System who have identified training needs relating to their role:

- 10.5.1.1 OASys training as required, as agreed by the Authority;
- 10.5.1.2 Prison NOMIS training will be provided as e-learning through the Authority's elearning management system; and
- 10.5.1.3 registration for up to two hundred (200) members of the Contractor's Staff to the Authority's elearning management system. Concurrent usage of the elearning management system shall be limited to five (5) members of the Contractor's Staff.

The method of training delivery shall be defined by the Authority and, where face to face training is to be provided, dates, times and location for such training will be agreed with the Authority.

- 10.5.2 Training on the Authority's ICT System required for Contractor's Staff for the Services Commencement Date, including for any applications not referred to in **clause 10.5.1 (Training)**, and the access method and date of availability of the Authority's elearning management system, shall be identified by the Contractor and agreed as part of the Initial Custodial Service Delivery Plan.
- 10.5.3 The Authority shall, at its own expense, provide access to training (face to face or elearning) for any upgrade and/or change that materially impacts Contractor's Staff use of the Authority's ICT System.

10.6 Responsibility for Security of Authority ICT Systems

- 10.6.1 The Authority or its appointed agents shall be responsible for ensuring the security of its infrastructure, services and data up to the point at which there is a physical or logical interface with the Contractor's ICT System.
- 10.6.2 Notwithstanding **clause 10.6.1 (Responsibility for Security of Authority ICT Systems)**, the Contractor shall take all reasonable steps to ensure that the security of the Authority's ICT System and any other connected or related systems is not jeopardised including erecting firewalls, providing protection against viruses and ensuring security of access to the Authority's ICT System.

10.7 Malicious Software

- 10.7.1 The Contractor shall use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for, contain the spread of, minimise the adverse effects of and delete Malicious Software from the Contractor's ICT System.
- 10.7.2 Notwithstanding **clause 10.7.1 (Malicious Software)**, if Malicious Software is

found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Prescribed Documentation, assist each other to mitigate any Losses.

10.7.3 Any cost arising out of the actions of the Parties taken in accordance with **clause 10.7.2 (Malicious Software)** shall be borne by the Parties as follows:

10.7.3.1 by the Contractor where the Malicious Software originates from the Contractor's ICT System or the Prescribed Documentation (whilst the Prescribed Documentation was under the control of the Contractor); and

10.7.3.2 by the Authority if the Malicious Software originates from the Authority's ICT System or the Prescribed Documentation (whilst the Prescribed Documentation was under the control of the Authority).

10.8 **No Warranty**

The Authority does not warrant the condition or performance of any existing network cabling within the Prison.

10.9 **Information Assurance**

Notwithstanding **clause 69.1.2 (Data Protection)**, the Contractor undertakes that all Prisoner and visitor data (and any other data as required pursuant to the provisions of Part 3 of **Schedule 1 (Authority's Requirements) (ICT Specification)**) shall be stored, processed and accessed within the United Kingdom only.

11. **[NOT USED]**

12. **[NOT USED]**

13. **DUTIES UNDER CDM REGULATIONS**

13.1 **Responsibility for Design**

As between the Contractor and the Authority, the Contractor shall be entirely responsible for the safety of any design which forms part of the Custodial Service and for the adequacy, stability and safety of all site operations.

13.2 **The Contractor as Client**

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 Custodial Service pursuant to Regulation 8 of the CDM Regulations.

13.3 Duties under CDM Regulations

13.3.1 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 Custodial Service (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations).

13.3.2 The Contractor shall ensure that the Health and Safety File is revised as often as may be appropriate to incorporate any relevant new information in relation to the Custodial Service for the term of this Contract.

13.4 Authority to Provide Information

Notwithstanding the election made under **clause 13.2 (The Contractor as Client)** the Authority shall observe and continue to observe the duties that are, pursuant to Regulation 8 of the CDM Regulations to remain with the Authority, notably those duties under Regulations 5(1)(b), 10(1), 15 and 17(1).

PART IV - PREPARATION FOR OPERATION**14. NOTIFICATION REQUIREMENTS****14.1 Notice**

If at any time the Contractor becomes aware that there will be or is likely to be a delay such that:

14.1.1 the Services Commencement Date may be delayed; or

14.1.2 the reduction or increase in the number of Available Prisoner Places may not be achieved on or before the date specified for such reduction or increase in the relevant RRAPP Band Activation Notice or RRAPP Band Deactivation Notice (as the case may be), or (following the relevant date in the RRAPP Band Activation Notice or RRAPP Band Deactivation Notice (as the case may be)) the reduction or increase in the number of Available Prisoner Places may be further delayed, in either case for any period,

the Contractor shall as soon as reasonably practicable, and in any event within twenty (20) Business Days of becoming aware of the likely delay, give notice to the Authority to that effect specifying in detail the reason for the delay or likely delay and an estimate of the likely effect of the delay on the provision of the Custodial Service including the achievement of the Services Commencement Date and/or the date specified for the provision of any Available Prisoner Place in the relevant RRAPP Band Deactivation Notice or RRAPP Band Activation Notice (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with **clause 14.3 (Duty to Mitigate)**).

14.2 Supply of Information

Following service of a notice by the Contractor pursuant to **clause 14.1 (Notice)**, the Contractor shall promptly supply to the Authority any further information relating to the delay which:

14.2.1 is received by the Contractor; or

14.2.2 is reasonably requested by the Authority.

14.3 Duty to Mitigate

The Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to **clause 14.1 (Notice)**.

15. COMPENSATION EVENTS**15.1 Delays due to a Compensation Event**

If, as a direct result of the occurrence of a Compensation Event, the Contractor shall:

15.1.1 be unable to achieve the Services Commencement Date;

15.1.2 be unable to manage the reduction or increase in the number of Available Prisoner Places on or before the date specified for such reduction or increase in the number of Available Prisoner Places in the relevant RRAPP Band Activation Notice or RRAPP Band Deactivation Notice (as the case may be) or (following the relevant date in the RRAPP Band Deactivation Notice or RRAPP Band Activation Notice (as the case may be)) is delayed in providing such Available Prisoner Places, in either case for any period;

15.1.3 be unable to comply with its obligations under this Contract; and/or

15.1.4 incur costs,

then the Contractor is entitled to apply for an extension of time to the Services Commencement Date and/or the requirement to reduce the number of Available Prisoner Places in accordance with the relevant RRAPP Band Activation Notice and/or the requirement to increase the number of Available Prisoner Places in accordance with the relevant RRAPP Band Deactivation Notice and/or relief from its obligations and/or to claim compensation under this Contract.

15.2 Procedure for Relief and Compensation

Subject to **clause 15.4 (Late Provision of Notice or Information)**, to obtain relief, extension and/or claim compensation, the Contractor must:

15.2.1 as soon as practicable, and in any event within twenty (20) Business Days, after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs, (or if earlier after it has received written notice from the Authority's Representative that a Compensation Event has occurred and that expressly requires the Contractor to claim relief, extension and/or compensation pursuant to this **clause 15.2**) give to the Authority a notice of its claim for:

15.2.1.1 an extension of time to (as appropriate):

(a) the Services Commencement Date;

- (b) any date specified in a RRAPP Band Deactivation Notice for an increase in the number of Available Prisoner Places;
 - (c) any date specified in a RRAPP Band Activation Notice for the reduction in the number of Available Prisoner Places; and/or
 - (d) the period specified in paragraph (i) of the definition of Contractor Default; and/or
- 15.2.1.2 payment of compensation; and/or
- 15.2.1.3 relief from its obligations under this Contract;
- 15.2.2 within ten (10) Business Days after receipt by the Authority of the notice referred to in **clause 15.2.1 (Procedure for Relief and Compensation)** give full details of the Compensation Event and the extension of time and/or relief from its obligations under this Contract and/or any Change in Costs claimed; and
- 15.2.3 demonstrate to the reasonable satisfaction of the Authority that:
 - 15.2.3.1 the Compensation Event was the direct cause of:
 - (a) the Change in Costs;
 - (b) any delay in achieving the Services Commencement Date;
 - (c) any failure to reduce the number of Available Prisoner Places on or before the date for reduction of such Available Prisoner Places as specified in the relevant RRAPP Band Activation Notice or (following the relevant date in the RRAPP Band Activation Notice) the delay in reducing any Available Prisoner Place, in either case for any period; and/or
 - (d) any failure to provide an increase in the number of Available Prisoner Places on or before the date for provision of such Available Prisoner Places as specified in the relevant RRAPP Band Deactivation Notice or (following the relevant date in the RRAPP Band Deactivation Notice) the delay in providing any Available Prisoner Place, in either case for any period; and/or
 - (e) any breach of the Contractor's obligations under this Contract; and
 - 15.2.3.2 the Change in Costs, time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be

mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

15.3 Giving of Relief and Compensation

In the event that the Contractor has complied with its obligations under **clause 15.2 (Procedure for Relief and Compensation)**, then:

15.3.1 in the case of a delay:

15.3.1.1 the Services Commencement Date;

15.3.1.2 any date specified in a RRAPP Band Deactivation Notice for an increase in the number of any Available Prisoner Places; and/or

15.3.1.3 any date specified in a RRAPP Band Activation Notice for a reduction in the number of any Available Prisoner Places;

shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay;

15.3.2 the period referred to in paragraph (i) of the definition of Contractor Default, shall be extended by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;

15.3.3 in the case of:

15.3.3.1 an additional cost being incurred by the Contractor as a result of Capital Expenditure being incurred by the Contractor at any time the Authority shall compensate the Contractor for the actual Change in Costs as adjusted to reflect the actual costs reasonably incurred (to the extent they could not reasonably have been mitigated); or

15.3.3.2 a payment of compensation for the Change in Costs that does not result in Capital Expenditure being incurred by the Contractor as referred to in **clause 15.3.3.1 (Giving of Relief and Compensation)** but which reflects a change in the costs being incurred by the Contractor during the Custodial Service Period;

the Authority shall compensate the Contractor either (at its sole discretion):

(a) by an adjustment to the Contract Price in accordance with **clause 63 (Financial Adjustments)**; or

(b) on a lump sum basis; and

- 15.3.4 the Authority shall give the Contractor such relief from its obligations under this Contract as is reasonable for such a Compensation Event.

15.4 Late Provision of Notice or Information

In the event that information is provided after the dates referred to in **clause 15.2 (Procedure for Relief and Compensation)**, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under this Contract in respect of the period for which the relevant information is delayed.

15.5 Failure to Agree

If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under this Contract, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the Contractor is entitled to relief under this **clause 15 (Compensation Events)**, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

16. PREPARATION FOR OPERATION OF THE PRISON

16.1A Mobilisation, Transition and Transformation

On and from the Commencement Date and until the Services Commencement Date (save as otherwise provided in any Asset and Contract Transfer Contract), the Contractor shall:

- 16.1A.1 agree and execute an Asset and Contract Transfer Contract (which shall be substantially in the form set out in **Schedule 30 (Asset and Contract Transfer Contract)**) if any Legacy Assets and Legacy Contracts are identified by the Parties;

- 16.1A.2 if any Legacy Assets and/or Legacy Contracts are identified and the Parties execute an Asset and Contract Transfer Contract, comply with the provisions of the Asset and Contract Transfer Contract relating to the transfer of Legacy Assets and Legacy Contracts; and

- 16.1A.3 comply with the mobilisation and transition obligations set out in **Schedule 24 (Mobilisation and Transition Plan and Transformation Plan)**.

- 16.1B The Contractor shall implement the Transformation Plan to effect the successful transformation of the Custodial Service.

16.1 Initial Custodial Service Delivery Plan

- 16.1.1 Within one (1) Month following the Commencement Date, the Contractor shall

provide to the Authority and to the Authority's Representative an initial plan detailing how the Contractor intends to prepare for providing and provide (on and from the Services Commencement Date), the Custodial Service for the period commencing on the Services Commencement Date and expiring six (6) Months after the Services Commencement Date (the "**Initial Custodial Service Delivery Plan**").

16.1.2 The Contractor shall ensure that the Initial Custodial Service Delivery Plan shall contain:

- 16.1.2.1 the staff handbook;
- 16.1.2.2 the public relations procedures;
- 16.1.2.3 an updated version of the Mobilisation and Transition Plan;
- 16.1.2.4 an updated version of the Transformation Plan;
- 16.1.2.5 the dates by which the Initial Operating Procedures are to be delivered to the Authority's Representative;
- 16.1.2.6 a copy of the partnering agreements entered into pursuant to **clause 20 (Working with the Education Provider and the Healthcare Provider)**;
- 16.1.2.7 details of the requirements for training on the Authority's ICT System pursuant to **clause 10.5 (Training)**; and
- 16.1.2.8 an Annual Resourcing Plan for the following twelve (12) Months.

16.2 Approval of Initial Custodial Service Delivery Plan

16.2.1 Within twenty (20) Business Days after receipt of the Initial Custodial Service Delivery Plan, the Authority's Representative shall either:

- 16.2.1.1 issue a certificate (the "**ICSDP Approval Certificate**") confirming that he or she is satisfied that the Initial Custodial Service Delivery Plan is in accordance with the requirements of the Contract; or
- 16.2.1.2 issue a notice (an "**ICSDP Notice of Non-Compliance**") stating that the ICSDP Approval Certificate has not been issued, specifying the grounds on which the ICSDP Notice of Non-Compliance is based (provided that such grounds shall be one or more of those set out in paragraphs 3.2.5.1 to 3.2.5.5 of **Schedule 9 (Review**

Procedure) and specifying any matters that must be attended to before the ICSDP Approval Certificate can be issued.

16.2.2 Following receipt of an ICSDP Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the ICSDP Notice of Non-Compliance and shall deliver the revised Initial Custodial Service Delivery Plan to the Authority within ten (10) Business Days after receipt of the ICSDP Notice of Non-Compliance so that the procedure in **clause 16.2.1 (Approval of Initial Custodial Service Delivery Plan)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Initial Custodial Service Delivery Plan are attended to and the ICSDP Approval Certificate can be issued in accordance with **clause 16.2.1.1 (Approval of Initial Custodial Service Delivery Plan)**.

16.2.3 If the Parties are unable to agree the Initial Custodial Service Delivery Plan, the Dispute Resolution Procedure shall apply.

16.2.4 Without prejudice to the Contractor's obligations pursuant to **clause 19.2 (Services Commencement)**, no Prisoner Places shall constitute Available Prisoner Places until the Authority's Representative has approved the Initial Custodial Service Delivery Plan.

16.3 Updates to the Initial Custodial Service Delivery Plan

16.3.1 The Contractor shall:

16.3.1.1 produce progress updates ("**ICSDP Reports**") to the Initial Custodial Service Delivery Plan each Month up to the date on which the first ACSDP Approval Certificate was issued; and

16.3.1.2 ensure that the ICSDP Reports contain details of the Contractor's progress against the Initial Custodial Service Delivery Plan.

16.3.2 The Parties acknowledge that the production of an ICSDP Report may require the Initial Custodial Service Delivery Plan to be amended.

16.3.3 If the Initial Custodial Service Delivery Plan requires amendment, the Contractor shall:

16.3.3.1 amend the Initial Custodial Service Delivery Plan accordingly; and

16.3.3.2 issue it to the Authority's Representative for approval,

and the procedure outlined in **clause 16.2 (Approval of Initial Custodial Service Delivery Plan)** shall be repeated until the amended Initial Custodial Service

Delivery Plan is approved by the Authority.

16.4 Initial Operating Procedures

The Contractor shall provide to the Authority and the Authority's Representative each Initial Operating Procedure on or before the relevant date for the provision of such Initial Operating Procedure listed in **Schedule 3 (Initial Availability Requirements)** (or, if earlier, the date for delivery specified within the Initial Custodial Service Delivery Plan).

16.5 Approval of Operating Procedures

16.5.1 Within twenty (20) Business Days after receipt of each Initial Operating Procedure, the Authority's Representative shall either:

16.5.1.1 issue a certificate (an "**Operating Procedure Approval Certificate**") confirming that he or she is satisfied that the Initial Operating Procedure in question is in accordance with the requirements of this Contract; or

16.5.1.2 issue a notice (an "**Operating Procedure Notice of Non-Compliance**") stating that the Operating Procedure Approval Certificate has not been issued, specifying the grounds on which the Operating Procedure Notice of Non-Compliance is based (provided that such grounds shall be one or more of those set out in paragraphs 3.2.5.1 to 3.2.5.5 of **Schedule 9 (Review Procedure)** and specifying any matters that must be attended to before the Operating Procedure Approval Certificate can be issued.

16.5.2 Following receipt of an Operating Procedure Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the Operating Procedure Notice of Non-Compliance and shall deliver such revised Initial Operating Procedure to the Authority's Representative within five (5) Business Days after receipt of the Operating Procedure Notice of Non-Compliance so that the procedure in **clause 16.5.1 (Approval of Operating Procedures)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Initial Operating Procedure are attended to and the Operating Procedure Approval Certificate can be issued in accordance with **clause 16.5.1.1 (Approval of Operating Procedures)**.

16.5.3 Without prejudice to the Contractor's obligations pursuant to **clause 19.2 (Services Commencement)**, no Prisoner Places shall constitute Available Prisoner Places until all of the Initial Operating Procedures have been approved by

the Authority's Representative.

- 16.5.4 Once so approved, the Initial Operating Procedures shall constitute the Operating Procedures for the purposes of this Contract and shall be reviewed on an annual basis on every twelve (12) month anniversary of the relevant date for the provision of such Initial Operating Procedure listed in **Schedule 3 (Initial Availability Requirements)** or as otherwise specified by the Authority in writing.

16.6 Testing of Operating Procedures

- 16.6.1 The Authority's Representative may at any time notify the Contractor that it requires the Contractor to carry out a test of an Operating Procedure (an "**Operating Procedure Test**") whether or not such Operating Procedure has been approved by the Authority's Representative.

- 16.6.2 The Contractor shall:

16.6.2.1 give the Authority's Representative five (5) Business Days' notice of the time and location of the Operating Procedure Test;

16.6.2.2 allow representatives of the Authority to attend the Operating Procedure Test; and

16.6.2.3 carry out the Operating Procedure Test:

(a) in accordance with the Contractor's proposals for testing the Initial Operating Procedures or Operating Procedures set out in respect of each Operating Procedure in **Schedule 2 (Contractor's Proposals)**; and

(b) subject to **clause 16.6.2.1 (Testing of Operating Procedures)**, as soon as reasonably practicable after the date of any notice pursuant to **clause 16.6.1 (Testing of Operating Procedures)**.

- 16.6.3 Within five (5) Business Days after the completion of such test, the Authority's Representative shall either:

16.6.3.1 issue a notice confirming to the Contractor that he or she is satisfied that the Operating Procedure Test has demonstrated that the Initial Operating Procedure or Operating Procedure is satisfactory; or

16.6.3.2 issue a notice stating that the Operating Procedure Test has demonstrated that the Initial Operating Procedure or Operating Procedure is not satisfactory, and specifying any matters that must

be attended to.

- 16.6.4 Following receipt of a notice pursuant to **clause 16.6.3.2 (Testing of Operating Procedures)**, the Contractor shall attend to the matters referred to in such notice and shall re-run the test in accordance with **clause 16.6.2 (Testing of Operating Procedures)** (except that the notice period to the Authority's Representative shall be two (2) Business Days instead of the five (5) Business Days) as often as necessary to ensure that all outstanding matters in relation to the Initial Operating Procedure or Operating Procedure in question are attended to and the Initial Operating Procedure or Operating Procedure satisfies the test.

16.7 Contractor's Staff Information

- 16.7.1 At least three (3) Months prior to the Services Commencement Date, the Contractor shall submit to the Authority's Representative:

16.7.1.1 the names of, and such other information as the Authority's Representative may require about, the proposed members of the senior management of the Prison and all other persons requiring certification or approval, as specified in **clauses 40 (Certification of Prisoner Custody Officers)** and **41 (The Contractor's Staff)**; and

16.7.1.2 any other evidence reasonably required by the Authority's Representative to demonstrate that the Contractor is and will be capable of providing sufficient properly trained and certified Contractor's Staff,

together the "**Contractor's Staff Information**".

17. CELL CERTIFICATES**17.1 Existing Cell Certificates**

On or before the Services Commencement Date, the Authority shall provide the Contractor with:

17.1.1 the Cell Certificate Schedule;

17.1.2 the Cell Certificate Schedule Summary Sheet;

17.1.3 the Prisoner Accommodation (Operational Availability) document; and

17.1.4 the Prisoner Accommodation (Notification of Change) document (where relevant);

each signed by the Deputy Director of Custody (or other Crown servant authorised to undertake this role) or (where appropriate) by the Authority's Representative. These documents shall (inter alia) indicate in respect of each Prison Cell whether it has a Cell Certificate.

17.2 In respect of any Prison Cell which at the Services Commencement Date is in compliance with the Cell Certificate Requirements but for which the relevant signed documentation as set out in **clause 17.1 (Existing Cell Certificates)** has not been issued, any Prisoner Places in that Prison Cell shall solely for the purposes of **Schedule 5 (Payment Mechanism)** be treated as Available Prisoner Places until a Cell Certificate or a Non-Compliance Notice is issued for that Prison Cell.

18. AVAILABILITY OF PRISONER PLACES ON HANDOVER

A Prisoner Place shall not be capable of constituting an Available Prisoner Place until it has satisfied the Initial Availability Requirements. If a Prisoner Place has not satisfied the Initial Availability Requirements prior to the Services Commencement Date, the Prisoner Place in question shall not be deemed to be an Available Prisoner Place and the Contractor shall not be entitled to payment for such Prisoner Place until such time as the Initial Availability Requirements are satisfied.

19. SERVICES COMMENCEMENT

19.1 On the Services Commencement Date the Authority shall subject to and in accordance with the terms and conditions of this Contract hand over control of the Prison to the Contractor and the Contractor shall commence provision of the Custodial Service in accordance with this Contract.

19.2 Subject to the provisions of paragraph 7 of **Schedule 5 (Payment Mechanism)**, the

Contractor shall at all times on and from the Services Commencement Date provide to the Authority no less than the Maximum Available Prisoner Places.

19.3 Subject to **clause 15 (Compensation Events)**, the Authority may by written notice to the Contractor postpone the Services Commencement Date until the date specified in such notice, provided that:

19.3.1 the Authority shall serve written notice postponing the Services Commencement Date where the Authority has reasonable grounds to believe that the Contractor or any Sub-Contractor will not have entered into a Participation Agreement where required to do so under **Schedule 17 (TUPE, Employees and Pensions)** on or before the then current planned Services Commencement Date or where the Contractor, in breach of its obligations under **paragraph 3 of Schedule 17 (TUPE, Employees and Pensions)**, has failed to implement or procure entry into the requisite Participation Agreements by the then current planned Services Commencement Date; and

19.3.2 where the Authority's written notice is served pursuant to **clause 19.3.1 (Services Commencement)**, such circumstances shall not constitute a Compensation Event or a Relief Event for the purposes of this Contract and any postponement by the Authority in these circumstances shall be without prejudice to the Contractor's obligations and the Authority's rights under **Schedule 17 (TUPE, Employees and Pensions)**, including the obligations under **paragraph 3.1.2** of such Schedule and/or **clause 42 (TUPE and Employees)**.

19.4 The Authority shall procure that any necessary Statutory Certificates in respect of the Prison are current and valid at the Services Commencement Date.

20. **WORKING WITH THE EDUCATION PROVIDER AND THE HEALTHCARE PROVIDER**

20.1 The Contractor shall provide such access to the Prison as the Healthcare Provider may reasonably require in order to provide the Healthcare Service as set out in the Healthcare Specification within Part 4 of **Schedule 1 (Authority's Requirements)**.

20.2 The Contractor shall provide such access to the Prison as the Education Provider may reasonably require in order to provide the Education Service as set out in the Enablers Specification within Appendix 1 to **Schedule 1 Part 1 ((Authority's Requirements) (Custodial Service Specification))**.

20.3 The Contractor shall cooperate with the Education Provider and the Healthcare Provider so as to ensure that each of the Education Provider and the Healthcare Provider is able to discharge its functions at the Prison.

20.4 The Contractor shall attend management meetings with both the Education Provider and the Healthcare Provider each Month in order to discuss and address any issues arising in respect of the delivery of the Education Services and the Healthcare Services.

20.5 The Contractor shall, prior to the Services Commencement Date, agree and enter into partnering agreements with:

20.5.1 the Authority and the Education Provider; and

20.5.2 the Authority and the Healthcare Provider,

which shall address amongst other things, interface issues, ICT provision by the Contractor and dispute resolution.

PART V - THE CUSTODIAL SERVICE**21. CONDUCT OF OPERATION****21.1 Standard of Performance**

21.1.1 The Contractor shall provide the Custodial Service in accordance with, and at all times ensure that the Custodial Service complies with and meets all the requirements of:

21.1.1.1 this Contract;

21.1.1.2 the Authority's Requirements;

21.1.1.3 the Contractor's Proposals;

21.1.1.4 the Initial Service Delivery Documents or the Service Delivery Documents (as relevant);

21.1.1.5 the Operating Procedures;

21.1.1.6 Good Industry Practice;

21.1.1.7 all applicable Guidance;

21.1.1.8 all applicable Authority Policies; and

21.1.1.9 all applicable Legislation,

with effect from the Services Commencement Date.

21.1.2 The Contractor shall, at all times, ensure that the Custodial Service is performed by appropriately qualified and trained Contractor's Staff.

21.1.3 The Contractor shall, at all times, ensure that the Custodial Service is performed in such a manner that it does not cause, contribute to or otherwise give rise to any breach by the Authority of any of its duties or the exercise of its powers under the Criminal Justice Act 1991.

21.1.4 The Authority's Requirements shall at all times have priority over the Contractor's Proposals, the Operating Procedures, the Initial Service Delivery Documents and the Service Delivery Documents, and the Contractor shall comply with the Authority's Requirements and provide the Custodial Service in accordance with the Authority's Requirements.

21.2 Disclosure of Information to Emergency Services

21.2.1 Notwithstanding **clause 65 (Information and Confidentiality)**, the Authority and/or the Authority's Representative shall have the right to disclose to the police and/or any other emergency service (the "**Emergency Services**") Confidential Information if the Authority and/or the Authority's Representative reasonably believes such information is material to the matters in respect of which the Authority and/or the Authority's Representative consults or confers with such member of the Emergency Services and subject, in each case, to such member of the Emergency Services undertaking to keep the information confidential and to use it only for the purpose for which it was provided.

21.2.2 The Contractor shall not object to the Authority and/or the Authority's Representative consulting or conferring with any of the Emergency Services with respect to any matter, including any matter related to the risk of a Riot occurring or other serious disturbance which has occurred.

21.2.3 The Authority and/or the Authority's Representative shall not be obliged to:

21.2.3.1 inform the Contractor of any such consultation or conferring or of the context of such consultation or conferring; or

21.2.3.2 enter into any such consultation or conferring with any third party.

21.3 **Interventions**

The Contractor shall comply with the provisions of **Schedule 29 (Interventions)**.

21.4 **Prison Industries / Working Prisons**

The Contractor shall comply with the provisions of **Schedule 26 (Prison Industries)**.

21.5 **Contractor's use of Authority Assets**

21.5.1 During the Custodial Service Period, the Authority shall permit the Contractor to have access to and use of the Authority Assets upon the terms set out in this **clause 21.5 (Contractor's use of Authority Assets)**.

21.5.2 Title to the Authority Assets shall remain with the Authority or other owner at all times and, subject to the permissions granted under this **clause 21.5 (Contractor's use of Authority Assets)**, the Contractor shall have no right or interest in them and shall not obtain title to the Authority Assets.

