

**THE SECRETARY OF STATE
FOR JUSTICE**

PETERBOROUGH PRISON MANAGEMENT LIMITED

**CONDITIONS OF CONTRACT
for the design, construction, management
and financing of a custodial
service at Peterborough as amended and restated
on 3rd September 2013**

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THIS AGREEMENT is made on 14 February 2003 as amended and restated
on 2013

BETWEEN

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

PETERBOROUGH PRISON MANAGEMENT LIMITED (Company No. 4350276) whose registered office is situated at Interserve House, Ruscombe Park, Reading, Berkshire, RG10 9JU (the **Contractor**).

WHEREBY IT IS AGREED as follows:

PART I – GENERAL

1. Definitions

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

Actual Cost means the cost of the Operational Premiums;

Actual Full Operation Date means the date upon which the Contractor first provided four hundred and eighty (480) Available Male Prisoner Places and three hundred and sixty (360) Available Female Prisoner Places;

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

Actual Opening Date or **AOD** means the date upon which the Contractor first provided no less than twenty five (25) Available Male Prisoner Places and for the avoidance of doubt zero (0) Available Female Prisoner Places;

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

Additional Female Prisoner Place means an Available Female Prisoner Place, in addition to the three hundred and sixty (360) Available Female Prisoner Places provided pursuant to Clause 23.1, and provided by the Contractor to the Authority pursuant to Clause 40A (Additional Prisoner Places);

Additional Male Prisoner Place means:

(a) until the Actual Increased Capacity Date, an Available Male Prisoner Place, in addition to the four hundred and eighty (480) Available Male Prisoner Places provided pursuant to Clause 23.1; and

(b) from the Actual Increased Capacity Date, an Available Male Prisoner Place, in addition to the seven hundred and seventy two (772) Available Male Prisoner Places to be provided pursuant to clause 23A.1,

and provided by the Contractor to the Authority pursuant to clause 40A (Additional Prisoner Places);

Additional Payment has the meaning assigned to it in Clause 49.5(f) (Payment for Termination);

Additional Prisoner Place means

(a) an Additional Male Prisoner Place;

(b) an Additional Female Prisoner Place; or

- (c) during the Increased Capacity Phase-In Period, an Available Male Prisoner Place additional to the number of Available Male Prisoner Places provided pursuant to the Increased Capacity Phase-In Period Timetable.

Adjudicator means the adjudicator appointed in accordance with Clause 72.1;

Affiliate means an entity the majority of whose shares are owned indirectly by the Holding Company (as defined in the Companies Act 1985) of the Contractor or the Operating Sub-contractor, or by any company, which at the relevant time owns directly or indirectly fifty per cent. (50%) or more of the issued share capital in the Contractor or the Operating Sub-contractor;

Agent has the meaning assigned to it in the Direct Agreement;

Aggregate Number of Additional Prisoner Places means in respect of any APP Band the number specified in the sixth column of the table 1 or table 2, as applicable, in Clause 40A.1 corresponding to such APP Band;

Amended Operating Sub-contract means the amended Operating Sub-contract, entered into between the Contractor and the Operating Sub-contractor on or around the date of the Amending Agreement;

Amending Agreement means the agreement entered into between the Authority and the Contractor dated 3 September 2013;

Amendment Notice has the meaning assigned to it in Clause 40A.2 (Additional Prisoner Places);

APP Bands has the meaning assigned to it in Clause 40A.1(b) (Additional Prisoner Places);

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

Arbitral Tribunal has the meaning assigned to it in Clause 72.3 (Dispute Resolution);

Arbitrator means the arbitral tribunal appointed in accordance with Clause 72.3 (Dispute Resolution);

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

Authority's Work Products has the meaning assigned to it in Clause 59.10 (Miscellaneous);

Authority's Cabling Specification Requirements means the Quantum Cabling Design Specification & Installation Procedure as included at Part 2 of Schedule A (Design and Construction Specification – Prison Expansion Works);

Available has the meaning assigned to it in Clause 1.4;

Availability Basis means paying for each Available Prisoner Place or Additional Prisoner Place, which is available during the relevant period;

Available Female Prisoner Place shall mean a unit of accommodation for occupation by a female Prisoner in a Prison Cell (other than in a Prison Cell which is a segregation unit) and which shall comply with Clause 29 (Available Prisoner Places);

Available Male Prisoner Place shall mean a unit of accommodation for occupation by a male Prisoner in a Prison Cell (other than in a Prison Cell which is a segregation unit) and which shall comply with Clause 29 (Available Prisoner Places);