21.5.3 The Contractor shall:

21.5.3.1 only use, and permit its Sub-Contractors to use, the Authority

Assets to the extent necessary in order to provide the Custodial Service;

- 21.5.3.2 be responsible for taking delivery of the Authority Assets at the location where they are situated and not move such Authority Assets unless permission has been granted by the Authority in writing (and provided that the Contractor shall be responsible for meeting any associated delivery, off-loading and packaging costs related to the move and, at the request of the Authority, their return);
- 21.5.3.3 take reasonable and proper care of the Authority Assets in its or a Sub-Contractor's possession or control;
- 21.5.3.4 not use or permit any of the Authority Assets to be used in contravention of any Legislation;
- 21.5.3.5 be responsible for risk of loss of or damage to the Authority Assets provided that the Contractor shall not be liable for loss or damage caused by fair wear and tear resulting from normal and proper use in connection with the provision of the Custodial Service;
- 21.5.3.6 ensure that any instructions or manuals supplied by the manufacturer of the Authority Assets for their use and which are made available to the Contractor shall be followed by the Contractor's Staff;
- 21.5.3.7 not permit or assert any lien over, sell, offer for sale, assign, mortgage, encumbrance, pledge, sub-let or lend out any of the Authority Assets and ensure that no lien claims are made in respect thereof;
- 21.5.3.8 where the Authority Assets are leased to the Authority, ensure that these are used only in accordance with the terms of any relevant leasing agreement (to the extent that such terms have been notified to it); and
- 21.5.3.9 deliver the Authority Assets back to the Authority (where still extant) in accordance with **Schedule 28 (Exit Management)**.

21.6 Maintenance of Assets and Asset Refresh Plan

- 21.6.1 Save in relation to Assets that are comprised within the Built Environment and M&E Assets (which are dealt with in **clause 25 (Maintenance of the Prison)**),

the Contractor shall:

- 21.6.1.1 operate, manage, repair, maintain and (to the extent approved within the Asset Refresh Plan) dispose of them in order to maintain their condition for use in delivering the Custodial Service and in accordance with Good Industry Practice;
 - 21.6.1.2 replace and upgrade them on a regular basis and in any event in accordance with the Asset Refresh Plan; and
 - 21.6.1.3 catalogue them accurately on the Equipment Register in accordance with **clause 68.3 (Maintenance of Records)**.
- 21.6.2 The Asset Refresh Plan shall be updated by the Contractor on an annual basis (and in any event within thirty (30) Days of the end of each Contract Year) and submitted to the Authority for review and approval in accordance with **Schedule 9 (Review Procedure)**.

22. WORKS

- 22.1 The Contractor shall or shall procure that it or its Sub-Contractor(s) shall carry out the design, construction, installation, completion, commissioning and testing of any construction works so that:
- 22.1.1 the construction works shall be completed on or before any completion dates agreed with the Authority;
 - 22.1.2 the construction works are performed at all times in accordance with and fully comply with and meet all requirements of:
 - 22.1.2.1 **Schedule 1 Part 2 (Authority's Requirements) (Property Specification)**;
 - 22.1.2.2 this Contract;
 - 22.1.2.3 Construction Contractor Good Industry Practice;
 - 22.1.2.4 all Consents;
 - 22.1.2.5 without prejudice to **clause 62 (Changes in Law)**, all applicable Legislation;
 - 22.1.2.6 Technical Standards, Physical and Special Security Guides and the Building Regulations;

- 22.1.2.7 (where the construction works involve a new building) a standard which achieves an Excellent Marking in accordance with the BRE Environmental Assessment Method (BREEAM); and
 - 22.1.2.8 (where the construction works involve any refurbishment works) a standard which achieves a Very Good Marking in accordance with BREEAM;
- 22.1.3 all persons employed in connection with the performance of any construction works will be skilled and experienced in their several professions, trades and callings or adequately supervised;
- 22.1.4 all aspects of any construction works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the construction works in accordance with this Contract and having regard to the activities which are carried on or at the Prison;
- 22.1.5 any construction works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Prison are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the construction works; and
- 22.1.6 adequate retaining and supporting walls are provided to support any Adjoining Property during the carrying out of any construction works; and
- 22.1.7 any construction works are performed at all times in a manner that is not, or is not likely to be, injurious to health or to cause damage to property.
- 22.1.8 For the avoidance of doubt, the obligations in **clause 22.1.1** to **clause 22.1.7** inclusive are independent obligations.
- 22.2 Before commencing any construction works, the Contractor shall fully acquaint itself with:
 - 22.2.1 all available operating and maintenance manuals and drawings in sufficient detail as to enable the Contractor to maintain, dismantle, re-assemble and adjust all parts of the plant and buildings as part of the construction works;
 - 22.2.2 any existing health and safety files; and
 - 22.2.3 any available condition reports, summaries, drawings and sketches.
- 22.3 In carrying out any construction works:
 - 22.3.1 the Contractor shall comply with (and shall procure that any Sub-Contractor

- complies with) any reasonable directions of the Authority's Representative;
- 22.3.2 the Contractor (and shall procure that any Sub-Contractor) shall not use any apparatus or tools provided for use by third parties on the Site;
- 22.3.3 the Contractor agrees that all parts and materials supplied as part of the construction works shall become the property of the Authority;
- 22.3.4 the Contractor (and shall procure that any Sub-Contractor) shall not make any alteration to the construction works without the prior written consent of the Authority's Representative;
- 22.3.5 the Contractor shall inform the Authority's Representative when replacement parts are required for any systems and ensure that all replacement parts are of the same, similar or better standard than that which is being replaced;
- 22.3.6 the Contractor shall be responsible for conducting all necessary risk assessments and the production of all method statements to carry out all works, inspections and tests as specified by this Contract;
- 22.3.7 the Contractor shall be responsible for obtaining and complying with all necessary permits to work, including (but not limited to) those relating to testing, excavation, restricted area works (asbestos) and sealed system works;
- 22.3.8 the Contractor shall be fully responsible for ensuring that all persons working on the Site are provided with the appropriate and suitable personal protective equipment applicable to the tasks being carried out by those persons.
- 22.4 For the avoidance of doubt, the Contractor shall be responsible to the Authority for the cost of all repair that is required due to the Contractor's failure to carry out any construction works in accordance with the terms of this Contract, together with the cost of providing any necessary temporary service while the repair is being carried out.
- 22.5 The Contractor takes responsibility for the selection, design and specification of any construction works and warrants that any construction works as designed and constructed and/or installed shall discharge such responsibility.
- 22.6 The Contractor shall at the request of the Authority provide such information as the Authority shall reasonably require to enable the Authority to assess actual progress of any construction works relative to the planned progress of such construction works, which shall be prepared in accordance with Construction Contractor Good Industry Practice and shall be in sufficient detail so as to enable the Authority's Representative to monitor the progress including all commissioning activities and likely future progress of the construction works.

- 22.7 Notwithstanding **clause 72 (Insurance)**, the Contractor shall maintain (or procure that its Sub-Contractor(s) maintain) professional indemnity insurance covering (without limitation) all its liability in respect of any construction works whether for breach of contract, negligence or otherwise in respect of defects or insufficiency in design upon customary and usual terms and conditions prevailing in the insurance market at the commencement of the construction works, and with reputable insurers licensed to carry on such insurance business in the United Kingdom, in an amount of not less than £10,000,000 (ten million pounds) for any one occurrence or series of occurrences arising out of any one event for a period ending twelve (12) years after the date of completion of the construction works.
- 22.8 The Contractor shall procure that in respect of any construction works each Sub-Contractor shall validly execute and deliver to the Authority, as a condition precedent to their appointment, collateral warranties in favour of the Authority in the form set out in **Schedule 15 (Collateral Warranty from Sub-Contractor to the Authority)**. The delivered collateral warranties shall be accompanied by a certified true copy of the fully executed relevant building contract entered into by the Contractor and each Sub-Contractor.
- 22.9 The Contractor shall, for the benefit of the Authority, use all reasonable endeavours to secure guarantees and/or warranties from any suppliers or Sub-Contractor(s) for equipment and/or materials and/or services in connection with any construction works.
- 22.10 The Authority shall provide access to the Electronic Drawing Management System (EDMS) in order that existing surveys and reports can be reviewed in respect of construction works. The Authority shall not be responsible for any existing surveys, reports and lifecycle replacement information with this regard and any such data is for information purposes only.
- 22.11 The Contractor shall provide all designs and options (supported by full life cycle costings including building components, mechanical and electrical services, staff and energy) to the Authority for comment.
- 22.12 The data capture process shall be undertaken in accordance with the Authority's protocols to ensure that all project data is captured and site plans etc are kept up to date both during and upon completion of the project. Data and drawings of completed works shall be provided to the Authority as specified by the Authority.
- 22.13 The Contractor shall be responsible for obtaining from the Authority any required certification (including cell certification) relating to any construction works.
- 22.14 The Contractor shall be fully responsible for all construction works.

23. RIOT DAMAGES ACT

- 23.1 The Contractor shall, from the Services Commencement Date:

- 23.1.1 not act, and shall use reasonable endeavours to ensure that the Contractor's Staff do not act, in a way which is likely to cause or provoke or does cause or provoke a Riot at the Prison;
- 23.1.2 if a Riot does occur at the Prison, take reasonable steps, having regard to all relevant circumstances, to limit as far as possible the duration and consequences of the Riot, including minimising the risk of personal injury or death and limiting the damage to the Prison arising from the Riot or any related incident; and
- 23.1.3 provide a written report to the Authority's Representative, headed "Riot Risk Report" in accordance with the Custodial Service Specification, detailing any incidents that might reasonably be regarded as evidence of an increased risk of a Riot occurring and details of such measures that the Contractor has taken in response to such increased risk; and
- 23.1.4 without prejudice to the generality of **clause 23.1.1 (Riot Damages Act)** and **23.1.2 (Riot Damages Act)**, enter into such arrangements with the Emergency Services as may be reasonably appropriate in order to establish the basis upon which the Emergency Services will or may respond in the event of a Riot occurring and shall provide to the Authority's Representative copies of any documentation relating to any such arrangements.

24. CELL CERTIFICATION AND ACCEPTANCE OF PRISONERS

24.1 Compliance with Cell Certificate Requirements

Subject to **clause 17 (Cell Certificates)** and **clause 18 (Availability of Prisoner Places on Handover)**, 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 Cell Certificate Requirements during the Custodial Service Period.

24.2 Inspection and Non-Compliance

- 24.2.1 The Authority's Representative may, at his or her discretion, carry out inspections during the Custodial Service Period from time to time in order to assess the certification of any Prison Cell.
- 24.2.2 If the Authority's Representative identifies during any such inspection that a Prison Cell does not comply with the Cell Certificate Requirements, he or she shall issue to the Contractor a Non-Compliance Notice. The Cell Certificate in respect of that Prison Cell shall be deemed to be revoked on the date of the Non-Compliance Notice and any affected Prisoner Place shall be treated as an Unavailable Prisoner Place pursuant to paragraph 6 of **Schedule 5 (Payment**

Mechanism).**24.3 Notification of Events Affecting Cell Certificates or Availability**

The Contractor shall inform the Authority's Representative promptly if any event occurs (and record details of such event in the Daily Reports) which could reasonably be expected to result in:

- 24.3.1 a Cell Certificate being withdrawn if the Authority were to exercise its rights pursuant to **clause 24.2 (Inspection and Non-Compliance)**; or
- 24.3.2 a failure to comply in all respects with the Minimum Requirements and in such circumstances paragraph 6.6 of **Schedule 5 (Payment Mechanism)** shall apply.

24.4 Acceptance of Prisoners

The Contractor shall not refuse to accept a prisoner for an Available Prisoner Place where there is capacity to do so at the Prison and:

- 24.4.1 such prisoner has been sent to the Prison by any Court; or
- 24.4.2 it receives a request to do so from the Authority or the Authority's Representative unless the Contractor has reasonable cause to believe that complying with the Authority's or the Authority's Representative's request would prejudice the Contractor's ability to maintain security and control within the Prison.

24.5 Special Category Prisoners

- 24.5.1 Subject to **clause 24.4.2 (Acceptance of Prisoners)**, the Contractor shall, at the Authority's request, accept any Category 'A' Prisoner in an emergency.
- 24.5.2 If the Contractor accepts any Category 'A' Prisoners in an emergency following a request from the Authority:
 - 24.5.2.1 such Category 'A' Prisoners shall be removed from the Prison as soon as is reasonably practicable; and
 - 24.5.2.2 the Authority and the Contractor shall agree the level of extra resources (if any) which the Authority shall provide to ensure that the Contractor is able to maintain security and control within the Prison (provided that no such extra resources shall be required to be provided by the Authority if the number of Category 'A' Prisoner Days is less than four (4) Days in any six (6) Month period).

- 24.5.3 If the provision of any extra resource by the Authority pursuant to **clause 24.5.2.2**

(**Special Category Prisoners**) is by way of payment, the level of such payment shall be calculated in accordance with the principles of **clause 63.3 (No Better and no Worse)**.

25. **MAINTENANCE OF THE PRISON**

25.1 **Built Environment and M&E Assets Condition Verification**

- 25.1.1 During the period between the Commencement Date and the Services Commencement Date, the Contractor shall inspect the Built Environment and M&E Assets to confirm their condition status and shall no later than thirty (30) Days prior to the Services Commencement Date provide the Authority's Representative with an asset verification report in such format as is specified by the Authority's Representative (the "**Built Environment and M&E Assets Condition Verification Report**").
- 25.1.2 The Contractor shall, within the Built Environment and M&E Assets Condition Verification Report, notify the Authority's Representative in writing of any discrepancies or variations from the Built Environment and M&E Assets described in the Asset Management Records found during their inspections of the Site. The Contractor shall update the Asset Condition Schedule to reflect such discrepancies or variations and issue the revised Asset Condition Schedule to the Authority's Representative prior to the Services Commencement Date.
- 25.1.3 The Contractor shall remedy any defects, failures or malfunctions identified as part of the Built Environment and M&E Assets Condition Verification Report process as soon as practicable following the Services Commencement Date as part of the Contractor's normal repair process at no additional cost to the Authority.
- 25.1.4 Where a testing and inspection certificate is not available for an item, the Contractor shall undertake the necessary test within ninety (90) Days following the Services Commencement Date and any remedial works identified during the test shall be included within the Asset Forward Maintenance Plan and acted on by the Contractor as necessary.
- 25.1.5 At the same time as the Contractor provides to the Authority's Representative the Built Environment and M&E Assets Condition Verification Report, it shall also provide to the Authority's Representative detailed proposals for maintaining, repairing and, where necessary, replacing or renewing the relevant equipment within the Prison during the period of the Contract so as to ensure that all such equipment is at all times fully operational and in good working order such proposals to be included within the Asset Forward Maintenance Plan and the Asset Forward Replacement Plan. The Authority shall be entitled to propose

changes to the Asset Forward Maintenance Plan and Asset Forward Replacement Plan and the final form of the plans shall be such as is agreed between the Authority and the Contractor, each acting reasonably.

- 25.1.6 The Contractor shall conduct an annual review of the contents of the Built Environment and M&E Assets Condition Verification Report and every twelve (12) Months shall issue an updated version of the Built Environment and M&E Assets Condition Verification Report to the Authority's Representative on the anniversary of the Built Environment and M&E Assets Condition Verification Report.

25.2 Maintenance

- 25.2.1 The Contractor shall maintain and operate the Prison in accordance with this Contract, the Authority's Requirements, the maintenance and operating procedures set out in the Contractor's Proposals, the Contractor's Operating Manual, Asset Forward Maintenance Plan and Asset Forward Replacement Plan, and shall ensure on a continuing basis that at all times the said maintenance and operating procedures are and remain sufficient to ensure that:

25.2.1.1 the Custodial Service is continuously available as required by this Contract and the Authority's Requirements;

25.2.1.2 the Prison and, to the extent relevant not included in the Prison, the Site, is kept in good structural and decorative order (subject to fair wear and tear) and as a minimum to the standard identified in the Asset Condition Schedule and in accordance with this Contract, the Authority's Requirements, the Contractor's Operating Manual, the Asset Forward Maintenance Plan and Asset Forward Replacement Plan;

25.2.1.3 it can provide the Custodial Service in accordance with this Contract and the Authority's Requirements;

25.2.1.4 it maintains an up to date Equipment Register of all equipment (including the Authority Assets and Contractor Assets) used by it in the performance of the Custodial Service; and

25.2.1.5 the Prison and, to the extent relevant not included in the Prison, the Site, is handed back to the Authority on the Termination Date or Expiry Date in no worse a condition than that identified in the Asset Condition Schedule.

25.3 Repair

- 25.3.1 The Contractor shall carry out repairs to plant and buildings as required to comply with **Schedule 1 Part 2 (Authority's Requirements) (Property Specification)**, Asset Forward Maintenance Plan and Asset Forward Replacement Plan.
- 25.3.2 The Contractor shall be responsible for the cost of all repairs required to be carried out in order to comply with **Schedule 1 Part 2 (Authority's Requirements) (Property Specification)**, Asset Forward Maintenance Plan and Asset Forward Replacement Plan. For the avoidance of doubt, any repair which is required as a result of the Contractor's failure to complete the works in accordance with the requirements of this Contract together with the cost of any temporary services required to be implemented during the period in which any such repair work is completed will also be for the account of the Contractor.
- 25.3.3 The Contractor shall not carry out any structural alterations to the Site nor any non-structural alterations which would materially affect the layout of the Site or the Contractor's ability to provide the Custodial Service in accordance with this Contract. The Contractor shall comply with **clauses 22.1.2 to 22.14 (inclusive) (Works)** in respect of any alterations carried out by it to the Site, to the extent applicable to the works in question.

25.4 Asset Condition Schedule

- 25.4.1 The Authority will make available asset condition survey data, related reports and indicative lifecycle replacement information (including in the form of the Asset Management Records) which may assist the Contractor in compiling its own list and priorities and developing the Asset Forward Replacement Plan. Included within the Asset Management Records shall be a plan of the repairs and maintenance the Authority or its contractor proposed to carry out if the Contractor had not been appointed under this Contract. The Authority shall have no liability for any existing surveys, reports and lifecycle replacement information or the Asset Management Records in this regard and any such data is for information purposes only, with the Contractor being under no obligation to implement the plans set out in the Asset Management Records.
- 25.4.2 The asset condition survey data forms the basis of the Asset Condition Schedule and the Contractor's Asset Forward Replacement Plan.
- 25.4.3 The Asset Forward Replacement Plan is to be issued as part of the Built Environment and M&E Assets Condition Verification Report process as described in **clause 25.1.5 (Built Environment and M&E Assets Condition Verification)** and shall be revised and reissued every Year at the anniversary of the first Built

Environment and M&E Assets Condition Verification Report.

- 25.4.4 The Asset Condition Schedule shall constitute the agreed statement of the condition of the Built Environment and M&E Assets at the Services Commencement Date.
- 25.4.5 The Contractor shall ensure that the Asset Condition Schedule is maintained and at all times kept up-to-date to reflect any changes to the condition of the Prison and, to the extent not included in the Prison, the Site, as the result of maintenance, repair, replacement and/or renewal of the fabric of the Prison and the equipment within the Prison.
- 25.4.6 Where the Contractor proposes to amend the Asset Condition Schedule pursuant to **clause 25.4.1 (Asset Condition Schedule)**, it shall provide the Authority with a revised version of the Asset Condition Schedule indicating the amendments it proposes to make.
- 25.4.7 Where the Authority does not agree with the revised Asset Condition Schedule, it shall provide the Contractor with a written statement of the grounds of its disagreement, and the Contractor shall review its revisions and issue a further revised Asset Condition Schedule.
- 25.4.8 If the Authority still does not agree with the Asset Condition Schedule as so revised, the matter shall be resolved pursuant to **clause 74 (Dispute Resolution)**.

26. DILAPIDATION SURVEY**26.1 Right to carry out Survey**

- 26.1.1 If the Authority reasonably believes that the Contractor is in breach of its obligations under **clause 25 (Maintenance of Prison)** then it may carry out (or procure the carrying out of) a survey of the Prison and, to the extent relevant not included in the Prison, the Site, to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under **clause 25 (Maintenance of Prison)**.
- 26.1.2 The Authority shall notify the Contractor in writing a minimum of ten (10) Business Days in advance of the date on which it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the Contractor for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the

Custodial Service.

- 26.1.3 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Custodial Service by the Contractor. The cost of the survey shall, except where **clause 26.2.1.3 (Results of Survey)** applies, be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority from time to time during the carrying out of any survey.

26.2 Results of Survey

- 26.2.1 If a survey shows that the Contractor has not complied or is not complying with its obligations under **clause 25 (Maintenance of Prison)**, the Authority shall:

26.2.1.1 notify the Contractor of the standard that the condition of the Prison and, to the extent relevant not included in the Prison, the Site should be in to comply with its obligations under **clause 25 (Maintenance of Prison)** and this Contract generally;

26.2.1.2 specify a reasonable period within which the Contractor must carry out any necessary rectification and/or maintenance work; and

26.2.1.3 be entitled to be reimbursed by the Contractor for the cost of the survey and any administrative costs incurred by the Authority in relation to such survey.

- 26.2.2 The Contractor shall carry out such rectification and/or maintenance work within the period specified by the Authority and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

27. RIGHTS OF ACCESS AND INSPECTION

- 27.1 The Authority, the Authority's Representative and any other representative of the Authority may enter upon any property used by the Contractor and/or its Sub-Contractors to perform the Custodial Service, to inspect the operation and maintenance of the Prison and to monitor compliance by the Contractor with its obligations.

- 27.2 The Authority, the Authority's Representative and any other representative of the Authority may enter upon any property used by the Contractor and/or its Sub-Contractors as training or workshop facilities and places where work is being prepared or materials being obtained for the delivery of the Custodial Service.

- 27.3 The Authority, the Authority's Representative and any other representative of the Authority may enter upon any part of the Prison to carry out major maintenance works (including

replacement of major maintained assets) where the Authority undertakes to carry out such works.

- 27.4 The Contractor shall procure that satisfactory facilities are made available to the Authority, the Authority's Representative or any other representative of the Authority and that reasonable assistance is given for the purposes of **clauses 27.1, 27.2 and 27.3 (Rights of Access and Inspection)** subject to the Contractor's operational requirements not being adversely affected and to reimbursement of any reasonable costs and expenses of the Contractor.
- 27.5 If the Authority is or becomes aware of a breach by the Contractor of its obligations under **clause 21.6 (Maintenance of Assets and Asset Refresh Plan)** or **clause 25 (Maintenance of the Prison)**, then the Authority may exercise its right of access and remedy such breach and shall be entitled to recover from the Contractor any costs or expenses incurred as a debt.
- 27.6 The Authority, the Authority's Representative or any other representative of the Authority shall comply with any health and safety requirements when exercising its rights under this **clause 27 (Rights of Access and Inspection)**.
- 27.7 If the Authority, the Authority's Representative or any other representative of the Authority causes material damage to the Prison in exercising any right under this **clause 27 (Rights of Access and Inspection)**, then the Authority shall reimburse the Contractor for its reasonable documented costs directly caused by such damage.

28. HAZARDOUS SUBSTANCES

28.1 Storage

The Contractor shall:

- 28.1.1 ensure that any hazardous materials or equipment used or intended to be used in the provision of the Custodial Service are authorised for use and kept under control and in safe keeping and disposed of in accordance with all relevant Legislation and Good Industry Practice;
- 28.1.2 ensure that all such materials are properly and clearly labelled on their containers, and submit all necessary notifications to any Relevant Authority in respect of such hazardous materials where required under the relevant Legislation;
- 28.1.3 promptly inform the Authority's Representative of all such materials being used or stored at the Site; and
- 28.1.4 comply with any other reasonable requirement of the Authority's Representative in respect of such materials and equipment.

28.2 COSHH Register

- 28.2.1 The Contractor shall, during the Custodial Service Period, maintain a COSHH register in relation to the Prison and shall ensure that copies of the register are held at the Prison and at the Contractor's registered office, and that a copy is given to the Authority's Representative. The Authority's Representative shall notify the Contractor of any items that it or any Authority Related Party is using or storing at the Prison and that are required to be included in such register.

28.3 Montreal Protocol Substances

- 28.3.1 The Contractor shall identify which (if any) substances listed in **Schedule 10 (Montreal Protocol Substances)** are contained in any item or are used in connection with any items or are used in connection with any part of the Custodial Service.
- 28.3.2 The Parties shall work together to identify which (if any) Montreal Protocol Substances are contained in any item used in connection with any part of the Custodial Service.
- 28.3.3 The Contractor shall provide a list to the Authority on the Services Commencement Date specifying:
- 28.3.3.1 all Montreal Protocol Substances (adopting the nomenclature used in **Schedule 10 (Montreal Protocol Substances)** to be used in the execution of any task under this Contract;
 - 28.3.3.2 the quantity of any such Montreal Protocol Substance; and
 - 28.3.3.3 where such Montreal Protocol Substances will be used or contained.
- 28.3.4 If appropriate, the Contractor shall provide a 'Nil Return' in respect of **clauses 28.3.3.1, 28.3.3.2 and 28.3.3.3** above.
- 28.3.5 If at any time the Contractor changes its use of any Montreal Protocol Substances in connection with this Contract, the Contractor shall forthwith provide to the Authority an amended version of the information provided under **clause 28.3.3 (Montreal Protocol Substances)**.

29. PERFORMANCE MONITORING**29.1 Contractor Audits**

The Contractor shall audit its performance in the delivery of the Custodial Service in

accordance with **paragraph 4** of the Custodial Service Specification and **Schedule 6 (Performance Management and Management Information Reporting)**.

29.2 Authority Auditing

29.2.1 The Authority's Representative may elect to undertake its own performance audit for any purpose, including in order to ensure that the Custodial Service is being provided in accordance with this Contract. The Contractor will use its reasonable endeavours to assist the Authority's Representative in such an exercise.

29.2.2 The Authority's Representative shall be entitled to notify the Contractor of the outcome of the performance audit, and the Contractor shall have due regard to the Authority's Representative's comments and shall comply with all the requirements and recommendations of the Authority's Representative in relation to the future provision of the Custodial Service, provided that if the recommendations of the audit require a change to the Custodial Service Specification, this shall be deemed to be an Authority Change.

29.2.3 Without prejudice to the Authority's rights under **clause 49 (Termination on Contractor Default)** and to any other express rights under this Contract, where the Contractor:

29.2.3.1 submits a fraudulent claim for payment under **clause 44 (Payment Provisions)**; or

29.2.3.2 has submitted:

(a) Contract Delivery Management Information pursuant to **paragraph 2 of Schedule 6 (Performance Management and Management Information Reporting)** which contains at least three (3) material errors; or

(b) more than one Daily Report containing at least four (4) material errors,

within any consecutive three (3) Month period (provided that materiality shall not, for the purposes of this **clause 29.2.3.2 (Authority Auditing)** include clerical errors),

the Authority's Representative may, by notice to the Contractor, require to audit the Contractor's performance and/or (at the Authority's option) require the Contractor to audit its own performance of its obligations under this Contract in respect of any of the Custodial Services at more frequent intervals (as specified by the Authority) until such time as the Contractor has demonstrated to the

reasonable satisfaction of the Authority's Representative that it is capable of performing and will perform such obligations in accordance with the requirements of this Contract.

29.2.4 For the purposes of **clause 29.2.3 (Authority Auditing)**, the Authority acknowledges that if:

29.2.4.1 the Contractor has removed the person or persons responsible for the fraudulent reporting; or

29.2.4.2 in the following consecutive three (3) Month period after the date of the Authority's Representative's notice there have been no further material errors of any kind,

this shall be regarded as sufficient demonstration that the Contractor will perform and is capable of performing its relevant obligations.

29.2.5 If the Authority's Representative issues a notice under **clause 29.2.3 (Authority Auditing)**, the Contractor shall bear its own costs and indemnify and keep indemnified in full the Authority from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of auditing arising due to the circumstances described in **clause 29.2.3 (Authority Auditing)**.

30. ANNUAL CUSTODIAL SERVICE DELIVERY PLAN

30.1 Delivery of Annual Custodial Service Delivery Plan

30.1.1 On or before the date which is three (3) Months after the Services Commencement Date and on or before 1 January in each subsequent Contract Year, the Contractor shall provide to the Authority's Representative a plan (the "**Annual Custodial Service Delivery Plan**") to show how it will provide the Custodial Service in the next Contract Year.

30.1.2 The Contractor shall ensure that each Annual Custodial Service Delivery Plan shall contain:

30.1.2.1 all of the Operating Procedures;

30.1.2.2 the Contractor's proposed review dates for each of the Operating Procedures which shall require review on an annual basis as part of the Annual Custodial Service Delivery Plan, unless otherwise agreed between the parties;

- 30.1.2.3 the staff handbook;
- 30.1.2.4 the public relations procedures;
- 30.1.2.5 the Annual Interventions Plan;
- 30.1.2.6 the Annual Interventions Cost;
- 30.1.2.7 an Annual Resourcing Plan for the next Contract Year, highlighting any departure from the Annual Resourcing Plan for the preceding Contract Year and giving reasons for such departure; and
- 30.1.2.8 a copy of the then current Exit Plan.

30.2 Approval of Annual Custodial Service Delivery Plan

- 30.2.1 Within twenty (20) Business Days after receipt of each Annual Custodial Service Delivery Plan, the Authority's Representative shall either:
 - 30.2.1.1 issue a certificate (the "**ACSDP Approval Certificate**") confirming that he or she is satisfied that the Annual Custodial Service Delivery Plan is in accordance with the requirements of the Contract; or
 - 30.2.1.2 issue a notice (an "**ACSDP Notice of Non-Compliance**") stating that the ACSDP Approval Certificate has not been issued, specifying the grounds on which the ACSDP Notice of Non-Compliance is based (provided that such grounds shall be one or more of those set out in paragraph 3.2.5 of **Schedule 9 (Review Procedure)** and specifying any matters that must be attended to before the ACSDP Approval Certificate can be issued.
- 30.2.2 Following receipt of an ACSDP Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the ACSDP Notice of Non-Compliance and shall deliver the revised Annual Custodial Service Delivery Plan to the Authority's Representative within ten (10) Business Days after receipt of the ACSDP Notice of Non-Compliance so that the procedure in **clause 30.2.1 (Approval of Annual Custodial Service Delivery Plan)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Annual Custodial Service Delivery Plan are attended to and the ACSDP Approval Certificate can be issued in accordance with **clause 30.2.1.1 (Approval of Annual Custodial Service Delivery Plan)**.
- 30.2.3 No payment shall be made to the Contractor where the approval of the Annual Custodial Service Delivery Plan (such approval not to be unreasonably withheld or

delayed by the Authority) has not occurred on or before the date falling ten (10) Business Days (or such other date as may reasonably be agreed) after the first re-submission of the Annual Custodial Services Delivery Plan pursuant to **clause 30.2.2 (Approval of Annual Custodial Service Delivery Plan)**, provided that, following subsequent agreement of the Annual Custodial Service Delivery Plan pursuant to **clause 30.2.4 (Approval of Annual Custodial Service Delivery Plan)** or otherwise, the Authority shall resume payment to the Contractor and reimburse the Contractor in respect of amounts which would otherwise have been paid to it by the Authority under this Contract but which have been withheld pursuant to this **clause 30.2.3 (Approval of Annual Custodial Service Delivery Plan)**.

30.2.4 Subject to **clause 30.2.3 (Approval of Annual Custodial Service Delivery Plan)**, if the Authority does not approve the Annual Custodial Service Delivery Plan either acting reasonably or within a reasonable time, the Dispute Resolution Procedure shall apply.

30.2.5 Subject to **clause 30.2.3 (Approval of Annual Custodial Service Delivery Plan)**, where the Dispute Resolution Procedure is invoked in respect of an Annual Custodial Service Delivery Plan which cannot be agreed between the Parties, the Annual Custodial Service Delivery Plan (or, in the case of the first Annual Custodial Service Delivery Plan to be agreed, the Initial Custodial Service Delivery Plan) used by the Parties prior to any dispute shall continue to be followed until such time as a new Annual Custodial Service Delivery Plan (or the first Annual Custodial Service Delivery Plan (as the case may be)) may be agreed.

30.3 Updates to the Annual Custodial Service Delivery Plan

30.3.1 The Contractor shall:

30.3.1.1 produce progress updates ("**ACSDP Reports**") to the Annual Custodial Service Delivery Plan each Month; and

30.3.1.2 ensure that the ACSDP Reports contain details of the Contractor's progress against the Annual Custodial Service Delivery Plan.

30.3.2 The Parties acknowledge that the production of an ACSDP Report may require the Annual Custodial Service Delivery Plan to be amended.

30.3.3 If the Annual Custodial Service Delivery Plan requires amendment, the Contractor shall:

30.3.3.1 amend the Annual Custodial Service Delivery Plan accordingly; and

30.3.3.2 issue it to the Authority's Representative for approval,

and the procedure outlined in **clause 30.2 (Approval of Annual Custodial Service Delivery Plan)** shall be repeated until the amended Annual Custodial Service Delivery Plan is approved by the Authority.

31. **OPERATING MANUAL**

31.1 **Maintenance of Manual**

31.1.1 The Authority shall use its reasonable endeavours to provide the Contractor with information relating to the operation and maintenance of the Prison during the period between the Commencement Date and the Services Commencement Date.

31.1.2 The Authority shall, on or before the Services Commencement Date, provide the Contractor with the existing manual setting out the procedures (excluding the Operating Procedures) for providing the Custodial Service and maintaining the Prison (the "**Operating Manual**"). The Contractor shall throughout the Custodial Service Period maintain and update the Operating Manual.

31.2 **Access to Manual**

The Contractor shall at the request of the Authority's Representative provide the Authority's Representative with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under **clause 31.1 (Maintenance of Manual)**.

31.3 **Copy on Termination**

The Contractor shall:

31.3.1 no less than twelve (12) Months before the Expiry Date; or

31.3.2 if earlier, no more than two (2) Business Days after the date of the Termination Notice,

and, in addition, as required by **Schedule 28 (Exit Management)** provide two (2) copies of the Operating Manual to the Authority in such format as the Authority reasonably requires.

32. **QUALITY ASSURANCE**

32.1 **General Quality Assurance**

The Contractor shall procure that all aspects of the Custodial Service are the subject of, and are conducted in accordance with, approved quality assurance systems.

32.2 Quality Management Officer

The Contractor shall appoint, as soon as reasonably practicable following the date of this Contract, an individual, who may be directly involved in the day-to-day performance of the Custodial Service (the "**Quality Management Officer**"), and who shall:

- 32.2.1 ensure the effective operation and implementation of the quality assurance system;
- 32.2.2 audit any quality assurance system at regular intervals and report the findings of such audit to the Contractor and the Authority;
- 32.2.3 review the quality assurance system at intervals agreed with the Authority to ensure their continued suitability and effectiveness; and
- 32.2.4 liaise with the Authority on all matters relating to quality assurance.

32.3 Monitoring of Quality Assurance Systems

- 32.3.1 The Authority may carry out periodic audits of the quality assurance systems.
- 32.3.2 The Contractor shall procure that the Authority shall have the same right in respect of any relevant Sub-Contractors.
- 32.3.3 The Contractor shall co-operate and shall procure that any relevant Sub-Contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its rights under this **clause 32 (Quality Assurance)**.

33. CO-OPERATION FOR INVESTIGATION AND SECURITY**33.1 Co-operation**

Notwithstanding **clause 4.4 (Co-operation)**, the Contractor shall:

- 33.1.1 co-operate with any investigation relating to a breach of safety or security which is carried out by or on behalf of the Authority;
- 33.1.2 use its reasonable endeavours to make its employees (and other Contractor Related Parties) identified by the Authority available to be interviewed by the Authority for the purposes of the investigation; and
- 33.1.3 subject to any legal restriction on their disclosure, provide all copies of Documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation.

33.2 Infectious Diseases

The Contractor shall comply with the Authority's reasonable reporting requirements relating to infectious and notifiable diseases to the extent made known to the Contractor.

34. BENCHMARKING AND VALUE TESTING**34.1 Not used****34.2 Benchmarking**

The Authority may at its sole discretion conduct a Benchmarking Exercise on or from the fifth (5th) anniversary of the Services Commencement Date and at five (5) yearly intervals thereafter as follows:

34.2.1 the Authority shall notify the Contractor of its intention to conduct a Benchmarking Exercise in accordance with this **clause 34.2 (Benchmarking)** and such notification will state a Benchmarking Review Date which shall not be less than three (3) Months from the date of such notification;

34.2.2 each Benchmarking Exercise shall be undertaken to ascertain the relative quality and competitiveness of the Tested Custodial Service. The Benchmarking Exercise shall be undertaken in good faith by the Authority (and with the reasonable co-operation of the Contractor) and on the basis of an objective and like for like comparison by comparing the standards and prices of the Tested Custodial Service and the costs of providing them with the standards and prices of equivalent services and the costs of providing them;

34.2.3 the Authority shall make the outcome of any Benchmarking Exercise available to the Contractor by the date occurring one (1) Month before the relevant Benchmarking Review Date in preparation for the Authority and the Contractor making the appropriate adjustments to the Contract Price on the basis set out in **clause 34.2.4 (Benchmarking)**. The outcome shall indicate the extent to which (if at all) the Market Costs differ (in percentage terms) from the Latest Custodial Service Element; and

34.2.4 where the Market Costs are between ninety five per cent (95%) and one hundred and five per cent (105%) of the Latest Custodial Service Element, no change shall be made to the Contract Price or the Latest Custodial Service Element. Where the Market Costs are less than ninety five per cent (95%) or more than one hundred and five per cent (105%) of the Latest Custodial Service Element or a Tested Custodial Service Benchmarking Exercise cannot be carried out, the Parties shall adjust the Contract Price on the basis that:

34.2.4.1 the Contract Price will be increased by an amount to reflect the Market Costs where the Market Costs exceed one hundred and five percent (105%) of the Latest Custodial Service Element;

34.2.4.2 the Contract Price will be decreased by an amount to reflect the Market Costs where the Market Costs are less than ninety five percent (95%) of the Latest Custodial Service Element; and

34.2.4.3 the Latest Custodial Service Element shall be increased or decreased (as the case may be) to reflect the Market Costs,

and the Contract Price shall be adjusted in accordance with **clause 63 (Financial Adjustments)**.

34.2.5 Any dispute under this **clause 34.2 (Benchmarking)** (including as to the results of the Benchmarking Exercise) shall be determined in accordance with the Dispute Resolution Procedure.

34.3 Costs of Benchmarking Exercise

The Contractor shall be responsible for its own costs in relation to any Benchmarking Exercise.

34.4 Value Testing Option

34.4.1 The Authority shall consider which element of the Custodial Service shall be subject to value testing (the "**Value Tested Service**") pursuant to the remainder of this **clause 34.4 (Value Testing Option)** and shall inform the Contractor of its decision on or before the 1 January prior to the due date of the Annual Custodial Service Delivery Plan provided to the Authority's Representative in accordance with **clause 30.1 (Delivery of Custodial Service Delivery Plan)**, provided that:

34.4.1.1 the first Value Testing Exercise shall not take place before the second (2nd) anniversary of the Services Commencement Date;

34.4.1.2 no element of the Custodial Service shall be value tested more frequently than once every three (3) Years;

34.4.1.3 no more than ten per cent (10%) of the Custodial Service may be value tested in any Year; and

34.4.1.4 subject to **clause 34.4.3 (Value Testing Option)**, the Authority shall pay the costs incurred as a result of a Value Testing Exercise.

- 34.4.2 The Contractor shall notify the Authority of whether or not it agrees to carry out a Value Testing Exercise within fourteen (14) Business Days after receipt of the Authority's notice pursuant to **clause 34.4 (Value Testing Option)**.
- 34.4.3 If the Contractor agrees to carry out the Value Testing Exercise, then the costs, method, timescales and responsibility for such Value Testing Exercise shall be discussed, on the basis of open book accounting, and agreed by both Parties, acting in good faith, during the development of the Annual Custodial Service Delivery Plan.
- 34.4.4 Each Value Testing Exercise will be undertaken to ascertain the competitiveness and quality of the Value Tested Service in question and will be carried out in good faith and on the basis of open book accounting.
- 34.4.5 The Authority shall be entitled to receive a fifty per cent (50%) share of any gain arising from any Value Testing Exercise.
- 34.4.6 The carrying out of a Value Testing Exercise is subject to agreement between the Parties. Any failure to agree in relation this **clause 34.4 (Value Testing Option)** shall not constitute a dispute and shall not be subject to determination in accordance with the Dispute Resolution Procedure.

PART VI - GENERAL PERFORMANCE OBLIGATIONS**35. EQUALITY AND DIVERSITY****35.1 Compliance**

From the Commencement Date, the Contractor shall (and shall procure that its Sub-Contractors shall):

35.1.1 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, marital or civil partnership status, pregnancy, maternity or otherwise) and, in particular, monitor and promote the principle of equal treatment at all times;

35.1.2 co-operate fully with the Authority to exchange experiences and good practice; and

35.1.3 comply with Authority Policies and the Authority's standards on all equalities issues.

35.2 Promotion and Engagement

The Contractor shall promote equality and diversity including the employment of small and medium-sized enterprises, black and minority ethnic enterprises, women owned businesses and businesses owned by persons with disabilities and shall promote engagement with the voluntary sector in relation to the delivery of the Custodial Service.

35.3 Monitoring

The Contractor shall:

35.3.1 monitor the representation among the Contractor's Staff of:

35.3.1.1 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));

35.3.1.2 persons with disabilities; and

35.3.1.3 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;

35.3.2 where it appears to the Contractor, in relation to 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, take such steps as may be reasonably necessary to promote racial, disability and/or gender equality (as the case may be) which may include:

35.3.2.1 the placing and use of job advertisements to reach members of such groups and to encourage their applications;

35.3.2.2 the use of employment agencies and careers offices;

35.3.2.3 the promotion of recruitment and training schemes for school-leavers and/or unemployed persons intended to reach members of such groups;

35.3.2.4 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;

35.3.2.5 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;

35.3.2.6 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;

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.

35.4 Equality Duties

The Contractor acknowledges that the Authority is subject to those obligations and duties set

out in **clause 35.1 (Compliance)** (the "**Equality Duties**") and shall not (and shall procure that its Sub-Contractors shall not) 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.

35.5 Provision of Information and Assistance

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

- 35.5.1 enable the Authority to conduct reviews of the Contractor's performance in relation to compliance with this **clause 35 (Equality and Diversity)**;
- 35.5.2 facilitate the Authority in preparing any report or statement to the Commission for Equality and Human Rights or any other Relevant Authority;
- 35.5.3 enable the Authority to comply with any direction of the Commission for Equality and Human Rights or any other Relevant Authority; and/or
- 35.5.4 carry out and provide to the Authority risk assessments and Equality Impact Assessments (or any other similar instruments required by the Authority) in relation to the Equality Duties and the Contractor's compliance with this **clause 35 (Equality and Diversity)**.

35.6 Sub-Contractors

The Contractor shall procure that its Sub-Contractors comply with the obligations set out in **clauses 35.1 (Compliance) to 35.5 (Provision of Information and Assistance)** (inclusive).

35.7 Equality and Diversity Officer

The Contractor shall nominate, as soon as reasonably practicable following the date of this Contract, 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 35 (Equality and Diversity)**.

35.8 Equality and Diversity Reports

- 35.8.1 The Contractor shall provide a report at each Contract Review Meeting which shall include:
 - 35.8.1.1 the racial make-up, proportion of persons with disabilities and the gender breakdown of the Contractor's Staff;

- 35.8.1.2 details of any complaints and/or investigations in relation to equality and diversity and details of any action taken;
 - 35.8.1.3 any allegations of discrimination and/or harassment relating to race, gender, age, disability, religious belief, sexual orientation or otherwise;
 - 35.8.1.4 details of training provided by or for the Contractor to the Contractor's Staff in relation to equality and diversity;
 - 35.8.1.5 details of recruitment during the period covered by the report;
 - 35.8.1.6 details and copies of any equal opportunity impact assessments carried out by the Contractor. The Authority shall be entitled at its sole discretion to publish copies of such assessments on the internet; and
 - 35.8.1.7 details of any claims, the outcome of any claims and any recommendations made by an employment tribunal or other.
- 35.8.2 The Contractor shall twelve (12) Months after the Commencement Date of this Contract and on each twelve (12) Month anniversary of such date, submit a report to the Authority demonstrating its compliance with **clauses 35.1 (Compliance) to 35.6 (Sub-Contractors)** (inclusive) and its proposals in respect of equality and diversity for the following twelve (12) Months.
- 35.8.3 The Contractor shall provide the Authority with Equality Impact Assessments (or any other similar instruments required by the Authority) as and when they are completed. The Authority shall be entitled at its sole discretion to make such assessments available to the public.

35.9 Non-compliance and Investigations

- 35.9.1 If, in the reasonable opinion of the Authority, the Contractor fails to comply with its obligations in **clauses 35.1 (Compliance) to 35.6 (Sub-Contractors)** (inclusive), the Contractor shall co-operate fully with the Authority to remedy such non-compliance, provided that the Authority reserves the right to report any non-compliance to any Relevant Authority.
- 35.9.2 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 35 (Equality and Diversity)**, the Contractor shall (and shall ensure that its Sub-Contractors shall):

- 35.9.2.1 provide any information requested in the timescale allotted;
 - 35.9.2.2 attend and permit members of the Contractor's Staff to attend any meetings as required;
 - 35.9.2.3 allow itself and any member of the Contractor's Staff to appear as witnesses in any ensuing proceedings; and
 - 35.9.2.4 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.
- 35.9.3 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:
- 35.9.3.1 take all reasonable steps to eliminate such unlawful discrimination and shall otherwise comply with all the requirements and recommendations of such Relevant Authority; and
 - 35.9.3.2 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.

36. SUSTAINABILITY REPORTING REQUIREMENTS

The Contractor shall on an annual basis, in accordance with the specific timescales notified by the Authority, comply with the Sustainability Reporting Requirements set out in **Schedule 13 (GGC Reporting and FReM)**.

PART VII - ESCORT ARRANGEMENTS AND VISITORS**37. ESCORT ARRANGEMENTS**

The Contractor shall, during the Custodial Service Period, co-operate with all reasonable requirements of any other person providing Prisoner Escort Services to the Prison, but subject at all times to the maintenance of the security and control at the Prison and in accordance with the Custodial Service Specification.

38. VISITORS

Notwithstanding any other provision of this Contract, the Contractor shall, during the Custodial Service Period, 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 to the Prison, for whatever purpose.

PART VIII - STAFF AND PERSONNEL**39. THE DIRECTOR****39.1 Conditions for Appointment of the Director**

The Contractor shall not appoint any person as the Director without first having such person:

39.1.1 approved by the Authority's Representative pursuant to **clause 39.2 (Appointment of the Director)**; and

39.1.2 certified as a Prisoner Custody Officer in accordance with **clause 40 (Certification as Prisoner Custody Officer)**.

39.2 Appointment of the Director

39.2.1 The Contractor shall submit a nomination for the position of the Director to the Authority's Representative in accordance with **clause 16.7 (Contractor's Staff Information)** or, after the appointment of the first Director at any time after that appointment, which nomination the Authority's Representative may approve or reject as he or she thinks fit. The Contractor shall submit to the Authority's Representative such further particulars of the proposed Director and the terms of his or her employment contract as the Authority's Representative may require in order to decide whether to approve the appointment. The Authority's Representative shall consult with the Contractor with respect to any such proposed Director and if a Contractor's proposed Director is rejected by the Authority's Representative, the Authority's Representative shall provide reasons for the rejection, and the Contractor shall nominate a new proposed Director for the Authority's Representative's approval or rejection in the same manner as the earlier nomination.

39.2.2 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, appointment and certification as specified in this **clause 39 (The Director)**.

39.3 Status of the Director

During the term of this Contract, the Director shall be an appointee of the Contractor.

40. CERTIFICATION AS PRISONER CUSTODY OFFICERS**40.1 Certification**

Subject to **clause 40.2 (Certification of Authority Transferring Employees)**, the Contractor shall:

40.1.1 ensure that all persons carrying out Custodial Duties in the Prison shall be subject to certification as Prisoner Custody Officers by the Authority as required by sections 85 and 89 (and where appropriate section 80) of, and Schedule 10 to, the Criminal Justice Act 1991 (as amended); and

40.1.2 in order to obtain such certification by the Authority submit to the Authority:

40.1.2.1 the name of any proposed Prisoner Custody Officer;

40.1.2.2 without prejudice to **clause 41.1.2 (Recruitment and Training)**, the results of the applicable check made with the Criminal Records Bureau (or other relevant body) in respect of each person who it is proposed will be employed as a Prisoner Custody Officer at the Prison; and

40.1.2.3 such other information as the Authority may require, to assist in the Authority's decision as to his or her certification.

40.2 Certification of Authority Transferring Employees

Notwithstanding **clause 40.1 (Certification)**, the Authority shall ensure that Authority Transferring Employees transferring to the Contractor or a Sub-Contractor on the Relevant Vesting Day pursuant to **clause 42 (TUPE and Employees)** and **Schedule 17 (TUPE, Employees and Pensions)** who immediately prior to transfer are Prison Officers shall be certified as Prisoner Custody Officers as required by sections 85 and 89 (and where appropriate section 80) of, and Schedule 10 to, the Criminal Justice Act 1991.

40.3 Suspended or Revoked Certificates

40.3.1 The Contractor shall ensure that no person certified as a Prisoner Custody Officer may be employed in that capacity if his or her certification has been revoked or during any period when his or her certificate is suspended.

40.3.2 The Contractor shall notify the Authority's Representative immediately of any behaviour of any Prisoner Custody Officer which would cast doubt on his or her fitness for certification as a Prisoner Custody Officer, including if any member of the Contractor's Staff receives a police caution, a Conviction or an ASBO.

40.3.3 The Contractor shall ensure that Prisoner Custody Officers shall display their prisoner custody certificates at all times whilst on duty.

41. THE CONTRACTOR'S STAFF**41.1 Recruitment and Training**

The Contractor shall:

- 41.1.1 be responsible for the recruitment and provision of the Contractor's Staff;
- 41.1.2 subject to **clause 41.4 (Authority Transferring Employees)**, in respect of any member of the Contractor's Staff:
 - 41.1.2.1 question each such person as to whether he or she has any Convictions or ASBOs;
 - 41.1.2.2 carry out the applicable check with the Criminal Records Bureau (or other relevant body); and
 - 41.1.2.3 notify the Authority's Representative of the results of such checks;
- 41.1.3 ensure that no person who discloses any Convictions or ASBOs, or who is found to have any Convictions following the results of a Criminal Records Bureau or other applicable check, is employed or engaged as a member of the Contractor's Staff without the Authority's Representative's Approval (such approval not to be unreasonably delayed);
- 41.1.4 advise the Authority's Representative at all times of any person who, subsequent to his or her commencement of employment as a member of the Contractor's Staff receives a Conviction or ASBO or whose previous Convictions or ASBOs become known to the Contractor (or any Sub-Contractor); and
- 41.1.5 ensure that all members of the Contractor's Staff receive proper training and supervision in their functions and duties to ensure the proper performance of the Custodial Service, such training to be subject to the Authority's Representative's Approval (such approval not to be unreasonably delayed).

41.2 Uniforms

The Contractor shall:

- 41.2.1 submit for the Authority's Representative's Approval any and all uniforms to be worn by the Contractor's Staff (including the Prisoner Custody Officers) at least four (4) Months prior to the Services Commencement Date;
- 41.2.2 not take such uniforms into use and/or implement its required standards of dress for the Contractor's Staff without the Authority's Representative's Approval; and

- 41.2.3 not change the uniforms or standards of dress without the Authority's Representative's Approval.

41.3 **Approval of Contractor's Staff**

Subject to **clause 41.4 (Authority Transferring Employees)**, the Contractor shall:

- 41.3.1 ensure that it obtains the Authority's Representative's Approval to any member of the Contractor's Staff who is not required to be certified as a Prisoner Custody Officer (including, for the purposes of this **clause 41.3 (Approval of Contractor's Staff)**) at the Prison; and
- 41.3.2 provide to the Authority's Representative such details of those members of the Contractor's Staff who are not required to be certified as Prisoner Custody Officers as may be required by the Authority's Representative for the purposes of deciding whether to give the Authority's Representative's Approval,

provided that the Authority's Representative may exempt certain categories of the Contractor's Staff from the requirements of this **clause 41.3 (Approval of Contractor's Staff)**.

41.4 **Authority Transferring Employees**

The obligations set out in **clause 41.1 (Recruitment and Training)** and **clause 41.3 (Approval of Contractor's Staff)** shall not apply prior to or on the Services Commencement Date to the Authority Transferring Employees transferring to the Contractor or a Sub-Contractor on the Relevant Vesting Day pursuant to **clause 42 (TUPE and Employees)** and **Schedule 17 (TUPE, Employees and Pensions)**.

41.5 **Approval of New Members of Contractor's Staff**

If the Contractor or any Sub-Contractor seeks to engage a new member of the Contractor's Staff, and such person has not been the subject of prior approval or certification (as the case may be) in accordance with this **clause 41 (The Contractor's Staff)**, **clauses 39 (The Director)** and/or **40 (Certification as Prisoner Custody Officers)**, or such approval or certification has lapsed, the Contractor shall not permit such person to commence work at the Prison until the Contractor has complied with such provisions of this **clause 41 (The Contractor's Staff)**, **clauses 39 (The Director)** and/or **40 (Certification as Prisoner Custody Officers)** (as the case may be).

41.6 **Operating and Procedural Instructions**

The Contractor shall provide all members of the Contractor's Staff with:

41.6.1 those parts of the Operating Procedures, the Initial Service Delivery Documents and the Service Delivery Documents that are relevant to them; and

41.6.2 those parts of any revised or amended Operating Procedures, Initial Service Delivery Documents and Service Delivery Documents that are relevant to them and may be issued by the Contractor during the term of this Contract.

41.7 Obligation of Confidentiality

The Contractor shall:

41.7.1 ensure that all Contractor's Staff are under an obligation of confidence owed to the Contractor and the Authority not to disclose any information acquired during the course of their employment otherwise than in the proper discharge of their duties or as authorised by the Authority;

41.7.2 provide in the terms of the Sub-Contracts that:

41.7.2.1 the Sub-Contractors will undertake to the Authority in the same terms as the provisions of this **clause 41.7 (Obligation of Confidentiality)**; and

41.7.2.2 the Sub-Contractors shall ensure that all its Sub-Contractors undertake in the same terms as the provisions of this **clause 41.7 (Obligation of Confidentiality)**; and

41.7.3 at the Authority's request, provide the Authority with the benefit of a confidentiality undertaking from any Sub-Contractor, the form of such undertaking to be provided by the Authority.

41.8 Suspension of Staff

41.8.1 Without prejudice to **clauses 39 (The Director)** and **40 (Certification as Prisoner Custody Officers)**, if, in the opinion of the Authority's Representative, any member of the Contractor's Staff is guilty of misconduct, incapable of efficiently performing his or her duties or it is not in the public interest for such individual to work in the Prison, then the Authority's Representative may, by notice to the Contractor require the Contractor to immediately suspend such individual from his or her work and refuse the admission of such individual to the Prison (except, with the Authority's Representative's Approval, in connection with disciplinary matters) (a "**Suspended Member of Staff**") and shall, immediately on being required to do so, remove such Suspended Member of Staff from the Prison.

- 41.8.2 The Contractor will ensure that such Suspended Member of Staff's work is performed by such other member of the Contractor's Staff as is necessary. The Authority's Representative may, in respect of any such Suspended Member of Staff, take such action as it considers appropriate.
- 41.8.3 The Contractor and the Authority's Representative shall, following the suspension, refusal of admission and/or removal of such Suspended Member of Staff pursuant to **clause 41.8 (Suspension of Staff)**, consult in good faith to ascertain whether the Suspended Member of Staff should be allowed to recommence his or her duties in the Prison.
- 41.8.4 If the Contractor considers in good faith that suspension is no longer appropriate and that the Suspended Member of Staff should be allowed to resume his or her duties at the Prison, it shall notify the Authority's Representative in writing (a "**Cessation of Suspension Notice**").
- 41.8.5 Following receipt of any Cessation of Suspension Notice by the Authority's Representative, the Authority's Representative shall be entitled, by giving notice in writing (a "**Continued Suspension Notice**") to the Contractor within ten (10) Business Days after receipt of the Cessation of Suspension Notice, to require continued suspension and refusal of admission to the Prison of such Suspended Member of Staff for a specified period or permanently.
- 41.8.6 If the Authority's Representative does not give a Continued Suspension Notice within the period specified in **clause 41.8.5 (Suspension of Staff)**, the Suspended Member of Staff may be allowed to continue his or her duties and to be admitted to the Prison.

41.9 **Job Description and Details**

The Contractor shall:

- 41.9.1 provide written job descriptions (including any amendments), staff record systems and a performance evaluation plan for all members of the Contractor's Staff that shall be available for inspection by the Authority's Representative;
- 41.9.2 provide all members of the Contractor's Staff with written job descriptions before they begin work in the Prison; and
- 41.9.3 ensure that such job descriptions shall be amended as necessary and promptly reissued to the members of the Contractor's Staff concerned after each amendment.

41.10 **Section 88**

The Contractor shall ensure the inclusion in the contract of employment of all members of the Contractor's Staff a condition requiring the Contractor's Staff to co-operate with any Governor who may be appointed to the Prison.

41.11 Sufficient Contractor's Staff

41.11.1 The Contractor shall at all times:

41.11.1.1 maintain a sufficient number of Contractor's Staff with the requisite level of skill and experience engaged in the provision of the Custodial Service to ensure that the Prison is a safe, secure and decent environment; and

41.11.1.2 ensure that there are sufficient Contractor's Staff to cover for periods of holiday, sickness, other absences and anticipated and actual peaks in demand for the Custodial Service or any part of it.

41.11.2 In respect of resourcing:

41.11.2.1 the overriding principle shall be that the resourcing levels provided by the Contractor as set out in the Annual Resourcing Plan shall be sufficient to ensure that the Prison is a safe, secure and decent environment, and the Contractor may not propose changes to such resourcing which would conflict with or adversely affect that principle;

41.11.2.2 subject to **clause 41.11.2.1 (Sufficient Contractor's Staff)**, the Annual Resourcing Plan may include such flexibility of resource provision as may be reasonably necessary for the day-to-day running of the Prison;

41.11.2.3 the Contractor shall give the Authority prior written notification of any significant changes it proposes to make to the resourcing levels set out in the Annual Resourcing Plan for the then-current Contract Year, together with its reasons for such proposed changes; provided that where changes to resourcing levels are necessary to comply with **clause 41.11.2.1 (Sufficient Contractor's Staff)**, the Contractor may make such changes without prior notification;

41.11.2.4 if the proposed resourcing changes are not acceptable to the Authority, the Authority's Representative shall so notify the Contractor within twenty (20) Business Days after receipt of the Contractor's notification pursuant to **clause 41.11.2.1 (Sufficient**

Contractor's Staff), in which case the Contractor shall either:

- (a) withdraw its proposed changes; or
- (b) propose revised changes within ten (10) Business Days;

41.11.2.5 if the revised resourcing changes proposed by the Contractor pursuant to **clause 41.11.2.4(b) (Sufficient Contractor's Staff)** are not acceptable to the Authority, the Authority's Representative shall so notify the Contractor; and

41.11.2.6 where the Authority notifies the Contractor that proposed resourcing changes are not acceptable, such changes shall not be implemented or effective.

41.11.3 If the Authority considers that the Contractor is not complying with the requirements of **clauses 41.11.1 (Sufficient Contractor's Staff)** or **41.11.2.1 (Sufficient Contractor's Staff)**:

41.11.3.1 the Authority may issue an Improvement Notice in accordance with **Schedule 6 (Performance Management and Management Information Reporting)** and the provisions of paragraph 12 of **Schedule 6 (Performance Management and Management Information Reporting)** shall apply; and

41.11.3.2 if at any time the Authority considers that urgent and immediate steps are required to deal with the situation, it may take action in accordance with the provisions of **clause 64 (Authority Step-In)**.

41.11.4 Any dispute over what constitutes sufficient resourcing to ensure that the Prison is a safe, secure and decent environment shall be resolved in accordance with **clause 74 (Dispute Resolution)**.

41.12 **Continual Availability**

41.12.1 The Contractor shall ensure that:

41.12.1.1 sufficient Contractor's Staff (including Prisoner Custody Officers, the Director and other senior management of the Prison or their delegated representatives that have sufficient authority to take decisions necessary for the proper operation of the Prison) for the provision of the Custodial Service in accordance with the requirements of this Contract; and

41.12.1.2 a member of the senior management of the Contractor (if different from the senior management of the Prison),

shall be available twenty four (24) hours a Day on every Day of the Custodial Service Period.

41.12.2 The Contractor shall:

41.12.2.1 inform the Authority's Representative not less than three (3) Months prior to the Services Commencement Date of the procedures by which the obligations referred to in **clause 41.12.1 (Continual Availability)** will be performed (and any changes to such procedures); and

41.12.2.2 obtain the Authority's Representative's Approval to such procedures (and any such changes) before implementing them.

41.13 Responsibility for Staff Costs

As between the Contractor and the Authority the Contractor shall be entirely responsible for all aspects, including costs, of the contracts of employment of its and its Sub-Contractors' employees.

41.14 Offers of Employment

The Contractor shall not, and shall use reasonable endeavours to ensure that no Sub-Contractor shall make any offer of employment or otherwise approach, entice, induce or encourage any employee of the Authority, any Authority Related Party or any other part of the criminal justice system to leave the employment of the Authority, such Authority Related Party or such other part of the criminal justice system (including any sub-contractors of the Authority) unless it has given the Authority not less than five (5) Business Days prior written notice of such intended offer of employment, approach, enticement or encouragement.

41.15 Contractor's Key Staff and Senior Managers

41.15.1 The Contractor shall appoint an individual to each of the positions listed in the column headed 'Position' in the table in **Schedule 21 (Contractor's Key Staff)**, in accordance with the provisions of the clauses listed in the column headed 'Clause reference' in the table in **Schedule 21 (Contractor's Key Staff)** where appropriate.

41.15.2 The Contractor shall notify the Authority's Representative:

41.15.2.1 of the identity of each individual appointed to each position on or

before the date of the initial appointments to those positions; and

41.15.2.2 within five (5) Business Days of any change to the identity of any individual appointed to any of those positions.

41.15.3 The Contractor shall ensure that the employment contract for each such individual and senior manager ("**Senior Employee**") contains a mobility clause that obliges the Senior Employee to undertake such travel both within the United Kingdom and abroad and/or to relocate to another prison as may be required.

41.16 **Apprenticeships and Skills**

41.16.1 The Contractor shall use reasonable endeavours to procure the employment of apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during the delivery of this Contract.

41.16.2 The Contractor shall procure the provision of any appropriate further skills training opportunities for employees delivering the Contract.

41.16.3 The provisions of **clauses 41.16.1 to 41.16.2 (Apprenticeships and Skills)** above shall not apply in respect of Prisoner Custody Officers.

41.17 **Monitoring and Reporting**

The Contractor shall monitor, and report to the Authority when required:

41.17.1 the level of volunteering undertaken by the Contractor's Staff including the total number of Days spent on volunteering per Year and the average number of Days spent on volunteering per member of staff per Year; and

41.17.2 the level of training and development undertaken by the Contractor's Staff including the total number of Days spent on training and development per Year and the average number of Days spent on training and development per member of staff per Year.

42. **TUPE AND EMPLOYEES**

42.1 Subject to **clause 42.2 (TUPE and Employees)**, the Parties shall comply with the provisions of **Schedule 17 (TUPE, Employees and Pensions)**.

42.2 The Authority may at any time following a Pension Change Event but in any event no later than the then current planned Services Commencement Date issue a notice in writing (the "**Pension Change Notice**") to the Contractor notifying the Contractor that with effect from the date set out in the Pension Change Notice (the "Pension Change Date"), such date to be at

least forty-two (42) Days after the date of the Pension Change Notice:

42.2.1 the provisions of **paragraph 3 of Schedule 17 (TUPE, Employees and Pensions)** shall cease to apply in relation to this Contract; and

42.2.2 in their place, the Contractor will and shall procure that the relevant Sub-Contractors will, amongst other things, be required to procure that the Authority Transferring Employees will be members of a broadly comparable pension scheme and may take part in a bulk transfer exercise into the broadly comparable scheme, on the basis set out in **Appendix 3 to Schedule 17 (TUPE, Employees and Pensions)** and upon the basis of the pricing contained in the Pension Change Base Case (which shall be treated as the Base Case for all purposes under this Contract with effect from the Pension Change Date).

42.3 Where the Authority issues a Pension Change Notice:

42.3.1 the Contractor shall as soon as is reasonably practicable and in any event within five (5) Business Days notify the Authority of its plan for implementing the Pension Change Notice with effect from the Pension Change Date and shall implement the Pension Change Notice by such date; and

42.3.2 **clauses 61 (Change to Custodial Service), 62 (Changes in Law) and 63 (Financial Adjustment) and Schedule 8 (Change Protocol)** shall not apply.

43. **THE CONTROLLER**

43.1 **Section 85**

Without prejudice to any other provision of this Contract, the Contractor will note and comply with section 85 of the Criminal Justice Act 1991 (as amended by the Criminal Justice and Public Order Act 1994 and the Offender Management Act 2007).

43.2 **Unrestricted Access**

The Controller, or any person performing similar or like obligations on behalf of the Authority, shall be allowed unrestricted access to the Prison at any hour of the Day. In accordance with section 85(5) of the Criminal Justice Act 1991 the Contractor shall do all that it reasonably can to facilitate the exercise by the Controller of its functions, whether such functions are conferred by statute or by the Authority.

43.3 **Provision of Facilities**

43.3.1 From the Services Commencement Date, the Contractor shall provide such suitable accommodation in the Prison as the Authority may reasonably require, at

no additional cost, for the use of the Controller and his or her representatives. All such accommodation shall be:

- 43.3.1.1 sized to accommodate comfortably a minimum of four (4) persons and include a separate room of a similar size for meetings and shall include at least two (2) direct external telephone lines linked to the UK national telephone network which shall not be routed through any exchange or network gateway within the Prison or operated by the Contractor or any Sub-Contractor;
 - 43.3.1.2 adequately furnished, lighted, heated and ventilated, and shall include cloakroom, internal and external telephone, internet and other ICT infrastructure facilities; and
 - 43.3.1.3 capable of being made secure by means of door locks or other such equipment.
- 43.3.2 The Contractor shall provide, at the Authority's direction, similar space and facilities for the Independent Monitoring Board and other Authority representatives and nominated third parties who have a reasonable need to collocate at the Prison from time to time. Any such accommodation required by the Independent Monitoring Board shall (at the direction of the Independent Monitoring Board) be dedicated to the Independent Monitoring Board and contain a computer (installed with Microsoft Office, Quantum, PNomis and any items of the Authority's ICT System or replacement systems as specified by the Authority), telephone and filing cabinet.
- 43.3.3 The Contractor shall provide suitable temporary facilities for any other representative of the Authority who has cause to visit the Site or the Prison from time to time. This shall, where required, include the provision to Board of Visitors members the opportunity to receive Hepatitis B immunisations at no additional cost to the Authority.
- 43.3.4 The Contractor shall be responsible for the cleanliness and reasonable care of all such accommodation and facilities provided.

PART IX - PAYMENT PROVISIONS**44. PAYMENT PROVISIONS****44.1 Payment of the Contract Price**

44.1.1 The Authority shall pay to the Contractor the Contract Price in respect of each Month, which shall be calculated in accordance with **Schedule 5 (Payment Mechanism)** in accordance with this **clause 44 (Payment of the Contract Price)**.

44.1.2 The Monthly Payment (as defined in **Schedule 5 (Payment Mechanism)**) for each Month in each Contract Year shall be calculated in accordance with **Schedule 5 (Payment Mechanism)** and paid in accordance with **clauses 44.2 (Report and Invoice)** to **44.8 (Determination of Dispute)** inclusive. No payments shall be made for any period prior to the Service Commencement Date.

44.2 Report and Invoice

Within five (5) Business Days after the end of each Month, the Contractor shall submit to the Authority:

44.2.1 a report showing for that Month the Monthly Payment and, individually, each item taken into account in calculating the Monthly Payment for that Month pursuant to **paragraph 9.3 of Schedule 5 (Payment Mechanism)**; and

44.2.2 an invoice for the amount (if any) shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

44.3 Payment

44.3.1 Subject to **clauses 44.3.2 (Payment)** and **44.5 (Disputed Amounts)**, the Authority shall pay the amount stated in any invoice submitted under **clause 44.2 (Report and Invoice)** on or before the date falling thirty (30) Days after receipt of the invoice.

44.3.2 Where a report shows a net amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority on or before the date falling thirty (30) Days after the date of the invoice, or at the option of the Authority carry forward that amount to the next invoice in reduction of the amount which would otherwise have been owed by the Authority to the Contractor.

44.4 Interest on Late Payment

Except where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid on or before the due date, it shall bear interest on that amount at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this Contract provide the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

44.5 Disputed Amounts

44.5.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to this **clause 44 (Payment Provisions)**, the provisions of this **clause 44.5 (Disputed Amounts)** shall apply.

44.5.2 The Authority shall notify the Contractor in writing within ten (10) Business Days after receipt by the Authority of the relevant invoice and supporting information of that part of the amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) which the Authority (acting in good faith) disputes (a "**Disputed Amount**") and submit to the Contractor such supporting evidence as the Authority may have.

44.5.3 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.

44.6 Response to Authority Notice

Within ten (10) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to **clause 44.5.2 (Disputed Amounts)**, the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:

44.6.1 to retain on a permanent basis any amounts withheld pursuant to **clause 44.5.3 (Disputed Amounts)**; and

44.6.2 to reclaim from the Contractor the amount of any over-payment which may have been made to the Contractor, together with interest on any such amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which the over-payment was made until that amount has been paid in full and whether before or after judgment.

44.7 Dispute

If the Contractor responds (pursuant to **clause 44.6 (Response to Authority Notice)**) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to **clause 44.6.2 (Response to Authority Notice)**, the matter or matters in question shall be determined under the Dispute Resolution Procedure.

44.8 Determination of Dispute

If the determination of any dispute conducted pursuant to **clause 44.7 (Dispute)** shows that:

44.8.1 the Authority has withheld any amount which the Contractor was entitled to be paid; or

44.8.2 the Contractor has claimed under **clause 44 (Payment Provisions)** any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay the Authority) or from the date on which overpayment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

45. TAXATION**45.1 Value Added Tax**

45.1.1 All amounts due under this Contract are exclusive of VAT.

45.1.2 If any supply made or referred to in this Contract is or becomes chargeable to VAT then the person receiving the supply (the "**Recipient**") shall in addition pay the person making the supply (the "**Supplier**") the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.

45.1.3 Where under this Contract any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.

45.1.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in

accordance with this Contract and payable by the Authority to the Contractor.

46. SET OFF

46.1 Rights of Set Off

The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract.

46.2 Set Off and Disputed Amounts

If the payment or deduction of any amount referred to in **clause 46.1 (Rights of Set Off)** is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

PART X - EXPIRY AND TERMINATION**47. EXPIRY**

Where this Contract expires due to effluxion of time then the Authority shall have the option to require the Contractor to transfer to the Authority, or as directed by the Authority, all of its rights, title and interest in and to the Contractor Assets in accordance with **Schedule 28 (Exit Management)**.

48. TERMINATION ON AUTHORITY DEFAULT**48.1 Termination on Authority Default**

48.1.1 If an Authority Default has occurred and the Contractor wishes to terminate this Contract, the Contractor must serve a termination notice (the "**Contractor Termination Notice**") on the Authority within thirty (30) Business Days after becoming aware of the Authority Default.

48.1.2 The Contractor Termination Notice must specify the type of Authority Default which has occurred entitling the Contractor to terminate.

48.1.3 This Contract will terminate on the day falling thirty (30) Business Days after the date the Authority receives the Contractor Termination Notice, unless the Authority rectifies the Authority Default within twenty (20) Business Days after receipt of the Contractor Termination Notice.

48.2 Compensation on Termination for Authority Default

48.2.1 On termination of this Contract under **clause 48 (Termination on Authority Default)**, the Authority shall pay to the Contractor the Contractor Breakage Costs in accordance with **clauses 53 (Gross Up of Termination Payments)** and **54 (Method of Payment)** on the Termination Date.

48.2.2 On termination under this **clause 48 (Termination on Authority Default)**, the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 28 (Exit Management)**.

49. TERMINATION ON CONTRACTOR DEFAULT**49.1 Persistent Breach**

49.1.1 If a particular breach (other than any breach for which Performance Points could have accrued and/or for which a Deduction could have been made), has continued

for more than fourteen (14) Days or occurred more than three (3) times in any six (6) Month period then the Authority may serve a notice on the Contractor:

49.1.1.1 specifying that it is a formal warning notice;

49.1.1.2 giving reasonable details of the breach; and

49.1.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

49.1.2 If, following service of a warning notice, the breach specified has continued beyond thirty (30) Days or recurred in two (2) or more Months within the six (6) Month period after the date of service, then the Authority may serve another notice (a "**Final Warning Notice**") on the Contractor:

49.1.2.1 specifying that it is a Final Warning Notice;

49.1.2.2 stating that the breach specified has been the subject of a warning notice served within the six (6) Month period prior to the date of service of the Final Warning Notice; and

49.1.2.3 stating that if the breach continues for more than fourteen (14) Days or recurs in two (2) or more Months within the six (6) Month period after the date of service of the Final Warning Notice, this Contract may be terminated.

49.1.3 A warning notice may not be served in respect of any incident of breach which has previously been counted in the making of a separate warning notice.

49.2 **Rectification**

49.2.1 If a Contractor Default has occurred and the Authority wishes to terminate this Contract, it must serve a Termination Notice on the Contractor.

49.2.2 The Termination Notice must specify:

49.2.2.1 the type and nature of Contractor Default that has occurred, giving reasonable details; and

49.2.2.2 that in the case of any Contractor Default falling within paragraphs (a), (g), (h) and (m) of the definition of Contractor Default this Contract will terminate on the Day falling forty (40) Business Days after the date the Contractor receives the Termination Notice, unless:

- (a) in the case of a breach under paragraph (a) of the definition of Contractor Default the Contractor puts forward an acceptable rectification programme within twenty (20) Business Days after the date the Contractor receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or
 - (b) in the case of any Contractor Default falling within paragraphs (a), (g) and (m) of the definition of Contractor Default the Contractor rectifies the Contractor Default within forty (40) Business Days after the date the Contractor receives the Termination Notice; or
 - (c) in the case of any Contractor Default falling within paragraph (h) of the definition of Contractor Default the Contractor rectifies the Contractor Default within twenty (20) Business Days after the date the Contractor receives the Termination Notice; or
- 49.2.2.3 that in the case of any other Contractor Default (not being paragraphs (a), (g), (h) and (m) of the definition of Contractor Default), this Contract will terminate on the date falling forty (40) Business Days after the date the Contractor receives the Termination Notice (and in such circumstances this Contract shall terminate on such date).
- 49.2.3 If the Contractor either rectifies a Contractor Default, falling within paragraphs (a), (g), (h) and (m), within the time period specified in the Termination Notice, or implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and this Contract will continue.
- 49.2.4 If:
- 49.2.4.1 in the case of a Contractor Default within paragraph (a) of the definition of Contractor Default, no acceptable rectification programme has been put forward pursuant to **clause 49.2.2.2(a) (Rectification)** and the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice; or
 - 49.2.4.2 in the case of a Contractor Default falling within paragraphs (g), (h) and (m) of the definition of Contractor Default the Contractor fails to rectify the Contractor Default within the time period specified in

the Termination Notice,

the Authority may give notice stating that this Contract will terminate on the date falling five (5) Business Days after the date of receipt of such notice.

- 49.2.5 If the Authority issues a Termination Notice in any of the circumstances outlined in paragraph 13.4 of **Schedule 6 (Performance Management and Management Information Reporting)**, this Contract will terminate on the date falling five (5) Business Days after the date of such notification.

49.3 **Notice of Default Events**

The Contractor shall notify the Authority immediately it has knowledge of any event which constitutes a Contractor Default.

49.4 **Compensation on Termination for Contractor Default**

- 49.4.1 On termination of the Contract under this **clause 49 (Termination on Contractor Default)**, without prejudice to its other rights and remedies under this Contract, the Authority may recover from the Contractor the costs reasonably incurred of making other arrangements for the provision of the Custodial Service (including, for the avoidance of doubt, the Authority's administrative costs) up to the Expiry Date provided that in the payment of compensation by the Contractor only the difference in cost between the amount that would have been paid by the Authority for the provision of the Custodial Service had a Contractor Default not occurred and amounts reasonably incurred by the Authority for the delivery of the Custodial Service by an alternative provider (which the Authority shall take reasonable steps to mitigate) shall be paid by the Contractor to the Authority.

- 49.4.2 The amount which would have been paid to the Contractor had a Contractor Default not occurred shall, for the purposes of this **clause 49.4 (Compensation on Termination for Contractor Default)**, be calculated as:

49.4.2.1 where the Custodial Service Period at the Termination Date was three (3) Months or more, the average Monthly Service Payment paid or payable by the Authority per Month (excluding VAT and any payment in respect of Planned Capital Expenditure) in respect of the Custodial Service provided in the three (3) Month period immediately preceding the Termination Date; or

49.4.2.2 where the Custodial Service Period at the Termination Date was less than three (3) Months, the average Monthly Service Payment paid or payable by the Authority per Month during the Custodial

Service Period (excluding VAT and any payment in respect of Planned Capital Expenditure) in respect of the Custodial Service provided in the Custodial Services Period;

in each case multiplied by the number of Months in respect of which compensation is payable.

49.4.3 On termination of the Contract pursuant to this **clause 49 (Termination on Contractor Default)**, the Authority shall pay or allow to the Contractor an amount equal to the Contractor's Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition and Transformation Costs if and to the extent that:

49.4.3.1 all relevant Capital Works have been carried out and completed at the Termination Date, and

49.4.3.2 such Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition and Transformation Costs have not been recovered through the Monthly Payments as at the Termination Date.

49.5 **Transfer of Contractor Assets on Contractor Default**

On termination under this **clause 49 (Termination on Contractor Default)**, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 28 (Exit Management)**.

50. **TERMINATION ON FORCE MAJEURE**

50.1 **Termination**

50.1.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.

50.1.2 The Authority shall not be entitled to terminate this Contract for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to **clauses 50.1.6 (Termination)** or **50.1.8 (Termination)**).

50.1.3 Nothing in **clause 50.1 (Termination)** shall affect any entitlement to make Deductions in the period during which the Force Majeure Event is subsisting.

- 50.1.4 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 50.1.5 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 50.1.6 If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty (120) Business Days, then, subject to **clause 50.1.7 (Termination)**, either Party may terminate this Contract by giving twenty (20) Business Days' written notice to the other Party.
- 50.1.7 If this Contract is terminated under **clauses 50.1.6 (Termination) or 50.1.8 (Termination)**:
- 50.1.7.1 compensation shall be payable by the Authority in accordance with **clause 50.2 (Compensation on Termination on Force Majeure)**; and
- 50.1.7.2 the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 28 (Exit Management)**.
- 50.1.8 If the Contractor gives notice to the Authority under **clause 50.1.6 (Termination)** that it wishes to terminate this Contract, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Contract to continue. If the Authority gives the Contractor such notice, then:
- 50.1.8.1 the Authority shall pay to the Contractor the Maximum Contract Price for each Month of each Contract Year from the Day after the date on which this Contract would have terminated under **clause 50.1.6 (Termination)** until the Expiry Date or Termination Date (as the case may be) as if the Custodial Service were being fully provided; and

50.1.8.2 this Contract will not terminate until expiry of written notice (of at least twenty (20) Business Days) from the Authority to the Contractor that it wishes this Contract to terminate.

50.1.9 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

50.1.10 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

50.2 Compensation on Termination on Force Majeure

50.2.1 On termination of this Contract under **clause 50.1 (Termination on Force Majeure)**, the Authority shall pay to the Contractor the "**Force Majeure Termination Sum**" in accordance with **clauses 53 (Gross Up of Termination Payments)** and **54 (Method of Payment)**. The Force Majeure Termination Sum shall be an amount equivalent to the Contractor Breakage Costs provided that for the purposes of the Force Majeure Termination Sum, no loss of profits shall be compensated.

50.2.2 If the amount referred to in **clause 50.2.1 (Compensation on Termination on Force Majeure)** is less than zero, then, for the purposes of the calculation in **clause 50.2.1 (Compensation on Termination on Force Majeure)** it shall be deemed to be zero.

51. TERMINATION FOR CORRUPT GIFTS AND FRAUD AND PROHIBITED EQUALITY AND DIVERSITY ACT

51.1 Corrupt Gifts and Fraud

The Contractor warrants that in entering into this Contract it has not committed any Prohibited Act.

51.2 Termination for Corrupt Gifts and Fraud

51.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or Affiliates commits any Prohibited Act, then the Authority shall be entitled to act in accordance with

clauses 51.2.2 (Termination for Corrupt Gifts and Fraud) to 51.2.7 (Termination for Corrupt Gifts and Fraud).

- 51.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Contract by giving notice to the Contractor.
- 51.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Custodial Service by another person.
- 51.2.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the relevant Sub-Contract and procures the performance of such part of the Custodial Service by another person.
- 51.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days after receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Custodial Service by another person.
- 51.2.6 If the Prohibited Act is committed by any other person not specified in **clauses 51.2.2 (Termination for Corrupt Gifts and Fraud) to 51.2.5 (Termination for Corrupt Gifts and Fraud)**, then the Authority may give notice to the Contractor of termination and this Contract will terminate unless within twenty (20) Business Days after receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Custodial Service by another person.
- 51.2.7 Any Termination Notice under this **clause 51.2 (Termination for Corrupt Gifts and Fraud)** shall specify:
- 51.2.7.1 the nature of the Prohibited Act;
- 51.2.7.2 the identity of the party whom the Authority believes has committed

the Prohibited Act;

51.2.7.3 the date on which this Contract will terminate, in accordance with the applicable provision of this **clause 51.2 (Termination for Corrupt Gifts and Fraud)**; and

51.2.7.4 the Authority's chosen option under **clause 51.4.1 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**.

51.3 Termination for Prohibited Equality and Diversity Act

51.3.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents commits any Prohibited Equality and Diversity Act, then the Authority shall be entitled to act in accordance with **clauses 51.3.2 (Termination for Prohibited Equality and Diversity Act) to 51.3.6 (Termination for Prohibited Equality and Diversity Act)**.

51.3.2 If a Prohibited Equality and Diversity Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Contract by giving notice to the Contractor.

51.3.3 If the Prohibited Equality and Diversity Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Custodial Service by another person.

51.3.4 If the Prohibited Equality and Diversity Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the relevant Sub-Contract and procures the performance of such part of the Custodial Service by another person.

51.3.5 If the Prohibited Equality and Diversity Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days after receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Custodial Service by another person.

51.3.6 If the Prohibited Equality and Diversity Act is committed by any other person not specified in **clauses 51.3.2 (Termination for Prohibited Equality and Diversity Act) to 51.3.5 (Termination for Prohibited Equality and Diversity Act)**, then the Authority may give notice to the Contractor of termination and this Contract will terminate unless within twenty (20) Business Days after receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Custodial Service by another person.

51.3.7 Any Termination Notice under this **clause 51.3 (Termination for Prohibited Equality and Diversity Act)** shall specify:

51.3.7.1 the nature of the Prohibited Equality and Diversity Act;

51.3.7.2 the identity of the party whom the Authority believes has committed the Prohibited Equality and Diversity Act;

51.3.7.3 the date on which this Contract will terminate, in accordance with the applicable provision of this **clause 51.3 (Termination for Prohibited Equality and Diversity Act)**; and

51.3.7.4 the Authority's chosen option under **clause 51.4.1 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**.

51.4 Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act

51.4.1 On termination of the Contract under this **clause 51 (Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**, without prejudice to its other rights and remedies under this Contract, the Authority may recover from the Contractor the costs reasonably incurred of making other arrangements for the provision of the Custodial Service (including, for the avoidance of doubt, the Authority's administrative costs) up to the Expiry Date provided that in the payment of compensation by the Contractor only the difference in cost between the amount that would have been paid by the Authority for the provision of the Custodial Service had a Prohibited Act or Prohibited Equality and Diversity Act not occurred and amounts reasonably incurred by the Authority for the delivery of the Custodial Service by an alternative provider (which the Authority shall take reasonable steps to mitigate) shall be paid by the Contractor to the Authority.

51.4.2 The amount which would have been paid to the Contractor had a Prohibited Act or

Prohibited Equality and Diversity Act not occurred shall, for the purposes of this clause, be calculated as:

51.4.2.1 where the Custodial Service Period at the Termination Date was three (3) Months or more, the average Monthly Service Payment paid or payable by the Authority per Month (excluding VAT and any payment in respect of Planned Capital Expenditure) in respect of the Custodial Service provided in the three (3) Month period immediately preceding the Termination Date; or

51.4.2.2 where the Custodial Service Period at the Termination Date was less than three (3) Months, the average Monthly Service Payment paid or payable by the Authority per Month during the Custodial Service Period (excluding VAT and any payment in respect of Planned Capital Expenditure) in respect of the Custodial Service provided in the Custodial Service Period;

in each case multiplied by the number of Months in respect of which compensation is payable.

51.4.3 On termination of the Contract pursuant to this **clause 51 (Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**, the Authority shall pay or allow to the Contractor an amount equal to the Contractor's Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition and Transformation Costs if and to the extent that:

51.4.3.1 all relevant Capital Works have been carried out and completed at the Termination Date; and

51.4.3.2 such Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition and Transformation Costs have not been recovered through the Monthly Payments as at the Termination Date.

51.4.4 If termination occurs under this **clause 51 (Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 28 (Exit Management)**.

51.5 Interpretation

In this **clause 51 (Termination for Corrupt Gifts and Fraud and Prohibited Equality and**

Diversity Act), the expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting with the authority or knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be).

52. **VOLUNTARY TERMINATION BY THE AUTHORITY**

52.1 **Voluntary Termination by the Authority**

52.1.1 The Authority may terminate this Contract at any time on or before the Expiry Date by complying with its obligations under **clauses 52.1.2 (Voluntary Termination by the Authority) to 52.1.3 (Voluntary Termination by the Authority)**.

52.1.2 If the Authority wishes to terminate this Contract under this **clause 52.1 (Voluntary Termination by the Authority)**, it must give a Termination Notice to the Contractor stating:

52.1.2.1 that the Authority is terminating this Contract under this **clause 52.1 (Voluntary Termination by the Authority)**;

52.1.2.2 that this Contract will terminate on the date specified in the Termination Notice, which must be a minimum of twenty (20) Business Days after the date of receipt of the Termination Notice; and

52.1.2.3 whether the Authority has chosen to exercise its option under **clause 52.2.2 (Voluntary Termination by the Authority)**.

52.1.3 This Contract will terminate on the date specified in the Termination Notice referred to in **clause 52.1.2 (Voluntary Termination by the Authority)**.

52.2 **Compensation on Voluntary Termination**

52.2.1 On termination under **clause 52.1 (Voluntary Termination by the Authority)**, the Authority shall pay the Contractor an amount equal to the amount payable under **clause 48.2.1 (Termination on Authority Default)** in accordance with **clauses 53 (Gross Up of Termination Payments) and 54 (Method of Payment)**.

52.2.2 On termination under this **clause 52 (Voluntary Termination by the Authority)**, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 28 (Exit Management)**.

PART XI - ARRANGEMENTS ON TERMINATION OR EXPIRY**53. GROSS UP OF TERMINATION PAYMENTS**

If any amount of compensation payable by the Authority under **clauses 48.2 (Compensation on Termination for Authority Default)** and/or **50.2 (Compensation on Termination on Force Majeure)** and/or **52.2 (Compensation on Voluntary Termination)**, is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances, deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

54. METHOD OF PAYMENT**54.1 Date for Payment**

The Authority shall pay to the Contractor the Termination Sum, together with any interest at the Prescribed Rate on or before the date falling forty (40) Business Days after the Termination Date.

54.2 Late Payment of Termination Sum

If the Authority:

54.2.1 fails to make a payment to the Contractor in accordance with **clause 54.1 (Date for Payment)**; or

54.2.2 breaches **clause 76.1 (Restrictions on Transfer of this Contract by the Authority)**,

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of any Termination Sum payable by the Authority together with any accrued but unpaid interest at the Prescribed Rate to be immediately due and payable.

55. CHANGES TO PROJECT DOCUMENTS**55.1 No Increase in Liability**

No amendment, waiver or exercise of a right under any Project Document shall have the effect of increasing the Authority's liabilities on early termination of this Contract unless the Contractor has obtained the prior written consent of the Authority to such increased liability for the purposes of this **clause 55 (Changes to Project Documents)**

55.2 Conflict

In the event of any conflict between the provisions of this **clause 55 (Changes to Project Documents)** and any other provision of this Contract, the provisions of this **clause 55 (Changes to Project Documents)** shall prevail.

56. EXCLUSIVITY OF REMEDY

Save as provided in and subject to **clause 57 (Continuing Obligations)**, any payment of compensation shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to the termination of this Contract. The payment of compensation under **clauses 48.2 (Compensation on Termination for Authority Default), 50.2 (Compensation on Termination on Force Majeure) and/or 52.2 (Compensation on Voluntary Termination)** shall be the sole remedy of the Contractor against the Authority in respect of termination of the Contract.

57. CONTINUING OBLIGATIONS

57.1 Except as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract, and notwithstanding the provisions of **clause 56 (Exclusivity of Remedy)** termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date.

57.2 Termination (howsoever arising) or expiry of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under **clauses 7 (Nature of Land Interests), 42 (TUPE and Employees), 44 (Payment Provisions), 46 (Set Off), 48.2 (Compensation on Termination for Authority Default), 49.4 (Compensation on Termination for Contractor Default), 50.2 (Compensation on Termination on Force Majeure), 51.4 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act), 52.2 (Compensation on Voluntary Termination), 58 (Surveys on Expiry or Termination and Retention Fund), 59 (Transition to Another Contractor), 65 (Information and Confidentiality), 66 (Public Relations and Publicity), 68 (Contractor's Records and Provision of Information), 69**

(Data Protection), 70 (Indemnities and Liabilities), 72 (Insurance), 74 (Dispute Resolution), 75 (Intellectual Property Rights), 76.1 (Restrictions on Transfer of this Contract by the Authority), 84 (Notices), 87 (Governing Law and Jurisdiction) and 91 (Capacity) or under Schedule 28 (Exit Management) or under any other provision of this Contract which is expressed to survive termination (howsoever arising) or expiry or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.

58. SURVEYS ON EXPIRY OR TERMINATION AND RETENTION FUND

58.1 Final Survey

58.1.1 No later than the date eighteen (18) Months prior to the Expiry Date, or, in the case of early termination, no later than eighteen (18) Months following the Termination Notice (or other notice having the effect of termination), the Authority shall be entitled to carry out or procure the carrying out of a final survey of the Prison and, to the extent relevant not included in the Prison, the Site, to assess whether it and the Assets have been and are being maintained by the Contractor in accordance with its obligations under **clause 21.6 (Maintenance of Assets and Asset Refresh Plan)** and **clause 25 (Maintenance of the Prison)** (the "Required Condition Standard").

58.1.2 The Authority shall notify the Contractor in writing a minimum of ten (10) Business Days before the date it wishes to carry out or procure the carrying out of the final survey. The Authority shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor's ability to provide the Custodial Service.

58.2 Minimisation of Disruption

Where the Authority carries out or procures the carrying out of the final survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Custodial Service by the Contractor. The Contractor shall afford the Authority or any person carrying out the survey (free of charge) any reasonable assistance required by the Authority during the carrying out of the final survey.

58.3 Results of Survey

If the final survey shows that the Contractor has not complied with or is not complying with its obligations under **clause 21.6 (Maintenance of Assets and Asset Refresh Plan)** or

clause 25 (Maintenance of the Prison), the Authority shall:

58.3.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Prison and, to the extent relevant not included in the Prison, the Site, and/or as applicable the relevant Assets to the standard they would have been in if the Contractor had complied or was complying with its obligations under **clause 21.6 (Maintenance of Assets and Asset Refresh Plan)** and **clause 25 (Maintenance of the Prison)**;

58.3.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and

58.3.3 recover the cost of the survey from the Contractor by means of a deduction from the next payment or payments of the Contract Price.

58.4 **Maintenance Work**

The Contractor shall carry out such rectification and/or maintenance work notified pursuant to **clause 58.3.1 (Results of Survey)** (the "**Outstanding Work**") in order to bring the condition of the Prison and, to the extent relevant not included in the Prison, the Site, and/or as applicable the relevant Assets up to the Required Condition Standard within the period specified and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

58.5 **Retention Fund**

If the Contractor has been notified under **clause 58.3.1 (Results of Survey)** that rectification and/or maintenance work is required, then, in the case of expiry, for the twelve (12) Months prior to the Expiry Date the Authority shall (to the extent that the Outstanding Work has not been carried out in the interim) deduct the costs of that work as quantified by the survey referred to in **clause 58.1 (Final Survey)** from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of the Contract Price and pay such amount into an interest bearing account (the "**Retention Fund Account**").

58.6 **Costs**

If and to the extent that the Contractor carries out the Outstanding Work to the Authority's reasonable satisfaction within the specified period, to the extent that there are funds standing to the credit of the Retention Fund Account, the Authority shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account. If the amount in the Retention Fund Account is insufficient to cover the Contractor's costs, the Contractor shall bear the balance of such costs itself.

58.7 **Failure to Carry Out Work**

If and to the extent that the Contractor fails to carry out the Outstanding Work to the Authority's reasonable satisfaction within the specified period, the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall:

58.7.1 in the case of expiry, make withdrawals from the Retention Fund Account or where there are insufficient funds in the Retention Fund Account, make deductions from any subsequent payment of the Contract Price to pay for such work or recover such amounts from the Contractor as a debt payable on demand; and

58.7.2 in any other case, make deductions from any subsequent payment of the Contract Price to pay for such work or recover such amounts from the Contractor as a debt payable on demand.

58.8 Balance of Fund

If:

58.8.1 all the Outstanding Work identified by the Authority or the person the Authority procures to carry out the final survey has been carried out to the Authority's reasonable satisfaction;

58.8.2 all such Outstanding Work has been paid for by the Contractor; and

58.8.3 no Termination Notice is outstanding,

then the Authority shall pay any credit balance on the Retention Fund Account to the Contractor as soon as practicable.

59. TRANSITION TO ANOTHER CONTRACTOR

59.1 The provisions of **Schedule 28 (Exit Management)** shall apply in connection with the expiry or termination (howsoever caused) of this Contract.

59.2 Notwithstanding any of the other provisions of this Contract, including **clause 2 (Contract Duration)** and this **Part X (Expiry and Termination)**, the Expiry Date, Early Termination Date and any Termination Date may be extended by the Authority as set out in paragraph 5.1 of **Schedule 28 (Exit Management)** in connection with the completion of exit assistance in accordance with this Contract.

59.3 Duty to Co-operate

Without prejudice to its obligations under **Schedule 28 (Exit Management)**, during the

eighteen (18) Months immediately preceding the Expiry Date and during the period of any Termination Notice, and in either case for the period subsequently as specified in **Schedule 28 (Exit Management)**, the Contractor shall co-operate fully with the transfer of responsibility for the Custodial Service (or any part of the Custodial Service) to the Authority and/or any New Contractor of such services the same or similar to the Custodial Service, and for the purposes of this **clause 59 (Transition to Another Contractor)** the meaning of the term "co-operate" shall include:

- 59.3.1 liaising with the Authority and/or any New Contractor, and providing reasonable assistance and advice concerning the Custodial Service and its transfer to such New Contractor;
- 59.3.2 allowing any New Contractor access (at reasonable times and on reasonable notice) to the Prison but not so as to interfere with or impede the provision of the Custodial Service;
- 59.3.3 without prejudice to the obligations of the Contractor pursuant to **clause 31 (Operating Manual)**, providing to the Authority and/or to any New Contractor all and any information concerning the Site, the Prison, and/or the Custodial Service which is reasonably required for the efficient transfer of responsibility for their performance; and
- 59.3.4 transferring its rights, title and interest in and to the Contractor Assets to the Authority or at the Authority's direction in accordance with **Schedule 28 (Exit Management)**.

59.4 Transfer of Responsibility

The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Custodial Service to a New Contractor and the Contractor shall take no action at any time during the term of this Contract or afterwards which may prejudice, frustrate or make more difficult such transfer.

59.5 Handback

- 59.5.1 Upon the termination or expiry of the Contract, the Contractor shall ensure that:
 - 59.5.1.1 all areas which the Contractor has used for storage or operation have been left clean and tidy and all rubbish has been removed from the Site;
 - 59.5.1.2 all spares and parts have been stored in good order and protected from any damage of contamination and damp and a comprehensive schedule of such spares and parts has been handed to the Authority,



or the Authority's agent;

59.5.1.3 all consumables, oils, solvents, chemicals, gas canisters and aerosols have been safely stored at the Site, save where otherwise agreed with the Authority's Representative (in which case the Contractor shall safely remove them as directed); and

59.5.1.4 it has given at least eighteen (18) Months' notice to its Sub-Contractors of the expiry of the Contract, details of which shall be agreed with the Authority's Representative.

PART XII - RELIEF EVENTS**60. RELIEF EVENTS****60.1 Occurrence**

If and to the extent that a Relief Event:

60.1.1 is the direct cause of a failure by the Contractor to achieve:

60.1.1.1 the Services Commencement Date;

60.1.1.2 a reduction in the number of Available Prisoner Places on or before the date specified in any RRAPP Band Activation Notice or (following the relevant date in the RRAPP Band Activation Notice) the further delay in the reduction in the number of Available Prisoner Places, in either case for any period;

60.1.1.3 the provision of an increase in number of Available Prisoner Places on or before the date specified in any RRAPP Band Deactivation Notice or (following the relevant date in the RRAPP Band Deactivation Notice) the further provision of an increase in the number of Available Prisoner Places, in either case for any period; and/or

60.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Contract,

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under **clause 49 (Termination on Contractor Default)** and its obligations under this Contract.

60.2 Relief

Subject to **clause 60.5 (Information)**, to obtain relief, the Contractor must:

60.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations, (or if earlier after it has received written notice from the Authority's Representative that a Relief Event has occurred and that expressly requires the Contractor to claim relief pursuant to this **clause 60.2 (Relief)**) give to the Authority a notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

- 60.2.2 within five (5) Business Days after receipt by the Authority of the notice referred to in **clause 60.2.1 (Relief)**, give full details of the relief claimed; and
- 60.2.3 demonstrate to the reasonable satisfaction of the Authority that:
- 60.2.3.1 the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
 - 60.2.3.2 the Relief Event directly caused:
 - (a) the failure to achieve the Services Commencement Date;
 - (b) a failure to achieve a reduction in the number of Available Prisoner Places on or before the date specified in any RRAPP Band Activation Notice or (following the relevant date in the RRAPP Band Activation Notice) the further delay in the reduction in the number of Available Prisoner Places, in either case for any period;
 - (c) a failure to provide an increase in the number of Available Prisoner Places on or before the date specified in any RRAPP Band Deactivation Notice or (following the relevant date in the RRAPP Band Deactivation Notice) the further provision of an increase in the number of Available Prisoner Places, in either case for any period; and/or
 - (d) the need for relief from other obligations under this Contract;
 - 60.2.3.3 the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
 - 60.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under this Contract.

60.3 **Consequences**

In the event that the Contractor has complied with its obligations under **clause 60.2 (Relief)**:

- 60.3.1 then:
- 60.3.1.1 the Services Commencement Date;
 - 60.3.1.2 any date specified in a RRAPP Band Activation Notice for a

decrease in the number of Available Prisoner Places;

60.3.1.3 any date specified in a RRAPP Band Deactivation Notice for an increase in the number of Available Prisoner Places,

shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or

60.3.2 the period referred to in paragraph (i) of the definition of Contractor Default shall be extended by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay;

60.3.3 the Authority shall not be entitled to exercise its right to terminate this Contract under **clause 49 (Termination on Contractor Default)** and, subject to **clause 60.4 (Deductions)**, shall give such other relief as the Authority reasonably determines is appropriate in the circumstances.

60.4 Deductions

Nothing in **clause 60.3 (Consequences)** shall affect any entitlement to make Deductions under **clause 44 (Payment Provisions)** and **Schedule 5 (Payment Mechanism)** during the period in which the Relief Event is subsisting provided that any such Deductions shall be disregarded for the purposes of the Authority's right to terminate this Contract for Contractor Default.

60.5 Information

In the event that information required by **clause 60.2 (Relief)** is provided after the dates referred to in that **clause 60.2 (Relief)**, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

60.6 Notice

The Contractor shall notify the Authority if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.

60.7 Disputes

If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to the Services Commencement Date, any date specified in a RRAPP Band Activation Notice for a decrease in the number of Available Prisoner Places, any date specified in a RRAPP Band



Deactivation Notice for an increase in the number of Available Prisoner Places and/or the period referred to in paragraph (i) of the definition of Contractor Default and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

PART XIII – VARIATIONS**61. CHANGE TO CUSTODIAL SERVICE**

The provisions of **Schedule 8 (Change Protocol)** shall have effect in respect of any Change except as otherwise expressly provided in this Contract.

62. CHANGES IN LAW**62.1 Occurrence**

The Contractor shall take all steps necessary to ensure that the Custodial Service is performed in accordance with the provisions of this Contract following any Change in Law.

62.2 Qualifying Change in Law

If a Qualifying Change in Law occurs or is shortly to occur, then either Party may write to the other to express an opinion on its likely effects, giving details of its opinion of:

- 62.2.1 any necessary change to the Custodial Service;
- 62.2.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;
- 62.2.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to:
 - 62.2.3.1 achieve the Services Commencement Date;
 - 62.2.3.2 reduce the number of Available Prisoner Places on or before the date specified for the reduction of such Available Prisoner Places in the relevant RRAPP Band Activation Notice by that date or (following the relevant date in the RRAPP Band Activation Notice) to provide any Available Prisoner Place, in either case for any period;
 - 62.2.3.3 provide the number of Available Prisoner Places on or before the date specified for the provision of such Available Prisoner Places in the relevant RRAPP Band Deactivation Notice by that date or (following the relevant date in the RRAPP Band Deactivation Notice) to provide any Available Prisoner Place, in either case for any period; and/or
 - 62.2.3.4 meet the Authority's Requirements and/or the Contractor's Proposals and/or the Initial Service Delivery Documents or the

Service Delivery Documents (as relevant) and/or the Operating Procedures during the implementation of any relevant Qualifying Change in Law;

- 62.2.4 any loss of or increase in revenue that will result from the relevant Qualifying Change in Law;
- 62.2.5 any Change in Costs that directly results from the Qualifying Change in Law; and
- 62.2.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law;

in each case giving in full detail the procedure for implementing the change in the Custodial Service. Responsibility for the costs of implementation (and any resulting variation to the Contract Price) shall be dealt with in accordance with **clauses 62.3 (Parties to Discuss)** and **62.5 (Costs of implementation)**.

62.3 **Parties to Discuss**

As soon as practicable after receipt of any notice from either Party under **clause 62.2 (Qualifying Change In Law)**, the Parties shall discuss and agree the issues referred to in **clause 62.2 (Qualifying Change In Law)** and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law, including:

- 62.3.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimise any increase in costs and maximise any reduction in costs;
- 62.3.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
- 62.3.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Contractor, including similar businesses in which its Affiliates carry on business; and
- 62.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under **62.2.5 (Qualifying Change In Law)** or **62.2.6 (Qualifying Change In Law)**.

62.4 **Not used**

62.5 Costs of implementation

62.5.1 The Authority shall pay to the Contractor such compensation in respect of the costs of implementation pursuant to **clause 62.2 (Qualifying Change in Law)** as is agreed is payable to it pursuant to **clause 62.3 (Parties to Discuss)**.

62.5.2 Any compensation payable under this **clause 62 (Changes in Law)** by means of an adjustment to or reduction in the Contract Price shall be determined and made in accordance with **clause 63 (Financial Adjustments)**.

62.6 **Not used.**

62.7 **Not used.**

62.8 Payment of Irrecoverable VAT

The Authority shall pay to the Contractor from time to time as they are incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within thirty (30) Days of the delivery by the Contractor to the Authority of written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this **clause 62.8 (Payment of Irrecoverable VAT)**, "Irrecoverable VAT" means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in providing the Custodial Service or any of the obligations or provisions under this Contract (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Contractor is not entitled to repayment or credit from HM Revenue & Customs in respect of such input VAT.

62.9 Other Change in Law

62.9.1 Either Party may give notice to the other of the need for a Change which is necessary in order to enable the Contractor to comply with any General Change in Law (other than a Qualifying Change in Law).

62.9.2 The Parties shall, within fifteen (15) Business Days of a notice referred to in **clause 62.9.1 (Other Change in Law)**, meet and discuss the effect of any such General Change in Law and any Change required as a consequence of it.

62.9.3 The Authority shall, within ten (10) Business Days of the meeting referred to in **clause 62.9.2 (Other Change in Law)**, if a Change is required in order to comply with the General Change in Law (other than a Qualifying Change in Law), issue a Change Notice and the relevant provisions of **Schedule 8 (Change Protocol)** shall apply except that:

- 62.9.3.1 the Contractor may give notice to the Authority that it objects to such Change Notice only on the grounds that the implementation of the Change would not implement the relevant General Change in Law;
- 62.9.3.2 the Authority shall issue a Change Notice in respect of the Change in accordance with the relevant provisions of **Schedule 8 (Change Protocol)**;
- 62.9.3.3 the provisions of **clause 8.3 (Consents)** shall apply;
- 62.9.3.4 the Contractor shall not be entitled to payment or other compensation or relief from performance of its obligations under this Contract in respect of any such General Change in Law or associated Change (or the consequences of either of them).

63. FINANCIAL ADJUSTMENTS

63.1 Updating the Base Case

Whenever a Relevant Event occurs, the financial consequence shall (save where otherwise provided in this Contract or where the Parties mutually agree otherwise) be determined in accordance with this **clause 63 (Financial Adjustments)**. Where for the purposes of this **clause 63 (Financial Adjustments)** the Base Case is to be adjusted by reference to a Relevant Event, this shall be carried out by the Contractor, in consultation with the Authority, to reflect the cumulative impact of any prior Relevant Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken. In calculating the Change in Costs and in assessing other adjustments to be made to the Base Case arising from the Relevant Event, the Contractor shall be entitled to take into account, inter alia:

- 63.1.1 any Change in Costs;
- 63.1.2 reasonable economic assumptions prevailing at the time; and
- 63.1.3 changes in the prospective technical performance of the Contract arising as a result of the Relevant Event,

provided that the Authority shall not be required (and the Contractor shall not be entitled) to take into account the financial impact up to the date of the Relevant Event of those risks which the Contractor bears under the provisions of this Contract, including (to the extent so borne by the Contractor under this Contract) changes in VAT rates, taxation rates, RPIx and the impact of Deductions.

63.2 Application to the Base Case

Where, pursuant to this Contract, either Party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case, the adjustment to the Contract Price due shall be that required to ensure that, by reference to the Base Case adjusted under this **clause 63 (Financial Adjustments)**, the Contractor is left in a no better and no worse position than under the version of the Base Case applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Contract Price required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

63.3 No Better and no Worse

Any reference in this Contract to "no better and no worse" or to leaving the Contractor in a "no better and no worse position" shall be construed by reference to the Contractor's:

63.3.1 rights, duties and liabilities under or arising pursuant to performance of this Contract; and

63.3.2 ability to perform its obligations and exercise its rights under this Contract,

so as to ensure that:

63.3.3 the Contractor is left in a position which is no better and no worse in relation to its percentage profit margin by reference to the version of the Base Case applicable immediately prior to the Relevant Event than had the Relevant Event not occurred; and

63.3.4 the ability of the Contractor to comply with this Contract is not adversely affected or improved as a consequence of the Relevant Event.

63.4 Replacement of Base Case

Any Base Case produced following adjustments in accordance with this **clause 63 (Financial Adjustments)** shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Contract until its further amendment in accordance with this Contract.

63.5 Amendments to Logic and/or Formulae

Where it is necessary to amend the logic or formulae incorporated in the Base Case to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles.

63.6 Copies of the Revised Base Case

Following any change to the Base Case under the provisions of this **clause 63 (Financial Adjustments)**, the Contractor shall promptly deliver a copy of the revised Base Case to the Authority in the same form as is established at the date of this Contract or in such other form as may be agreed between the Parties.

PART XIV - STEP-IN AND SECTION 88**64. AUTHORITY STEP-IN****64.1 Right to Step-In**

Without prejudice to **clause 64.6 (Intervention under Section 88)**, if the Authority reasonably believes that it needs to take action in connection with the Custodial Service:

- 64.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or
- 64.1.2 to discharge a statutory duty; and/or
- 64.1.3 following a Contractor Default; and/or
- 64.1.4 pursuant to **clause 41.11.3.2 (Sufficient Contractor's Staff)**,

then the Authority shall be entitled to take action in accordance with **clauses 64.2 (Notice to the Contractor) to 64.5 (Step-In on Contractor Breach)**.

64.2 Notice to the Contractor

If **clause 64.1 (Right to Step-In)** applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:

- 64.2.1 the action it wishes to take;
- 64.2.2 the reason for such action;
- 64.2.3 the date it wishes to commence such action;
- 64.2.4 the time period which it believes will be necessary for such action; and
- 64.2.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Custodial Service during the period such action is being taken.

64.3 Action by Authority

- 64.3.1 Following service of such notice, the Authority shall (acting by itself or with or through a third party) take such action as notified under **clause 64.2 (Notice to the Contractor)** and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is

reasonably practicable of its anticipated completion.

- 64.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify and keep indemnified in full the Contractor against all Direct Losses where it fails to do so.

64.4 Step-In without Contractor Breach

If the Contractor is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Custodial Service:

- 64.4.1 the Contractor shall be relieved from its obligations to provide such part of the Custodial Service; and
- 64.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Custodial Service affected by the Required Action in full over that period.

64.5 Step-In on Contractor Breach

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Custodial Service:

- 64.5.1 the Contractor shall be relieved of its obligations to provide such part of the Custodial Service; and
- 64.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Custodial Service affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

64.6 Intervention under Section 88

- 64.6.1 Without prejudice to any other provision of this Contract, the Contractor shall note and comply with the provisions of Section 88.



64.6.2 If the Secretary of State for Justice shall appoint a Governor of the Prison by virtue of his or her powers under Section 88, then:

64.6.2.1 this Contract shall continue in force;

64.6.2.2 all provisions of this Contract shall, without prejudice to the Authority's rights under **Part X (Expiry and Termination)** of this Contract, continue to operate except that the functions that would otherwise be exercisable by the Director and the Controller shall be exercised by the Governor; and

64.6.2.3 for the period during which a Governor is appointed the Contract Price due from the Authority to the Contractor shall continue to be paid in accordance with **clause 44 (Payment Provisions)**, less an amount equal to all the Authority's costs of operation in respect of any action taken under this **clause 64.6.2 (Intervention under Section 88)**.

64.7 **Step-Out**

64.7.1 The Authority may, at any time during the period of the Required Action, provide notice (a "**Step-Out Notice**") to the Contractor stating that the Authority wishes to cease the Required Action with effect from such date as is reasonable in the circumstances (a "**Step-Out Date**").

64.7.2 Where the Authority exercised its rights to take the Required Action as a result of a breach of the obligations of the Contractor under this Contract then the Authority shall issue the Contractor with a Step-Out Notice as soon as is reasonably practicable following the Contractor having demonstrated to the Authority, to the Authority's reasonable satisfaction, that:

64.7.2.1 the Contractor is capable of resuming the provision of the Custodial Service; and

64.7.2.2 the circumstances which gave rise to the Required Action are not continuing and are unlikely to recur.

64.7.3 On the Step-Out Date:

64.7.3.1 the Authority shall be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action; and

64.7.3.2 the Contractor shall resume the provision of all or any relevant part

of the Custodial Service which was the subject of the Required Action.

PART XV - INFORMATION AND PUBLICITY**65. INFORMATION AND CONFIDENTIALITY****65.1 Section 91 of the Criminal Justice Act 1991**

Without prejudice to any other provisions of this Contract, the Contractor shall note and shall ensure that all of its employees and its Sub-Contractors' employees comply with the provisions of section 91 of the Criminal Justice Act 1991 (as amended) 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).

65.2 Notice of Statutory Provisions

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

65.3 Confidentiality

65.3.1 The Parties agree that the provisions of this Contract and each Project Document shall, subject to **clause 65.3.2 (Confidentiality)**, not be treated as Confidential Information and may be disclosed without restriction provided that prior to such disclosure the Authority may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:

- (a) national security;
- (b) the information is Personal Data;
- (c) the information is protected by intellectual property law;
- (d) it is not in the public interest to disclose the information (pursuant to FOIA);
- (e) the information is third party confidential information;
- (f) IT security; or
- (g) prevention of fraud.

65.3.2 **Clause 65.3.1 (Confidentiality)** shall not apply to the provisions of this Contract or a Project Document designated as Commercially Sensitive Information and

listed in Part 1 of **Schedule 14 (Commercially Sensitive Information)** which shall, subject to **clause 65.4 (Permitted Disclosure)**, be kept confidential for the periods specified in that Part.

- 65.3.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and the Project Documents and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

65.4 **Permitted Disclosure**

Clauses 65.3.2 (Confidentiality) and 65.3.3 (Confidentiality) shall not apply to:

- 65.4.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Contract for the performance of those obligations;
- 65.4.2 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 65 (Information and Confidentiality)**;
- 65.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its Sub-Contractors;
- 65.4.4 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;
- 65.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 65.4.6 any provision of information to the Parties' own professional advisers or insurance 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 in connection with the carrying out of 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;

65.4.7 any disclosure by the Authority of information relating to the operation and maintenance of the Prison and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:

65.4.7.1 any proposed New Contractor and its advisers, should the Authority decide to retender this Contract; or

65.4.7.2 any person in connection with **clause 34 (Benchmarking and Value Testing)**;

65.4.8 any application for registration or recording of the Consents and property registration required;

65.4.9 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

65.4.10 any disclosure for the purpose of:

65.4.10.1 the examination and certification of the Authority's or the Contractor's accounts;

65.4.10.2 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;

65.4.10.3 complying with a proper request from either Party's insurance advisers or insurers on placing or renewing any insurance policies; or

65.4.10.4 (without prejudice to the generality of **clause 65.4.4 (Permitted Disclosure)**) compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither **clauses 65.4.10.4 (Permitted Disclosure)** nor **65.4.4 (Permitted Disclosure)** shall permit disclosure of Confidential Information otherwise prohibited by **clause 65.3.3 (Confidentiality)** where that information is exempt from disclosure under section 41 of the FOIA.

65.5 Obligations Preserved

Where disclosure is permitted under **clause 65.4 (Permitted Disclosure)**, other than **clauses 65.4.2 (Permitted Disclosure), 65.4.4 (Permitted Disclosure), 65.4.5 (Permitted Disclosure), 65.4.8 (Permitted Disclosure) and 65.4.10 (Permitted Disclosure)** 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.

65.6 Audit

For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such Documents as he or she 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 or she considers necessary. It is 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.

65.7 Exploitation of Information

The Contractor shall not make use of this Contract or any information issued or provided by or on behalf of the Authority in connection with this Contract otherwise than for the purposes of this Contract, except with the written consent of the Authority.

65.8 Information about Prisoners

Where the Contractor, in carrying out its obligations under this 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 Authority's Representative's Approval.

65.9 Expiry and Termination

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all Documents (including computer records) in its possession, custody or control, which contain information relating to Prisoners who are or will on the Expiry Date or the Termination Date be accommodated within the Prison, including any Documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority or as the Authority so directs.

65.10 Disclosure by the National Audit Office

The Parties acknowledge that the National Audit Office has the right to publish details of this Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

65.11 Official Secrets Acts

The provisions of this **clause 65 (Information and Confidentiality)** are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

65.12 Freedom of Information

65.12.1 The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.

65.12.2 The Contractor shall and shall procure that its Sub-Contractors shall:

65.12.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information;

65.12.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Business Days (or such other period as the Authority may specify) of the Authority's request; and

65.12.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

65.12.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

65.12.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

65.12.5 The Contractor acknowledges that (notwithstanding the provisions of this **clause 65.12 (Freedom of Information)**) the Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

65.12.5.1 in certain circumstances without consulting the Contractor; or

65.12.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where **clause 65.12.5.1 (Freedom of Information)** applies the Authority shall take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

65.12.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

65.12.7 The Contractor acknowledges that the Commercially Sensitive Information listed in **Schedule 14 (Commercially Sensitive Information)** is of indicative value only and that the Authority may be obliged to disclose it in accordance with **clause 65.12.5 (Freedom of Information)**.

66. PUBLIC RELATIONS AND PUBLICITY

66.1 Restriction

The Contractor shall not by itself, its employees or agents and shall procure that its Sub-Contractors shall not communicate with representatives of the press, television, radio, social media including the internet or other communications media on any matter concerning this Contract without the prior written approval of the Authority.

66.2 Photographs

Without prejudice to any other obligation of the Contractor under this Contract, no facilities to photograph or film in or upon any property used in relation to the Contract shall be given or permitted by the Contractor without the prior written approval of the Authority.

67. ADVERTISEMENTS

The Contractor shall not exhibit or attach to any part of the Site any notice or advertisement without the Authority's Representative's Approval, except where otherwise required to comply with Legislation.

68. CONTRACTOR'S RECORDS AND PROVISION OF INFORMATION

68.1 Records and Open Book Accounting

The Contractor shall (and shall procure that each Sub-Contractor shall) at all times:

- 68.1.1 maintain a full record of particulars of the costs of providing the Custodial Service (which shall include cost detail broken down into the actual cost of providing each element of the Custodial Service), including those relating to the maintenance and operation of the Prison;
- 68.1.2 upon request by the Authority, provide a written summary of any of the costs referred to in **clause 68.1.1 (Records and Open Book Accounting)**, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract;
- 68.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this **clause 68 (Contractor's Records and Provision of Information)**; and
- 68.1.4 not store any records outside of the United Kingdom without the prior written consent of the Authority.

68.2 Books of Account

Compliance with **clause 68.1 (Records and Open Book Accounting)** shall require the Contractor to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to this Contract showing in detail;

- 68.2.1 administrative overheads;
- 68.2.2 payments to Sub-Contractors and by Sub-Contractors to their respective Sub-Contractors;
- 68.2.3 capital and revenue expenditure; and
- 68.2.4 such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract,

and the Contractor shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in **clauses 68.2.1 (Books of Account) to 68.2.4 (Books of Account)** (inclusive) available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a written report of these to the Authority as and when requested.

68.3 Maintenance of Records

- 68.3.1 The Contractor shall maintain or procure the maintenance of detailed records relating to the provision of the Custodial Service, in each case in accordance with Good Industry Practice and any applicable Legislation.
- 68.3.2 Without prejudice to **clause 68.3.1 (Maintenance of Records)**, the Contractor shall procure that the following are maintained (and where necessary created):
- 68.3.2.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract;
 - 68.3.2.2 full records of all maintenance procedures carried out during the term of this Contract;
 - 68.3.2.3 full Site records and log books, including emergency attendances, and relevant notes, calculations and recordings, all such entries to be dated and signed;
 - 68.3.2.4 (where plant, or systems, are modified, replaced and recommissioned) full record of all data and drawings in the site operation and maintenance manuals;
 - 68.3.2.5 other miscellaneous records, including but not limited to:
 - a Asbestos register;
 - b Asset register of maintainable fixed assets (including the Equipment Register and the Asset Condition Schedule);
 - c Automatic heat and smoke detector test records;
 - d Air sampling records;
 - e Building services log books;
 - f Cooling tower registration certificate and test sheets;
 - g COSHH records;
 - h Drainage logs and plans;
 - i Fire alarm system test records;
 - j Certificates relating to the regular testing of electrical appliances including portable appliance testing (PAT);

- k Electrical schematics;
- l Emergency generator test log;
- m Emergency lighting test records;
- n Fire drill reports;
- o Fire extinguisher inspection sheets;
- p Fire risk assessments and drawings as required by the Regulatory Reform (Fire Safety) Order 2005;
- q Fire damper checks;
- r Fixed wiring test records;
- s Gas system test records (including up-to-date gas schematics);
- t Insurance inspections;
- u Legionella testing including purity/hygiene test records;
- v Legislative compliance files, including health and safety file;
- w Lift maintenance and test results;
- x Lighting protection system and earthing test results;
- y Maintenance log books;
- z Maintenance and repair requisitions;
- aa Manufacturers' instructions library index;
- bb Up-to-date operation and maintenance manuals;
- cc Plant room check sheets;
- dd Pressure vessel inspection records;
- ee Public address and communication systems test logs;
- ff Record drawing index sheets;
- gg Records/test certificates relating to any other testing that is

required in order to comply with statutory requirements

- hh RIDDOR;
- ii Roof surveys and inspection sheets;
- jj Schedules of the Authority's property and Contractor's equipment;
- kk Security systems test logs;
- ll Smoke ventilation and sprinkler test records;
- mm Sub-Contractor service logs;
- nn Test certificates and specialist reports;
- oo Transportation logs;
- pp Up-to-date "as-built" and "as fitted" drawings and manuals;
- qq Water hygiene risk assessments and schematics;
- rr Water test reports;
- ss Work order summaries and additional work order sheets and corrective maintenance summary;
- tt Valve schedules – charts and logs,

and the Contractor shall have the items referred to in **clause 68.3.2** available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a report of them to the Authority as and when requested.

68.3.3 Without prejudice to **clause 68.3.1 (Maintenance of Records)**, the Contractor shall use the Computer Aided Facilities Management System to manage, amongst other things, all aspects of maintenance, asset register, tasks, frequencies and history files. The Contractor shall also:

- 68.3.3.1 supply its own IT equipment to operate, file, share and print all necessary activities relating to the Computer Aided Facilities Management System;
- 68.3.3.2 keep the Authority's Representative apprised of the Computer Aided Facilities Management System and keep records on such system. The data stored on the Computer Aided Facilities

Management System shall become and remain the property of the Authority and as such all such data and information shall be handed back to the Authority on expiry or earlier termination of the Contract, as the case may be;

68.3.4 The Contractor shall keep all records in a format which has been approved by the Authority, and store them in such a way that they can be easily accessed for the purposes of auditing or the production for the HSE, EHO, Fire Officer or any other enforcing body.

68.4 **Auditor**

The Contractor shall permit all records referred to in this **clause 68 (Contractor's Records and Provision of Information)** to be examined and copied by the Controller and other representatives of the Authority, and by the Comptroller and Auditor General and his or her representatives.

68.5 **Retention**

The records referred to in this **clause 68 (Contractor's Records and Provision of Information)** shall be retained in accordance with and for the periods specified in **clause 68.10 (Retention of Records)**, or if not so specified for a period of at least six (6) Years after the Contractor's obligations under this Contract have come to an end.

68.6 **Termination or Expiry**

Prior to the Expiry Date or Termination Date, in accordance with **Schedule 28 (Exit Management)**, the Contractor shall (and shall ensure that any Sub-Contractors) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Contract.

68.7 **Confidentiality**

All information referred to in this **clause 68 (Contractor's Records and Provision of Information)** is subject to the obligations set out in **clause 65 (Information and Confidentiality)**.

68.8 **Prescribed Documentation**

During the term of this Contract, certain Documents shall be produced by or for the Contractor. Prescribed Documents shall be defined as any item or document which relates to the performance of the Custodial Service (the "**Prescribed Documentation**") and shall include all plans of the Site and such other Documents which relate to the provision of the Custodial Service, including, whether as hard copy or electronic data:

- 68.8.1 drawings (including of all Buildings, premises and vehicles);
- 68.8.2 reports and records;
- 68.8.3 data sheets;
- 68.8.4 schedules;
- 68.8.5 presentation brochures;
- 68.8.6 Prisoners' records;
- 68.8.7 photographs; and
- 68.8.8 other information, including models and samples.

68.9 Security and Confidentiality of Prescribed Documentation

- 68.9.1 The Contractor shall be responsible for the security and confidentiality of all Prescribed Documentation. The Contractor shall control and monitor the issue, use and return of the Prescribed Documentation issued by the Contractor to its Sub-Contractors, suppliers and third parties and the security and safe storage of such Prescribed Documentation.
- 68.9.2 The Contractor shall procure that the Prescribed Documentation is managed and controlled by its Sub-Contractors, suppliers and third parties in the manner set out in this **clause 68.9 (Security and Confidentiality of Prescribed Documentation)**.
- 68.9.3 The Contractor shall ensure that the Prescribed Documentation shall only be issued for review outside the following organisations:
 - 68.9.3.1 the Authority (including any contractors contracted to operate prisons);
 - 68.9.3.2 any Authority Related Party;
 - 68.9.3.3 any coroner (as defined in section 1 of the Coroners Act 1988);
 - 68.9.3.4 any Relevant Organisation,where the Authority has given its prior written consent.
- 68.9.4 The Contractor shall at all times comply with any instructions of the Authority or the Authority's Representative relating to security of the Prescribed Documentation.

- 68.9.5 The Prescribed Documentation that is issued to the Contractor by the Authority or the Authority's Representative remains at all times the property of the Authority and on termination or expiry of this Contract shall either be returned to the Authority in accordance with this Contract, or be certified by the Contractor as having been destroyed in a secure manner or shall be retained by the Contractor pursuant to **clauses 68.9 (Security and Confidentiality of Prescribed Documentation) to 68.11 (Alternative Methods of Documentation Storage)** (inclusive).
- 68.9.6 The Contractor shall notify the Authority in writing of its nominated Prescribed Documentation officer (the "**Prescribed Documentation Security Officer**"), who shall promptly respond to any enquiries by or on behalf of the Authority or the Authority's Representative that relate to the Prescribed Documentation.
- 68.9.7 The Contractor shall prevent information detrimental to the security of the Authority coming into the possession of unauthorised persons and shall establish an audit trail to track the movement and location of the Prescribed Documentation at all times.
- 68.9.8 The Contractor shall be responsible at all times for the security of all Prescribed Documentation in the keeping of the Contractor, whether issued by the Authority or the Authority's Representative or copied or produced by the Contractor, its Sub-Contractors or agents.
- 68.9.9 The Contractor shall notify all Contractor's Staff handling Prescribed Documentation of the requirements imposed by the Authority pursuant to **clauses 68.9 (Security and Confidentiality of Prescribed Documentation) to 68.11 (Alternative Methods of Documentation Storage)** (inclusive) and of the procedures for maintaining security. The Contractor shall notify all others (including its Sub-Contractors) having an interest in this Contract of the particular requirements imposed regarding the security of Prescribed Documentation.
- 68.9.10 The Contractor shall include in all contracts with its Sub-Contractors similar but no less strict conditions of security for the Prescribed Documentation and shall be responsible for their compliance.
- 68.9.11 The Contractor shall arrange for the secure destruction and recording of any Prescribed Documentation which are no longer required, have been superseded or are additional to the requirements of the Authority.
- 68.9.12 The Contractor shall:
- 68.9.12.1 report immediately to the Controller and the Authority's

Representative the loss of any Prescribed Documentation stating details of the loss and the actions the Contractor is taking to secure the recovery of such Prescribed Documentation;

68.9.12.2 use its best endeavours to recover such lost Prescribed Documentation; and

68.9.12.3 record the loss, the action taken by the Contractor and outcome in the Daily Report.

68.10 Retention of Records

68.10.1 Notwithstanding **clause 68.10.2 (Retention of Records)**, the Contractor shall retain all Documents held by it or a Sub-Contractor upon the Expiry Date or Termination Date for a period of six (6) Years after the Expiry Date or Termination Date (as the case may be).

68.10.2 From the Commencement Date, the Contractor shall retain all Documents of the type set out below for the minimum periods specified opposite such Documents from the creation of the relevant Document:

Document Type	Retention Period
Prisoner records	To comply with PSO 9020
Financial records	6 Years
Medical records	6 Years
Incident records	6 Years
Complaint records	6 Years
Court records	6 Years
Personnel records	6 Years
Record of visitors	2 Years
Staffing details	2 Years
Administrative records	2 Years
Prisoner journey details	2 Years

68.10.3 The Contractor shall determine (and shall promptly notify the Authority) if there are any requirements of Legislation, Relevant Authorities or otherwise, that would necessitate the retention of any Documents for longer retention periods than those specified in **clause 68.10.2 (Retention of Records)**.

68.10.4 The retention periods specified in **clause 68.10.2 (Retention of Records)** apply to the primary source Documents and any electronic or other types of Documents for such records produced.

68.11 Alternative Methods Of Documentation Storage

68.11.1 The Contractor may propose alternative means of storing the records, Prescribed Documentation and Documents referred to in this **clause 68 (Contractor's Records and Provision of Information)** storage for the Authority's Representative's Approval. The Contractor shall ensure that any such proposals:

68.11.1.1 comply with Legislation, including the Public Records Acts 1958 and 1967, the Taxes Management Act 1970, the Value Added Tax Act 1994, the Companies Act 2006, EU Regulations and the Statute of Limitations;

68.11.1.2 state methods of minimising any potential risks of such alternative means of storage that may arise; and

68.11.1.3 offer no opportunity for the records, Prescribed Documentation and Documents referred to in this **clause 68 (Contractor's Records and Provision of Information)** to be amended.

68.11.2 Without prejudice to **clause 65.10 (Disclosure by National Audit Office)**, the Contractor shall promptly provide the National Audit Office with such Documents including this Contract, the Project Documents and such other contracts, agreements, guarantees and titles to property that the National Audit Office may request from time to time.

68.12 **Interpretation**

Clauses 68.8 (Prescribed Documentation) to 68.11 (Alternative Methods of Documentation Storage) (inclusive) shall be without prejudice to any other provisions of this Contract.

68.13 **Data Loss**

The Contractor acknowledges that:

68.13.1 the security of data, including Personal Data is of paramount importance to the Authority; and

68.13.2 loss of such data may have a significant impact on the operation and reputation of the Authority, the Contractor and the Prison.

69. **DATA PROTECTION**

69.1 **General**

69.1.1 In relation to all Personal Data, the Contractor shall at all times comply with the

Data Protection Legislation as a data controller (as the same term is defined in the DPA), including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Contract.

- 69.1.2 The Contractor and any Sub-Contractor shall only undertake processing of Personal Data reasonably required in connection with the Contract and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

69.2 No Disclosure

The Contractor shall not disclose Personal Data to any third parties other than:

- 69.2.1 to employees and Sub-Contractors to whom such disclosure is reasonably necessary in order for the Contractor to provide the Custodial Service; or

- 69.2.2 to the extent required under a court order,

provided that disclosure under **clause 69.2.1 (No Disclosure)** is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this **clause 69 (Data Protection)** and that the Contractor shall give notice in writing to the Authority's Representative of any disclosure of Personal Data which either the Contractor or a Sub-Contractor is required to make under this **clause 69.2.2 (No Disclosure)** immediately upon becoming aware of such a requirement.

69.3 Measures

The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to Personal Data, including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

69.4 Authority Requests

The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor and/or the Sub-Contractors referred to in **clause 69.3 (Measures)**. Within twenty (20) Business Days after such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

69.5 Subject Access Requests

- 69.5.1 The Contractor shall be responsible for responding to Subject Access Requests in respect of Personal Data in accordance with the provisions of the DPA.
- 69.5.2 In responding to Subject Access Requests the Contractor shall comply with paragraphs 1.18, 1.19, 1.21 and 2.7 of PSO 9020 (as such provisions may be amended or replaced from time to time).
- 69.5.3 The Contractor shall provide the Authority with a copy of each Subject Access Request made to it.
- 69.5.4 Where the Contractor does not hold the information requested it shall expressly and clearly notify the Authority of the request as soon as possible and in any event within ten (10) Days of the date on which the request is made.

69.6 Indemnity

The Contractor shall indemnify and keep indemnified in full the Authority, its employees, agents and contractors against all Direct Losses incurred by it in respect of any breach of this **clause 69 (Data Protection)** by the Contractor and/or any act or omission of any Sub-Contractor which causes the Contractor to be in breach of this **clause 69 (Data Protection)**.

PART XVI - INDEMNITIES AND INSURANCE**70. INDEMNITIES AND LIABILITIES****70.1 Contractor's Indemnity**

The Contractor shall, subject to **clauses 70.2 (Contractor not Responsible)**, be responsible for, and shall indemnify and keep indemnified in full and on demand the Authority or any Authority Related Party from and against:

70.1.1 all liability for:

70.1.1.1 death or personal injury;

70.1.1.2 loss of or damage to property (including property belonging to the Authority or for which it is responsible);

70.1.1.3 breach of statutory duty;

70.1.1.4 third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis);

70.1.1.5 subject to **clause 70.8 (Limitation of Liability under clause 70.1.1.5)**, and notwithstanding any Unavailability Deductions, losses suffered or incurred by the Authority in connection with accommodating prisoners who should have been accommodated at the Prison outside the Prison (including the costs of transferring prisoners to and from alternative accommodation) due to any failure by the Contractor to fulfil its obligations under this Contract to provide Available Prisoner Places;

which may arise out of, or in consequence of, the operation or maintenance of the Prison or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Authority's property of the Contractor or any Contractor Related Party.

70.2 Contractor not Responsible

The Contractor shall not be responsible or be obliged to indemnify the Authority for:

70.2.1 any of the matters referred to in **clauses 70.1.1 (Contractor's Indemnity)** which arises as a direct result of the Contractor acting on the written instruction of the Authority, provided that the Contractor has implemented the instruction in a manner which is not negligent and is in accordance with Good Industry Practice;

or

70.2.2 any injury, loss, damage, cost and expense to the extent caused by the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Contract) or by the breach by the Authority of its obligations under this Contract.

70.3 Limitation of Indemnity

An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

70.4 Notification of Claims

Where either Party (the "**Indemnified Party**") wishes to make a claim under this Contract against the other (the "**Indemnifying Party**") in relation to a claim made against it by a third party (a "**Third Party Claim**"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

70.5 Conduct of Claims

70.5.1 The Contractor agrees (and undertakes to procure that its Sub-Contractors agree) that the Authority has the sole right, on giving written notice to such effect to the Contractor at any time, to control of any proceedings in relation to any Third Party Claim (including any claim by employees of the Parties), to which the Authority is, or is likely to be, a party as a defendant, regardless of whether the Contractor (or any Sub-Contractor) is also a party to such proceedings.

70.5.2 The Authority agrees that it shall not settle or compromise any Third Party Claim giving rise to losses exceeding ten thousand pounds (£10,000) (Indexed) for which the Contractor is liable to indemnify the Authority under **clause 70.1 (Contractor's Indemnity)** without prior consultation with the Contractor. The Authority shall keep the Contractor reasonably informed as to the progress and status of any such Third Party Claim until such Third Party Claim is settled or withdrawn.

70.5.3 If, in contesting, settling or compromising any Third Party Claim, the Authority takes or fails to take any action which prejudices any entitlement of the Contractor to recover any portion of the claim from any insurer under any insurance policy maintained by the Contractor in accordance with this Contract, the liability of the Contractor to indemnify the Authority in respect of such claim shall be reduced by such portion.

70.5.4 The Contractor undertakes that:

70.5.4.1 it shall not, without the prior written consent of the Authority, settle or compromise any claim (whether insured or uninsured) to which the Authority is, or is likely to become, a party;

70.5.4.2 where a claim is made against the Contractor and the Authority is not, and is not likely to become, a party to such claim as a defendant, the Contractor shall not settle or compromise any claim exceeding ten thousand pounds (£10,000) (Indexed) without prior consultation with the Authority; and

70.5.4.3 it shall ensure that its Sub-Contractors give undertakings identical to those given by the Contractor to the Authority under this **clause 70.5 (Conduct of Claims)**.

70.5.5 If conduct of a claim is so assumed by the Authority pursuant to this **clause 70.5 (Conduct of Claims)**, the Authority shall hold the Contractor and its insurers harmless against all or any Direct Losses which either of them may incur by reason of its conduct of the claim and any settlement of the relevant claim or judgment being given if the settlement is made without their prior written approval (such approval not to be unreasonably withheld or delayed).

70.6 **Mitigation**

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Contract.

70.7 **Limitation of Liability**

70.7.1 Subject to **clauses 70.1.1.5 (Contractor's Indemnity)** and **70.7.3 (Limitation of Liability)** and unless otherwise expressly provided, the maximum amount for which the Contractor shall be liable to the Authority in respect of Uninsured Losses shall be limited:

70.7.1.1 in respect of one incident arising out of any one event, to an amount equivalent to 30% (thirty per cent) of the total of the Monthly Contract Price for each Month of the 12 months preceding the incident or, if greater:

(a) £XXX (Indexed), where an incident arises on or before the expiry of the first Price Year; and

- (b) £XXX (Indexed), where an incident arises after the expiry of the first Price Year;
- 70.7.1.2 in respect a series of incidents arising out of any one event, to an amount equivalent to 30% (thirty per cent) of the total of the Monthly Contract Price for each Month of the 12 months preceding the last of the incidents to occur or, if greater:
 - (a) £XXX (Indexed), where the last incident occurs on or before the expiry of the first Price Year; and
 - (b) £XXX (Indexed), where the last incident occurs after the expiry of the first Price Year; and
- 70.7.1.3 in any period of twelve (12) Months, to an aggregate amount equivalent to 100% (one hundred per cent) of the total of the Monthly Contract Price for each Month in such period or, if greater:
 - (a) £XXX (Indexed), where part of such period falls in the period on or before the expiry of the first Price Year; and
 - (b) £XXX (Indexed), where the whole of such period falls in the period after the expiry of the first Price Year.
- 70.7.2 For the purposes of this **clause 70.7 (Limitation of Liability)**, "Uninsured Losses" shall mean any Losses of the Authority against which the Contractor is not required to maintain insurance pursuant to **clause 72 (Insurance)**, including (without limitation) any deductibles and excesses of loss.
- 70.7.3 For the avoidance of doubt and without prejudice to or limitation of any other liability the Contractor may have under this Contract, this **clause 70.7 (Limitation of Liability)** shall not apply in respect of:
 - 70.7.3.1 any liability the Contractor may have in respect of:
 - (a) personal injury or death resulting from the negligence of the Contractor or any Contractor Related Party; or
 - (b) fraud; or
 - 70.7.3.2 any Deductions.

70.8 Limitation of Liability under clause 70.1.1.5

- 70.8.1 The provisions of this **clause 70.8 (Limitation of Liability under clause**

70.1.1.5) shall apply to claims made by the Authority under **clause 70.1.1.5 (Contractor's Indemnity)**.

70.8.2 Not used.

70.8.3 If the Authority has to house prisoners who should have been accommodated at the Prison outside the Prison due to any failure by the Contractor to fulfil its obligations under this Contract to provide Available Prisoner Places, the Authority shall:

70.8.3.1 on the Contractor's written request, increase the Permitted Level (either on a temporary or a permanent basis) if and to the extent that such increase, in the Authority's opinion, will not prejudice the level of security and safety in the Prison and the control of Prisoners as required under the Operating Procedures;

70.8.3.2 mitigate the relevant Losses where it is reasonably practicable to do so, for example taking reasonable steps to arrange for such prisoners to be housed in alternative accommodation that is not more costly than other suitable accommodation reasonably available to the Authority at the relevant time (having regard to the circumstances from time to time); and

70.8.3.3 to the extent practicable (having regard to the then existing circumstances) consult with the Contractor as to where such prisoners should be accommodated.

70.8.4 In the case of prisoners housed in alternative accommodation not managed by the Authority, the Authority shall only be entitled to recover Losses under **clause 70.1.1.5 (Contractor's Indemnity)** to the extent that the payment by the Authority for such accommodation exceeds the amount that the Authority would pay to the Contractor for providing an Available Prisoner Place to accommodate each such Prisoner if the Contractor were satisfying all its obligations and providing the Custodial Service in full over that period.

70.8.5 The amount of Losses recoverable under **clause 70.1.1.5 (Contractor's Indemnity)** shall be calculated by deducting (to the extent not already taken into account) from the total of the relevant Losses the aggregate of the following:

70.8.5.1 any damages for breach of contract received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places (whether pursuant to **clause 19 (Services Commencement)**, **Schedule 5 (Payment Mechanism)** or

otherwise);

70.8.5.2 any insurance proceeds received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places; and

70.8.5.3 the amount of the Contract Price the Authority would have paid the Contractor if the Contractor had provided the required number of Available Prisoner Places.

70.8.6 If the Authority recovers any amount (the "**Relevant Amount**") pursuant to **clause 70.1.1.5 (Contractor's Indemnity)** and subsequently receives amounts of the type described in **clauses 70.8.5.1 (Limitation of Liability under clause 70.1.1.5)**, or **70.8.5.2 (Limitation of Liability under clause 70.1.1.5)** in circumstances that amount to double recovery, the Authority shall (subject to the other provisions of this Contract and any rights of set off), to the extent of such double recovery, reimburse the party from whom the Relevant Amount was received within twenty (20) Business Days after written demand for reimbursement.

70.9 No Prejudice to clause 73

For the avoidance of doubt, this **clause 70 (Indemnities and Liabilities)** shall take effect without prejudice to the Contractor's obligations under **clause 73 (Liability for Loss and Damage)**.

71. MUTUAL AID

71.1 Application

This **clause 71 (Mutual Aid)** applies only to the provision of Mutual Aid within the terms of the Custodial Service Specification.

71.2 Prison Officers Reporting to the Prison

71.2.1 Subject to **clause 71.2.2 (Prison Officers Reporting to the Prison)**, the Authority shall be responsible for and shall release and indemnify and keep indemnified in full and on demand the Contractor from and against all Direct Losses arising as a result of:

71.2.1.1 personal injury to any prison officer (other than a member of the Contractor's Staff) sustained during the period when such prison officer is reporting for Mutual Aid purposes to the Prison; or

71.2.1.2 injury, loss or damage to a third party (other than the Contractor or any Contractor Related Party) caused or contributed to by the act or omission of such prison officer.

71.2.2 The Authority shall not be responsible or be obliged to indemnify the Contractor if any such Direct Loss has arisen in whole or in part as a result of a command given by the Contractor or any Contractor Related Party within the command structure operating at the time for Mutual Aid purposes at the Prison and either:

71.2.2.1 a public duty defence in respect of the claim is unsuccessful; or

71.2.2.2 with the prior written approval of the Authority, such defence is not pursued,

and such Direct Loss shall be the responsibility of the Contractor and the Contractor shall indemnify and keep indemnified in full and on demand the Authority in respect of such Direct Loss.

71.3 Contractor's Staff Reporting to other Prisons

71.3.1 Subject to **clause 71.3.2 (Contractor's Staff Reporting to other Prisons)**, the Contractor shall, notwithstanding the limits set out in **clause 70.8 (Limitation of Liability under clause 70.1.1.5)** be responsible for and shall release and indemnify and keep indemnified in full and on demand the Authority from and against all Direct Losses arising as a result of:

71.3.1.1 personal injury to any member of the Contractor's Staff sustained during the period when such member of the Contractor's Staff is reporting for Mutual Aid purposes to any other prison; or

71.3.1.2 injury, loss or damage to a third party (other than the Authority and its employees) caused or contributed to by the act or omission of such member of the Contractor's Staff.

71.3.2 The Contractor shall not be responsible or be obliged to indemnify the Authority if any such Direct Loss has arisen in whole or in part as a result of a command given by an officer within the command structure operating at the time for Mutual Aid purposes at such prison and either:

71.3.2.1 a public duty defence in respect of the claim is unsuccessful; or

71.3.2.2 with the prior written approval of the Authority, such defence is not pursued,

and such Direct Loss shall be the responsibility of the Authority and the Authority shall indemnify and keep indemnified in full and on demand the Contractor in respect of such Direct Loss.

72. **INSURANCE**

72.1 **Obligation to Maintain**

The Contractor shall during the Custodial Service Period take out and maintain or procure the maintenance of the insurances described in Parts 1 and 2 of **Schedule 7 (Required Insurances)** and any other insurances as may be required by law. These insurances must be effective in each case not later than the date on which the relevant risk commences.

72.2 **Obligation on Parties**

Neither Party to this Contract shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or an additional insured person.

72.3 **Nature of Insurances**

72.3.1 With the exception of any insurances required by law, the insurances referred to in **clause 72.1 (Obligation to Maintain)** shall:

72.3.1.1 subject to **clauses 72.3.2 (Nature of Insurances)**, name the Contractor as co-insured with any other party maintaining the insurance;

72.3.1.2 provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 2 in Part 3 of **Schedule 7 (Required Insurances)**;

72.3.1.3 contain a clause waiving the insurers' subrogation rights against the Authority, its employees and agents in accordance with Endorsement 2 in Part 3 of **Schedule 7 (Required Insurances)**;

72.3.1.4 provide for thirty (30) Days' prior written notice of their cancellation, non-renewal or amendment to be given to the Authority in accordance with Endorsement 1 in Part 3 of **Schedule 7 (Required Insurances)**; and

72.3.1.5 in respect of any of the Physical Damage Policies provide for payment of any proceeds received by the Contractor to be applied in

accordance with **clause 72.13 (Reinstatement)**.

72.3.2 Wherever possible, the insurances referred to in **clause 72.1 (Obligation to Maintain)** shall, where specified in **Schedule 7 (Required Insurances)**, name the Authority as a co-insured for its separate interest.

72.4 **Evidence of Policies**

The Contractor shall provide to the Authority:

72.4.1 copies on request of all insurance policies referred to in **clause 72.1 (Obligation to Maintain)** (together with any other information reasonably requested by the Authority relating to such insurance policies) and the Authority shall be entitled to inspect them during ordinary business hours;

72.4.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this **clause 72 (Insurance)** and **Schedule 7 (Required Insurances)**; and

72.4.3 on or before the date of expiry of any insurance required by **clause 72.1 (Obligation to Maintain)**, satisfactory evidence that the relevant insurance has been or is being renewed.

72.5 **Renewal Certificates**

Renewal certificates in relation to any of the insurances required by **clause 72.1 (Obligation to Maintain)** shall be obtained as and when necessary and copies (certified in a manner acceptable to the Authority) shall be forwarded to the Authority as soon as possible but in any event on or before the renewal date.

72.6 **Breach**

If the Contractor is in breach of **clause 72.1 (Obligation to Maintain)**, the Authority may pay any premiums, fees, broker's costs or other expenses required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Contractor on written demand.

72.7 **Notification of Claims**

The Contractor shall give the Authority notification within ten (10) Business Days after any claim in excess of twenty five thousand pounds (£25,000) (Indexed) on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances accompanied by full details of the incident giving rise to

the claim.

72.8 Limit of Liability

Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its other liabilities and obligations under this Contract.

72.9 Premiums

Premiums for the Required Insurances and the amount of any loss that would otherwise be recoverable under any of the Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall, at all times, be the responsibility of the Contractor.

72.10 Authority Approval

The Required Insurances shall be effected with insurers approved by the Authority, such approval not to be unreasonably withheld or delayed.

72.11 Claims

The Contractor shall, where it is obliged to effect insurance under this **clause 72 (Insurance)**, not bring any claim or action against the Authority or any Authority Related Party in respect of any loss or damage in circumstances where the Contractor is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Contract), provided that this **clause 72.11 (Claims)** shall not by itself prevent the Contractor from claiming against the Authority or any Authority Related Party for any loss or damage not covered because of the level of deductibles under such insurance permitted by this Contract or to the extent such loss or damage exceeds the maximum level of such insurance required by this Contract.

72.12 Broker's Letter of Undertaking

72.12.1 Within twenty (20) Business Days of the Services Commencement Date and of each renewal of 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 form set out in Part 4 of **Schedule 7 (Required Insurances)**.

72.12.2 The Contractor shall procure that any broker(s) appointed during the term of this Contract shall:

72.12.2.1 owe the Authority such obligations and give to the Authority such warranties as are substantially the same as those set out in Part 3 of **Schedule 7 (Required Insurances)** and in **clauses 72.1**

(Obligation to Maintain) to 72.11 (Claims) (inclusive); and

72.12.2.2 enter into an agreement in substantially the same form as that set out in Part 4 of **Schedule 7 (Required Insurances)**.

72.13 Reinstatement

72.13.1 All insurance proceeds received under the policies referred to in paragraph 1 of Part 1 and paragraph 1 of Part 2 (in connection with any relevant risk) of **Schedule 7 (Required Insurances)** (the "**Physical Damage Policies**") shall be applied to repair, reinstate or replace each part or parts of the relevant insured property in respect of which such proceeds were received.

72.13.2 No later than twenty (20) Business Days prior to the Services Commencement Date, the Contractor shall set up and at all times thereafter maintain an account in the joint names of the Authority and the Contractor (the "**Joint Insurance Account**"). All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of two hundred and fifty thousand pounds (£250,000) shall be paid into the Joint Insurance Account.

72.13.3 Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "**Relevant Incident**") in an amount in excess of two hundred and fifty thousand pounds (£250,000):

72.13.3.1 the Contractor shall deliver to the Authority as soon as practicable and in any event within twenty (20) Business Days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the assets which are the subject of the relevant claim or claims in accordance with **clause 72.13.4 (Reinstatement)**. The Reinstatement Plan shall set out:

(a) the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed); and

(b) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Prison will become fully operational), the final terms of which shall be subject

to the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);

- 72.13.3.2 provided that the Authority is satisfied that the Reinstatement Plan will enable the Contractor to comply with **clause 72.13.4 (Reinstatement)** within a reasonable timescale:
- (a) the Reinstatement Plan will be adopted;
 - (b) the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Authority;
 - (c) before the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the "**Relevant Proceeds**") (together with any interest accrued) may be withdrawn by the Contractor from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in **clause 72.13.3.2(b) (Reinstatement)**, and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the Parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;
 - (d) the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this **clause 72.13 (Reinstatement)**, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in **clause 72.13.3.2(b) (Reinstatement)**, it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds;
 - (e) the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;
 - (f) after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with **clause 72.13.4 (Reinstatement)**, the Authority shall permit

withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under **clause 72.13.3.2(c) (Reinstatement)**, in respect of the Relevant Incident, together with any interest accrued; and

- (g) subject to **clause 70 (Indemnities and Liabilities)**, the Contractor shall be solely responsible for the payment of any deficiency.

72.13.4 Where insurance proceeds are to be used in accordance with this Contract to repair, reinstate or replace any part of the Prison, the Contractor shall carry out the work in accordance with the Authority's Requirements, the Contractor's Proposals, the Operating Procedures and the Initial Service Delivery Documents or the Service Delivery Documents (as relevant) so that on completion of the work, the provisions of this Contract are complied with.

72.14 Uninsurable Risks

72.14.1 Nothing in this **clause 72 (Insurance)** shall oblige the Contractor to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the Contractor or a Contractor Related Party.

72.14.2 If a risk usually covered by property damage "all risks" insurance, third party public and products liability insurance, contractors' "all risks" insurance, construction third party liability insurance or statutory insurances in each case required under this Contract becomes Uninsurable then:

72.14.2.1 the Contractor shall notify the Authority of any risk becoming Uninsurable within five (5) Business Days of becoming aware of the same and in any event at least five (5) Business Days before expiry or cancellation of any existing insurance in respect of that risk; and

72.14.2.2 if both Parties agree, or it is determined in accordance with the Dispute Resolution Procedure, that the risk is Uninsurable and that:

- (a) the risk being Uninsurable is not caused by the actions, breaches, omissions or defaults of the Contractor or a Sub-Contractor; and
- (b) the Contractor has demonstrated to the Authority that the Contractor and a prudent board of directors of a company operating the same or substantially similar businesses in the United Kingdom to that operated by the Contractor would in similar circumstances (in the

absence of the type of relief envisaged by this **clause 72.14 (Uninsurable Risks)**) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account inter alia (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company,

then the Parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either Party).

72.14.3 If the requirements of **clause 72.14.2 (Uninsurable Risks)** are satisfied, but the Parties cannot agree as to how to manage or share the risk, then:

72.14.3.1 in respect of such third party public and products liability insurance and construction third party liability insurance only the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the amount calculated in accordance with **clause 50.2 (Compensation on Termination on Force Majeure)** and this Contract will terminate or elect to allow this Contract to continue and **clause 72.14.3.2 (Uninsurable Risks)** shall thereafter apply in respect of such risk;

72.14.3.2 in respect of such property damage "all risks" insurance, contractors' "all risks" insurance, third party public and products liability insurance and construction third party liability insurance (if the Authority elects to allow this Contract to continue in accordance with **clause 72.14.3.1 (Uninsurable Risks)**) or statutory insurances this Contract shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Authority shall (at the Authority's option) either pay to the Contractor an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available and this Contract shall continue, or an amount equal to the amount calculated in accordance with **clause 50.2 (Compensation on Termination on Force Majeure)** plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable whereupon the Contract will terminate;

- 72.14.3.3 where pursuant to **clauses 72.14.3.1 (Uninsurable Risks)** and/or **72.14.3.2 (Uninsurable Risks)** this Contract continues, then the Contract Price shall be reduced in each Contract Year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the Contractor in respect of the relevant risk in the Contract Year prior to it becoming Uninsurable (Indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a Contract Year only the reduction in the Contract Price shall be pro rated to the number of Months for which the risk was Uninsurable; and
- 72.14.3.4 where pursuant to **clauses 72.14.3.1 (Uninsurable Risks)** and/or **72.14.3.2 (Uninsurable Risks)** this Contract continues, the Contractor shall approach the insurance market at least every four (4) Months to establish whether the risk remains Uninsurable. As soon as the Contractor is aware that the risk is no longer Uninsurable, the Contractor shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Contract;
- 72.14.3.5 in respect of any period between the Authority receiving notification in accordance with **clause 72.14.2.1 (Uninsurable Risks)** that a TPL Risk has become Uninsurable and the Authority's notification to the Contractor in accordance with **clause 72.14.3 (Uninsurable Risks)** in respect of such risk then, provided it is ultimately agreed or determined that the requirements of **clause 72.14.2.2 (Uninsurable Risks)** are satisfied in respect of the Uninsurable TPL Risk and subject to **clause 72.14.3.6 (Uninsurable Risks)**, **clause 72.14.3.2 (Uninsurable Risks)** shall apply in respect of occurrences of the Uninsurable TPL Risk during such period unless the Parties otherwise agree how to manage the risk during this period; and
- 72.14.3.6 **clause 72.14.3.5 (Uninsurable Risks)**, shall only apply provided the Contractor does not unreasonably materially delay:
- (a) agreement and/or determination in accordance with the Dispute Resolution Procedure as to whether the requirements of **clause 72.14.2.2 (Uninsurable Risks)** are satisfied in respect of the Uninsurable TPL Risk; and/or

- (b) meeting the Authority to discuss the means by which the risk should be managed.

72.14.4 If, pursuant to **clause 72.14.3.2 (Uninsurable Risks)**, the Authority elects to make payment to the Contractor (such that this Contract will terminate) (the "**Relevant Payment**"), the Contractor shall have the option (exercisable within twenty (20) Business Days after the date of such election by the Authority (the "**Option Period**")) to pay to the Authority on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case this Contract will continue (and the Relevant Payment will not be made by the Authority), and the Contractor's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

72.15 Increase in Insured Amounts

72.15.1 The limit of indemnity for the Required Insurances specified in paragraph 2 of Part 1 of **Schedule 7 (Required Insurances)** and the maximum deductibles for each of the Required Insurances in Part 1 of **Schedule 7 (Required Insurances)** shall be Indexed.

72.15.2 The limits of indemnity and maximum deductibles shall only be increased:

72.15.2.1 on a renewal date; and

72.15.2.2 where the limit of indemnity or maximum deductible that is Indexed becomes equal to or exceeds the next whole insurable amount or next deductible level (as the case may be) available in the insurance market from time to time.

72.16 Insurance Renewal

72.16.1 If, upon the renewal of any insurance which the Contractor is required to maintain or to procure the maintenance of pursuant to this Contract:

72.16.1.1 any Insurance Term is not available to the Contractor in the worldwide insurance market with reputable insurers of good standing; and/or

72.16.1.2 the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the worldwide insurance market with reputable insurers of good standing by

contractors in the United Kingdom,

(other than, in each case, by reason of one or more actions of the Contractor and/or any Sub-Contractor) then **clause 72.16.2 (Insurance Renewal)** shall apply.

- 72.16.2 If it is agreed or determined that **clause 72.16.1 (Insurance Renewal)** applies, then the Authority shall waive the Contractor's obligations in **clause 72.1 (Obligation to Maintain)** to **72.9 (Premiums)** and/or **Schedule 7 (Required Insurances)** in respect of that particular Insurance Term and the Contractor shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Contract as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in **clause 72.16.1 (Insurance Renewal)** continue to apply to such Insurance Term.
- 72.16.3 To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Dispute Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Contractor in the worldwide insurance market with reputable insurers of good standing which if included in the relevant insurance policy would fully or partially address the Contractor's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which contractors in the UK are (at such time) generally prepared to pay, the Contractor shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition.
- 72.16.4 The Contractor shall notify the Authority as soon as reasonably practicable and in any event within five (5) Business Days after becoming aware that **clauses 72.16.1.1 (Insurance Renewal)** and/or **72.16.1.2 (Insurance Renewal)** are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for such **clauses 72.16.1.1 (Insurance Renewal)** and/or **72.16.1.2 (Insurance Renewal)** being so likely to apply or applying). The Contractor shall provide the Authority with such information as the Authority reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.
- 72.16.5 In the event that **clauses 72.16.1.1 (Insurance Renewal)** and/or **72.16.1.2 (Insurance Renewal)** apply in respect of an Insurance Term (irrespective of the reasons for such **clauses 72.16.1.1 (Insurance Renewal)** and/or **72.16.1.2 (Insurance Renewal)** being so likely to apply or applying), the Contractor shall approach the insurance market at least every four (4) Months to establish whether

clauses 72.16.1.1 (**Insurance Renewal**) and/or 72.16.1.2 (**Insurance Renewal**) remain applicable to the Insurance Term. As soon as the Contractor is aware that clauses 72.16.1.1 (**Insurance Renewal**) and/or 72.16.1.2 (**Insurance Renewal**) have ceased to apply to the Insurance Term, the Contractor shall take out and maintain, or procure the taking out and maintenance of, insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Contract.

72.17 **Riot (Damages) Act 1886**

72.17.1 The Contractor shall not, and undertakes to procure that no:

72.17.1.1 Commercial Insurer;

72.17.1.2 Commercial Insurer's successors or permitted assignees; or

72.17.1.3 other person claiming by or through a Commercial Insurer,

shall bring any claim under the Riot (Damages) Act 1886 in respect of any damage to the Prison. This undertaking shall be for the benefit of any Police Authority in the United Kingdom and the statutory successors of any such Police Authority, each of which may enforce the terms of this clause against the Contractor and/or its successors and permitted assignees (as appropriate).

72.17.2 For the purposes of this **clause 72.17 (Riot (Damages) Act 1886)**:

72.17.2.1 "**Police Authority**" shall have the meaning ascribed to it in section 101 of the Police Act 1996 as amended; and

72.17.2.2 "**Commercial Insurer**" shall mean a person providing commercial insurance in respect of the Prison.

72.17.3 **Clause 72.17 (Riot (Damages) Act 1886)** shall be binding upon the Contractor and each of its successors and permitted assignees.

73. **LIABILITY FOR LOSS AND DAMAGE**

73.1 **Responsibility for Damage**

Without prejudice to the provisions of **clause 27.7 (Rights of Access and Inspection)** and to the obligations of the Contractor to repair, maintain and replace the Prison and subject to **clause 73.5 (Minor Damage)**, as between the Authority and the Contractor:

73.1.1 the Authority will only have any responsibility for the cost of damage to the Prison to the extent that:

73.1.1.1 the Contractor is able to prove to the Authority's satisfaction (acting reasonably) that the damage was caused or contributed to by:

- (a) the wilful misconduct or negligence of an Authority Related Party;
or
- (b) the Contractor acting on the written instruction of the Authority, provided that the Contractor has implemented that instruction in a manner which is not negligent and is in accordance with Good Industry Practice;

73.1.1.2 such damage:

- (a) does not constitute fair wear and tear; and
- (b) does not arise as a result of the damaged item being used for its reasonable and proper purpose or any part of the Prison being used for its reasonable and proper purpose; and

73.1.1.3 the cost of such damage is either:

- (a) of a value below the level of the deductible of the Required Insurance (up to the maximum deductible specified in the Required Insurances); or
- (b) is not covered by the insurances taken out, or which should have been taken out by the Contractor in accordance with this Contract,

provided that the Authority shall be liable for any excess or deductible (up to the amount of any maximum deductible specified in the Required Insurances) which is payable as a result of any Authority Damage which has resulted in a Repair Cost being incurred where such Repair Cost has been funded under any such insurance; and

73.1.2 the Contractor shall be responsible for the cost of all damage on or to the Prison that is not the responsibility of the Authority pursuant to **clause 73.1.1 (Responsibility for Damage)**.

73.2 Obligation to Repair

Upon the discovery of any damage the Contractor shall:

73.2.1 record any relevant details of the damage (including photographs if necessary);

and

- 73.2.2 as soon as is practicable, reinstate, replace or make good the damage, returning the damaged item to its original standard (or equivalent) in accordance with the relevant provisions of this Contract, including where relevant in accordance with **clause 72.13 (Reinstatement)**.

73.3 Obligation to Discuss

- 73.3.1 The Contractor and the Authority's Representative shall, as soon as reasonably practicable following the discovery of any damage in accordance with **clause 73.2 (Obligation to Repair)** meet to discuss whether such damage is Authority Damage and whether there should be an extension of the Rectification Period and, if so, what reasonable extension should be agreed.

- 73.3.2 If the Contractor and the Authority's Representative:

73.3.2.1 agree that the relevant damage constitutes Authority Damage, the Contractor shall be entitled to issue an invoice in respect of its reasonable and demonstrable costs incurred in reinstating the damage, but only in respect of those costs that are the responsibility of the Authority under **clause 73.1 (Responsibility for Damage)**;

73.3.2.2 do not agree that the relevant damage constitutes Authority Damage, the matter shall be referred to the Dispute Resolution Procedure for resolution and if the dispute is resolved in the Contractor's favour, the Contractor shall be permitted to submit an invoice in respect of its reasonable and demonstrable costs incurred in repairing the damage, but only in respect of those costs that are the responsibility of the Authority under **clause 73.1 (Responsibility for Damage)**;

73.3.2.3 agree an extension to the applicable Rectification Period in accordance with **clause 73.3 (Obligation to Discuss)**, such Rectification Period shall apply in respect of the relevant damage for the purposes of **Schedule 5 (Payment Mechanism)**; or

73.3.2.4 do not agree either that there should be an extension to the relevant Rectification Period or what the extension should be, the matter shall be referred to the Dispute Resolution Procedure.

73.4 Supporting Information

Any invoice submitted to the Authority pursuant to **clause 73.3 (Obligation to Discuss)** shall

be supported by any relevant information recorded pursuant to **clause 73.2.1 (Obligation to Repair)**, and may be in respect of multiple incidents of damage. The Authority shall pay any such invoice within thirty (30) Days of receipt by the Authority of the invoice and supporting information.

73.5 **Minor Damage**

If any Authority Damage is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by the Contractor without incurring any additional costs through the use of its site-based resources during their normal working hours and without adversely affecting the ability of the Contractor to perform the Custodial Service, then the cost of rectifying such damage shall be for the account of the Contractor.

73.6 **Dispute Resolution**

Any disputes between the Parties arising from this **clause 73 (Liability for Loss and Damage)** shall be referred to the Dispute Resolution Procedure.

73.7 **Programmed Maintenance Costs**

73.7.1 In relation to any Repair Cost which has been funded or partly funded by the Authority or under any Required Insurance ("**Damage Funding**"), the Contractor shall take such funding and the timing of such repair or replacement into account when preparing its maintenance schedule for the Prison and any savings to the maintenance costs as shown in the Base Case shall be shared equally between the Contractor and the Authority.

73.7.2 At the end of each Contract Year the Contractor shall supply to the Authority an account of any damage and associated Repair Costs and Damage Funding, as well as money spent or saved in accordance with the maintenance costs as shown in the Base Case.

73.7.3 On every fifth (5th) anniversary of the Commencement Date the Contractor shall provide a consolidated and reconciled account of the accounts referred to in **clause 73.7.2 (Programmed Maintenance Costs)**. If such account shows that in respect of the preceding five (5) Year period there was a saving in the costs to the Contractor in complying with its obligations under this Contract because of the Damage Funding then the Contractor shall within thirty (30) Days after submission of the account pay to the Authority half of such saving.

73.8 **Time Periods**

The Contractor shall perform its obligations under **clause 73.2 (Obligation to Repair)** as soon as practicable and shall use all reasonable endeavours (where practicable and taking



account of the nature of the works required) to complete any works required within forty eight (48) hours after becoming aware of the loss or damage occurring.

PART XVII - DISPUTES**74. DISPUTE RESOLUTION****74.1 Disputes**

Save where expressly stated to the contrary in this Contract, any Dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this **Part XVII (Disputes)**.

74.2 Notice of Dispute

74.2.1 The Dispute Resolution Procedure shall commence with the service of a Notice of Dispute by either Party on the other Party.

74.2.2 The Notice of Dispute shall:

74.2.2.1 set out the material particulars of the Dispute; and

74.2.2.2 set out the reasons why the Party serving the Notice of Dispute believes that the Dispute has arisen.

74.2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under the Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

74.2.4 The Parties shall seek to resolve Disputes firstly by consultation (in accordance with **clause 74.3 (Consultation)**), then by Mediation (at the Authority's sole election in accordance with **clause 74.4 (Mediation)**) and lastly by recourse to Arbitration (in accordance with **clause 74.14 (Arbitration)**) noting that either Party may seek urgent injunctive relief at any time in accordance with **clause 74.18 (Urgent Relief)**.

74.3 Consultation

If a Dispute arises in relation to any aspect of this Contract, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

74.4 Mediation

74.4.1 In the event that a Dispute between the Parties cannot be resolved by consultation in accordance with **clause 74.3 (Consultation)** within thirty (30) Days of the request by either Party for such consultation, the Authority may, at its sole election, require the Parties to participate in a Mediation in accordance with this **clause**

74.4 (Mediation) and CEDR's model mediation procedure.

74.4.2 If the Parties are unable to agree on the joint appointment of a Mediator within a reasonable time they shall make a joint application to CEDR to nominate the Mediator.

74.4.3 The Parties shall use all reasonable endeavours to ensure that the Mediator, after consultation with the Parties where appropriate, shall:

74.4.3.1 attend any meetings with either or both of the Parties preceding the Mediation, if requested or if the Mediator decides this is appropriate and the Parties agree;

74.4.3.2 read before the Mediation each Case Summary and all the documents sent to him or her;

74.4.3.3 chair, and determine the procedure for the Mediation;

74.4.3.4 assist the Parties in drawing up any written settlement agreement; and

74.4.3.5 abide by the terms of CEDR's model mediation procedure and CEDR's code of conduct for mediators.

74.4.4 The Parties shall ensure that the Mediator (and any member of the Mediator's firm or company) shall not act for either of the Parties individually in connection with the Dispute in any capacity during the Custodial Service Period. The Parties accept that in relation to the Dispute neither the Mediator nor CEDR is an agent of, or acting in any capacity for, any of the Parties. Furthermore, the Parties and the Mediator accept that the Mediator (unless an employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

74.5 CEDR

74.5.1 The Parties shall ensure that CEDR, in conjunction with the Mediator, shall make the necessary arrangements for the Mediation including, as necessary:

74.5.1.1 nominating, and obtaining the agreement of the Parties to the Mediator;

74.5.1.2 organising a suitable venue and dates;

74.5.1.3 organising exchange of the Case Summaries and documents;



74.5.1.4 meeting with either or both of the Parties (and the Mediator if appointed), either together or separately, to discuss any matters or concerns relating to the Mediation; and

74.5.1.5 general administration in relation to the Mediation.

74.5.2 If there is any issue about the conduct of the Mediation upon which the Parties cannot agree within a reasonable time, CEDR shall, at the request of any Party, decide the issue for the Parties, having consulted with them.

74.6 **Participants**

74.6.1 Each Party shall state the names of:

74.6.1.1 the person(s) who shall be the lead negotiator(s) for that Party, who must have full authority to settle the Dispute for the purpose of the Mediation; and

74.6.1.2 any other person(s) (such as professional advisers, colleagues or sub-contractors) who shall also be present at, and/or participating in, the Mediation on that Party's behalf.

74.7 **Exchange of Information**

74.7.1 Each Party shall send to CEDR at least two (2) weeks before the Mediation, or such other date as may be agreed between the Parties and CEDR, sufficient copies of:

74.7.1.1 its Case Summary; and

74.7.1.2 all the documents to which the Case Summary refers and any others to which it may want to refer in the Mediation.

74.7.2 In addition, each Party may send to the Mediator (through CEDR) and/or bring to the Mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator and CEDR.

74.7.3 The Parties shall procure that the Mediator shall be responsible for sending a copy of each Party's Case Summary and supporting documents (pursuant to **clause 74.7.1 (Exchange of Information)**) to the other simultaneously.

74.7.4 The Parties should seek to agree:

74.7.4.1 the maximum number of pages of each Case Summary; and

- 74.7.4.2 a joint set of supporting documents or the maximum length of each set of supporting documents.

74.8 The Mediation

- 74.8.1 The Mediation shall take place at the time and place arranged by CEDR. The Parties agree to request that CEDR arrange the time and place for the Mediation.
- 74.8.2 The Parties shall procure that the Mediator shall chair, and determine the procedure at, the Mediation.
- 74.8.3 No recording or transcript of the Mediation shall be made.

74.9 Settlement Agreement

- 74.9.1 Any settlement reached in the Mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties and in accordance with **Schedule 8 (Change Protocol)** where changes are required to this Contract.

74.10 Termination of Mediation

- 74.10.1 The Mediation shall terminate when:
- 74.10.1.1 a Party withdraws from the Mediation;
 - 74.10.1.2 a written settlement agreement is concluded;
 - 74.10.1.3 the Mediator decides that continuing the Mediation is unlikely to result in a settlement; or
 - 74.10.1.4 the Mediator decides he or she should retire for any of the reasons in CEDR's code of conduct.

74.11 Confidentiality

- 74.11.1 Each of the Parties shall use all their respective reasonable endeavours to ensure that every person involved in the Mediation shall keep confidential and not use for any collateral or ulterior purpose:
- 74.11.1.1 information that the Mediation is to take place or has taken place, other than to inform a court or tribunal dealing with any litigation relating to the Dispute of that information; and

74.11.1.2 all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the Mediation including the fact of any settlement and its terms.

74.11.2 All information (whether oral or documentary and on any media) arising out of, or in connection with, the Mediation shall be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever. This does not apply to any information, which would have been admissible or disclosable in any such proceedings but for its use in the Mediation.

74.11.3 **Clause 74.11.1 and 74.11.2 (Confidentiality)** shall not apply insofar as any such information is necessary to implement and enforce any settlement agreement arising out of the Mediation.

74.11.4 None of the Parties to the Mediation shall call the Mediator or CEDR (or any employee, consultant, officer or representative of CEDR) as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever. The Mediator and CEDR shall not voluntarily act in any such capacity without the written agreement of the Parties.

74.12 Mediator's fees and expenses

74.12.1 CEDR's fees (which include the Mediator's fees) and the other expenses of the Mediation shall be borne equally by the Parties. Payment of these fees and expenses shall be made to CEDR in accordance with its fee schedule and terms and conditions of business.

74.12.2 Each Party shall bear its own costs and expenses of its participation in the Mediation.

74.13 Exclusion of Liability

74.13.1 Neither the Mediator nor CEDR shall be liable to the Parties for any act or omission in connection with the services provided by them in, or in relation to, the Mediation, unless the act or omission is shown to have been in bad faith.

74.14 Arbitration

74.14.1 Either Party may notify the other Party of its intention to refer a Dispute to Arbitration (the "**Notice of Arbitration**"). The Notice of Arbitration shall include a brief statement of the issue being referred and the redress sought provided that, if the Authority has elected to commence the Mediation process, the Contractor may not commence Arbitration until the Mediation has concluded.

- 74.14.2 The Arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules in force at the Commencement Date shall be applied.
- 74.14.3 The decision of the Arbitrator shall be binding on the Parties (in the absence of any material failure by the Arbitrator to comply with the LCIA procedural rules).
- 74.14.4 Subject to **clause 74.14.5 (Arbitration)**, the tribunal shall consist of a sole Arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the Arbitrator within ten (10) Business Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA.
- 74.14.5 If the Dispute is of a complex nature, the Parties may agree, or the Authority at its sole discretion may direct, that the tribunal shall consist of three (3) Arbitrators, to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the Arbitrators within ten (10) Business Days or, if the persons appointed are unable or unwilling to act, as appointed by the LCIA.
- 74.14.6 The seat of the Arbitration shall be England.
- 74.14.7 The language of the Arbitration shall be English and the Arbitration proceedings shall take place in London unless otherwise agreed between the Parties.

74.15 Arbitrator's Powers

The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract and, where appropriate, to order financial compensation to be paid by one (1) Party to the other.

74.16 Arbitrator's Decision

The Arbitrator shall deliver his or her decision on any matter referred to him or her within three (3) Months (or such other period as the Parties may agree) after concluding any hearings which may have been held in connection with the matter. The Arbitrator's decision shall be in writing and shall state his or her reasons for his or her decision. The decision of the Arbitrator shall be final and binding on both Parties. The costs of the Arbitration will be at the discretion of the Arbitrator.

74.17 Parties' Obligations

The Parties shall continue to comply with, observe and perform all their obligations under this Contract regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this **clause 74 (Dispute Resolution)** and shall give effect, as soon as



reasonably practicable, to every decision of the Arbitrator, if the matter is referred to Arbitration under this **clause 74 (Dispute Resolution)**.

74.18 Urgent Relief

Nothing in this Part XVII (Disputes) shall prevent either Party from seeking injunctive relief at any time.

PART XVIII - INTELLECTUAL PROPERTY**75. INTELLECTUAL PROPERTY RIGHTS****75.1 Custodial Service Data**

The Contractor shall, subject to **clause 75.2.1.2 (Licence in Respect of Intellectual Property Rights)**, make available to the Authority free of charge (and hereby irrevocably licenses the Authority to use) all Custodial Service Data that might reasonably be required by the Authority and the Contractor shall ensure that it obtains all necessary licences, permissions and consents to ensure that it can make the Custodial Service Data available to the Authority on these terms, for the purposes of:

- 75.1.1 the Authority complying with its duties under this Contract and/or any statutory duties which the Authority may have; and
- 75.1.2 following termination of this Contract, the operation, maintenance or improvement of the Prison and/or the provision of services the same as or similar to the Custodial Service,

(together, the "**Approved Purposes**"), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

75.2 Licence in Respect of Intellectual Property Rights

75.2.1 Subject to **clause 75.2.2 (Licence in Respect of Intellectual Property Rights)**, the Contractor:

75.2.1.1 hereby grants to the Authority, free of charge, an irrevocable, non exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Contract or upon or at any time following termination of this Contract) licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights used within the Custodial Service which are or become vested in the Contractor; and

75.2.1.2 shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in **clause 75.2.1.1 (Licence in Respect of Intellectual Property Rights)** to the Authority but shall in any event procure the grant of a licence with such scope as is required to enable the Authority to enjoy the benefit of the Custodial Service and otherwise exercise its rights under this

Contract during the Custodial Service Period and for a reasonable period following the Expiry Date or Termination Date (as the case may be),

in both cases, solely for the Approved Purposes.

- 75.2.2 The Contractor hereby grants, and shall procure that its Sub-Contractors grant, to the Authority an irrevocable, royalty-free, non-exclusive licence to use for any purposes whatsoever, including further use in connection with other contracts by the Authority or third parties authorised by the Authority, all rights, titles and interest in any Intellectual Property Rights which the Contractor has supplied to the Authority in accordance with the Contract and which the Contractor or its Sub-Contractors have created and/or developed for the purposes of performing the Contractor's obligations under the Contract; provided that the Contractor shall have no liability for any use of such Intellectual Property Rights other than for the purposes for which it was supplied. The Authority may assign and grant sub-licences out of the said licence to any persons.

75.3 Vesting of Intellectual Property Rights

The Contractor shall:

- 75.3.1 use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Contract vest, and remain vested throughout the term of this Contract, in the Contractor; and
- 75.3.2 enter into appropriate agreements with any Contractor Related Party (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

75.4 Maintenance of Data

To the extent that any of the data, materials and documents referred to in this **clause 75 (Intellectual Property Rights)** are generated by or maintained on a computer or similar system, the Contractor shall:

- 75.4.1 use all reasonable endeavours to procure for the benefit of the Authority, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Contractor may provide such data, materials or documents in a format which may be read by software generally available in the market at the relevant time or in hard copy format; and

- 75.4.2 enter into the National Computing Centre's then current multi licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case.

75.5 Back Up and Storage

The Contractor shall:

- 75.5.1 ensure the back up and storage in safe custody of the data, materials and Documents referred to in **clause 75.4 (Maintenance of Data)** in accordance with Good Industry Practice;
- 75.5.2 without prejudice to **clause 75.5 (Back Up and Storage)**, submit to the Authority for approval its proposals for the back up and storage in safe custody of such data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice;
- 75.5.3 comply, and shall ensure that all Contractor Related Parties comply with all procedures to which the Authority has given its approval pursuant to **clause 75.5.2 (Back Up and Storage)**; and
- 75.5.4 not change its procedures for such back-up and storage without the Authority's prior written approval and the Authority shall be entitled to withhold its approval if such proposed change is not in accordance with Good Industry Practice.

75.6 Indemnity

- 75.6.1 Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any intellectual property rights or because the receipt of the Custodial Service (including the use of any data, software, materials, plant, machinery or equipment in connection with the Contract) infringes any intellectual property rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with this Contract, the Contractor shall indemnify and keep indemnified in full the Authority, its employees, agents and contractors at all times from and against all Losses arising as a result of such claims and proceedings and the provisions of **clause 70 (Indemnities and Liabilities)** shall apply.
- 75.6.2 Where a claim or proceeding is made or brought against the Contractor which arises out of the infringement of any intellectual property rights or because the use of any materials, plant, machinery or equipment in connection with the Contract infringes any rights in or to any intellectual property rights of a third party then, if

such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with this Contract and otherwise than as a result of a breach of this **clause 75 (Intellectual Property Rights)** by the Contractor then the Authority shall indemnify and keep indemnified in full the Contractor at all times from and against all Losses arising as a result of such claims and proceedings.

75.7 Licence to Contractor

The Authority hereby grants to the Contractor a non-transferable, non-exclusive, royalty free licence (carrying the right to grant sub-licences to its Sub-Contractors) to use for the term of this Contract only and only for purposes directly relating to the Custodial Service any Intellectual Property Rights relating to the Custodial Service which are or become vested in the Authority.

PART XIX - SUB-CONTRACTING, ASSIGNMENT AND CHANGE IN OWNERSHIP**76. SUB-CONTRACTING AND ASSIGNMENT****76.1 Restrictions on Transfer of this Contract by the Authority**

The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:

76.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

76.1.2 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

76.2 Restrictions on Transfer of this Contract by the Contractor

Subject to **clauses 76.3 (Exception)**, the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with this Contract, in whole or in part, except with the prior written consent of the Authority.

76.3 Exception

The provisions of **clause 76.2 (Restrictions on Transfer of this Contract by the Contractor)** do not apply to the entry into by the Contractor or relevant Sub-Contractor of the Approved Sub-Contracts.

76.4 Sub-Contractors

76.4.1 Subject to **clause 76.2 (Restrictions on Transfer of this Contract by the Contractor)**, nothing in this Contract shall prohibit the Contractor from providing or procuring provision of the Custodial Service from a Sub-Contractor having the legal capacity, power and authority to become a party to and perform the obligations of the relevant Sub-Contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the Sub-Contractor under the relevant Sub-Contract provided that:

- 76.4.1.1 the Contractor has notified the Authority of the identity of such Sub-Contractor and the proposed terms of such Sub-Contract and has provided the Authority with such other information as may be required by the Authority; and
 - 76.4.1.2 the Contractor shall remain primarily and directly liable for the Contractor's obligations.
- 76.4.2 In relation to Sub-Contractors and the procurement of Sub-Contractors, the Contractor:
 - 76.4.2.1 warrants and represents to the Authority that it will follow ethical procurement practices;
 - 76.4.2.2 shall provide the Authority with reasonable notice of any appointments of new Sub-Contractors and any material developments or changes in relation to Sub-Contractors including:
 - (a) the amounts the Contractor is paying the Sub-Contractors;
 - (b) activities that could give rise to material risk, including operational risk and commercial risk, for the Authority or the Contractor;
 - (c) activities relating to any aspect of security;
 - (d) activities relating to construction and works;
 - (e) activities relating to ICT infrastructure;
 - (f) activities relating to the delivery of Interventions (as described in **Schedule 29 (Interventions)**);
 - (g) activities relating to all external providers for Prison Industries (as described in **Schedule 26 (Prison Industries)**).
- 76.4.3 By entering into this Contract, the Authority:
 - 76.4.3.1 approves the Sub-Contractors appointed by the Contractor as at the date of this Contract (the parties to the Approved Sub-Contracts); and
 - 76.4.3.2 for the purposes of the calculation of any Contractor Breakage Costs only, confirms that it considers the Approved Sub-Contracts provided to it by the Contractor at the date of this Contract are consistent with terms that have been entered into in the ordinary

course of business and on reasonable commercial terms.

- 76.4.4 The Authority shall be deemed to have approved any amendment to any Sub-Contract which is required as a result of any change made to this Contract (provided that any changes made correspond exactly in each of the Sub-Contracts and this Contract).

76.5 Contractor's Obligations

The Contractor shall:

- 76.5.1 perform its obligations under and observe all the provisions of any Sub-Contract with a Sub-Contractor; and
- 76.5.2 be directly responsible for the management and supervision of all Sub-Contractors and Sub-Contractors.

76.6 Employment of Sub-Contractors by the Authority

Nothing in this Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority.

76.7 Flow Down and Payment Terms in Sub-Contracts

Where the Contractor enters into a Sub-Contract with a Sub-Contractor, it shall include:

- 76.7.1 the right for the Contractor or, as appropriate, Sub-Contractor to terminate the Sub-Contract voluntarily on terms no more onerous than the Authority's right to terminate this Contract voluntarily;
- 76.7.2 the right for the Authority (acting by itself or with or through a third party) to take Required Action as contemplated by **clause 64 (Authority Step-In)**.
- 76.7.3 the right to enable the Contractor or, as appropriate, Sub-Contractor to assign or novate its rights and obligations under the Sub-Contract to the Authority or any New Contractor free of charge in connection with the termination or expiry of this Contract pursuant to an Authority request in accordance with **Schedule 28 (Exit Management)**;
- 76.7.4 a provision 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 in respect of any amount which has fallen due and payable as required by the provisions of such Sub-Contract; and
- 76.7.5 a requirement for a provision to be included in the contracts between the Sub-

Contractor and its contractors which requires payment by the Sub-Contractor to its contractors within a specified period not exceeding thirty (30) Days from receipt of a valid invoice in respect of any amount which has fallen due and payable as required by the provisions of such contract.

76.8 **Authority Third Party Contracts**

The Authority has in place contracts for the supply of utilities, prisoner retail, food and uniforms, and the Contractor is not required to supply these. In relation to such supply the Contractor shall comply with the provisions of **Schedule 25 (Authority Third Party Contracts)**.

77. **CHANGE OF CONTROL**

77.1 **Restriction on Change of Control**

77.1.1 A Change of Control may only occur with the prior written consent of the Authority which consent shall not be unreasonably withheld in the event that such Change of Control is to a Suitable Third Party. The Contractor shall within fourteen (14) Days of receipt of request provide the Authority with all such information as it may reasonably require with regard to the Change of Control and/or the proposed acquirer(s) of Control in order for it to decide whether or not to give such consent. The Authority shall not be unreasonably withholding consent pursuant to this **clause 77.1.1 (Restriction on Change of Control)** inter alia for so long as any information reasonably requested by it is outstanding or in any event for a period of not less than thirty (30) Days following any such request.

77.1.2 Without prejudice to **clause 77.1.1 (Restriction on Change of Control)**, the Contractor shall inform the Authority as soon as reasonably practicable that it becomes aware that there may be or will be a Change of Control and shall, in any event, inform the Authority within fourteen (14) Days of any Change of Control occurring and provide the Authority with all such information as it may request with regard to the Change of Control and the proposed acquirer(s) of Control.

77.1.3 The Authority may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, require the Contractor to inform it, as soon as reasonably practicable and in any event within thirty (30) Days of receipt of the Authority's request for details, of any Change of Control.

77.2 PART XX - GENERAL**78. ORDERING OF GOODS AND SERVICES**

Subject to the provisions of **Schedule 25 (Authority Third Party Contracts)**, neither Party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

79. AUDIT ACCESS**79.1 Provision of Information**

The Contractor shall provide to the Authority's Representative all information, documents, records and the like in the possession of, or available to, the Contractor and to this end the Contractor shall procure that all such items in the possession of the Contractor or any Sub-Contractor shall be available to it and the Contractor shall (and shall procure that the Sub-Contractors shall) include appropriate terms in contracts with all Sub-Contractors to this effect as may be reasonably requested by the Authority's Representative for any purpose in connection with this Contract.

79.2 Internal and External Audits

The Contractor shall:

79.2.1 facilitate both 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;

79.2.2 discharge all of its obligations to comply with the recommendations of internal and external audits, including HM Inspector of Prisons, the Independent Monitoring Board and the Prison and Probation Ombudsman within a timescale agreed with the Authority, which shall include the provision of regular progress reports; and

79.2.3 provide the Independent Monitoring Board with administrative support so as to enable it to carry out its duties at the Prison and such support shall include the provision of a clerk at the Prison to provide administrative support.

80. NO AGENCY**80.1 No Partnership or Employment**

Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

80.2 Power to Bind

Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

80.3 Deemed Knowledge

Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Contract as is held (or ought reasonably to be held) by any Contractor Related Party.

81. ENTIRE AGREEMENT**81.1 Prior Representations etc Superseded**

Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

81.2 Acknowledgements

Each of the Parties acknowledges that:

81.2.1 subject to **clause 5.1 (Contractor Warranties)**, it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy under this Contract; and

81.2.2 this **clause 81 (Entire Agreement)** shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

82. THIRD PARTY RIGHTS

82.1 Any Police Authority in the United Kingdom (and the statutory successors of any Police Authority) has the right to enforce **clause 72.17 (Riot (Damages) Act 1986)** only of this Contract, subject to and in accordance with **clause 72.17 (Riot (Damages) Act 1986)** and in

accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.

- 82.2 Except as stated in **clause 82.1 (Third Party Rights)** or as otherwise expressly provided in this Contract, no term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.

83. **REPRESENTATIVES**

83.1 **Representatives of the Authority**

- 83.1.1 The Authority's Representative(s) shall be Vincent Godfrey on behalf of The Secretary of State, or such other person appointed pursuant to this **clause 83.1 (Representatives of the Authority)**.

- 83.1.2 The Authority's Representative shall exercise the functions and powers of the Authority in relation to the Contract which are identified in this Contract as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Contract as may be notified to the Contractor from time to time.

- 83.1.3 The Authority's Representative shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Authority delegated to him or her pursuant to this clause, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Authority's Representative and all references to the "Authority's Representative" in this Contract (apart from this **clause 83.1.3 (Representatives of the Authority)**) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

- 83.1.4 The Authority may by notice to the Contractor change the Authority's Representative. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Contract).

- 83.1.5 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his or her functions under this Contract) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.

- 83.1.6 Except where notified in writing by the Authority before such act or instruction,

the Contractor and Contractor's Representative shall be entitled to treat any act or instruction of the Authority's Representative which is authorised by this Contract as being expressly authorised by the Authority and the Contractor and the Contractor's Representative shall not be required to determine whether authority has in fact been given.

- 83.1.7 Except where notified in writing by the Authority before such act or instruction, the Contractor and Contractor's Representative shall not be entitled to treat any act or instruction of the Authority's Representative or any other officer, employee or other person engaged by the Authority which is not authorised by this Contract as being authorised by the Authority and shall be required to determine by notice to the Authority whether an express authority has in fact been given.

83.2 Representatives of the Contractor

- 83.2.1 The Contractor's Representative shall be Tony Leech, Managing Director of Sodexo Justice Services, or such other persons appointed pursuant to this **clause 83.2 (Representatives of the Contractor)**.
- 83.2.2 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.
- 83.2.3 The Contractor may by notice to the Authority, change the Contractor's Representative. Where the Contractor wishes to do so it shall, by written notice to the Authority, propose a substitute representative, taking account of the need for liaison and continuity in respect of the Contract. Such appointment shall be subject to the approval of the Authority (not to be unreasonably withheld or delayed).

83.3 Appointment of Representatives

At any time the Authority may appoint more than one Authority's Representative and the Contractor may appoint more than one Contractor's Representative provided in each case the appointer provides written confirmation to the Contractor or Authority as appropriate of the extent of its representative's authority.

84. NOTICES

All notices required to be issued under this Contract shall be served in accordance with the

provisions of **Schedule 22 (Notices)**.

85. SEVERABILITY

If any term, condition, clause or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition, clause or provision shall, to that extent be omitted from this Contract and not affect the validity, legality or enforceability of the remaining parts of this Contract.

86. WAIVER

86.1 Waiver to be Written

No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

86.2 Extent of Waiver

No waiver under **clause 86.1 (Waiver to be Written)** shall be a waiver of a past or future default or breach nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

87. GOVERNING LAW AND JURISDICTION

This Contract and any contractual or non-contractual obligations arising from or connected with it shall be governed by English law and this Contract shall be construed in accordance with English law. In relation to any legal action or proceedings arising out of or in connection with this Agreement seeking urgent injunctive relief in accordance with the Dispute Resolution Procedure (whether arising out of or in connection with any contractual or non-contractual obligations) ("**Proceedings**"), each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

88. SOLE REMEDY

88.1 Common Law Rights for the Contractor

Without prejudice to any entitlement of the Contractor:

88.1.1 to specific performance of any obligation under this Contract;

88.1.2 to injunctive relief; or

88.1.3 to any other express right of the Contractor pursuant to this Contract,

the Contractor's sole remedy in relation to any Compensation Event shall be the operation of **clause 15 (Compensation Events)**.

88.2 No Breach

The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is a result of the Authority's breach of its obligations under this Contract.

88.3 Indirect Losses

Save where stated to the contrary, neither Party shall have any liability to the other (whether pursuant to an express indemnity or otherwise) in respect of any Indirect Loss.

88.4 Right to Terminate

Neither Party may terminate this Contract, except as expressly set out in this Contract.

89. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

90. COUNTERPARTS

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

91. CAPACITY

Without prejudice to the remedies and contractual rights of the Contractor in respect of a risk or liability or obligation expressly provided in this Contract as being a risk, liability or obligation of the Authority:

91.1 nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain, the Authority in any capacity other than in its capacity as a contracting counterparty; and

91.2 the exercise by the Authority of its duties powers and functions in any capacity other than in its capacity as a contracting counterparty shall not lead to any liability under this Contract on the part of the Authority to the Contractor.

92. FURTHER ASSURANCE



- 92.1 Each Party agrees to do all further acts and things and execute and deliver all instruments as shall be necessary or expedient for the carrying out of the provisions of this Contract.



SIGNED by)
for and on behalf of the **Secretary of State**)
for Justice)
)
in the presence of:)

SIGNED by)
for and on behalf of)
Sodexo Limited)
acting by two Directors/a Director)
and the Secretary)

Director

Director/Secretary