Available Prisoner Place shall mean an Available Female Prisoner Place or an Available Male Prisoner Place as applicable and shall have the meaning assigned to it in Clauses 29.1 (Available Prisoner Places) and 29A.1 (Available Prisoner Places);

Banks means in relation to the provision of finance to the Contractor, the following Persons, from time to time:

- (a) an institution which (i) is authorised by the Bank of England under the Banking Act 1987 to accept deposits in the United Kingdom and (ii) has as its home state supervisory authority an authority based in an OECD Country; or
- (b) a Treaty Entity, which is authorised to carry on, and carries on, banking business, and in relation to that business has as its home state supervisory authority an authority based in an OECD Country;
- (c) any trustee or agent for the Persons referred to in paragraphs (a) and/or (b) above provided that such trustee or agent is a Person referred to in paragraph (a) or (b), or is a Person approved by the Authority (such approval not to be unreasonably withheld or delayed);

provided that no such Person is directly or indirectly either a Shareholder in the Contractor or a beneficial holder of or beneficially interested in more than five per cent. (5%) of any class of the equity share capital in any of the Shareholders (other than through the realisation of security over the same) unless otherwise agreed in writing by the Authority;

Base Cost means [REDACTED];

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

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

Brokers' Fees means at any time any amounts or consideration received (or a reverse or reduction of premium or similar credit granted) in whatever form by the broker (or any party on their behalf) pursuant or in relation to any liability or obligation arising or owed by the Contractor to the broker (or any party on their behalf) relating to the Contract whether present or future, actual, conditional, contingent or otherwise;

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

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

Cash means cash in hand and deposits (including any investment of such deposits made in accordance with the terms of the Financing Agreements) with any bank or other financial institution and includes deposits in foreign currencies and marketable securities;

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

CDM Regulations means for the purposes of the Prison Expansion Works the Construction (Design and Management) Regulations 2007;

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

Certified Normal Accommodation means the number of Available Prisoner Places on the (i) Full Operation Date, or (ii) date immediately preceding the damage in the event that the number of Available Prisoner Places has been the subject of a Notice of Change in accordance with Clause 9 (Change to Services Required);

COD+7 means the seventh Day after the Contractual Opening Date;

Code has the meaning assigned to it in Clause 58.8 (Information and Confidentiality);

Cohort Prisoners means those Prisoners at the Prison who satisfy the following criteria:

- (a) are males of at least 18 Years of age upon the date on which such Person is sentenced; and
- (b) are sentenced for a consecutive period of less than 365 Days; and
- (c) are discharged from the Prison after serving the sentence referred to in (b) above (or any part thereof) at the Prison;

from time to time as determined by the Inmate Related System(s);

Commercial Insurer has the meaning assigned to it in Clause 5A1.2(b) (Riot (Damages) Act 1886);

Commercial Premium has the meaning ascribed to this term in Clause 1.4;

Comptroller and Auditor General means the head of the National Audit Office;

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

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 Data Protection Act 1998; and/or

(b) Commercially Sensitive Information;

Confidential Matters means any information which:

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

Construction Staff shall mean a Person who is required to work or perform duties which are connected either directly or indirectly with the design and construction of the Prison, the Works or the Prison Expansion Works, who is an employee of the Contractor or any Construction Sub-contractor (or any sub-contractor or supplier of the Construction Sub-contractor) or the Prison Expansion Construction Sub-contractor (or any sub-contractor or supplier of the Prison Expansion Construction Sub-contractor) at any time during the period prior to, and after the Actual Opening Date;

Construction Sub-contract means the agreement dated on or about 14 February 2003 between the Contractor and the Construction Sub-contractor in respect of the design, execution and completion of the Works;

Construction Sub-contract Dispute has the meaning assigned to it in Clause 72.6 (Dispute Resolution);

Construction Sub-contractor means Interserve Construction Limited (with company number 00303359) or, with the prior written approval of the Authority, such other construction sub-contractor appointed by the Contractor, subject to the provisions of Clause 7 (Sub-contracting), from time to time to execute the Works;

Contract means the contract dated 14 February 2003 between the Authority and the Contractor as amended and restated pursuant to the Amended Agreement;

Contractor's Work Products means all or any Work Products which have been created or developed by or on behalf of the Contractor or any of its Sub-contractors after 14 February 2003 (whether or not incorporating any Existing Work Product) in the course of the design, construction, maintenance, operation or management of the Prison or otherwise in the provision of the Services, including software written by or on behalf of the Contractor or any Sub-contractor;

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

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

Contractual Increased Capacity Date means 9 February 2015 or as the same may be altered pursuant to Clause 24A (Extension of Time - Increased Capacity);

Contractual Opening Date or **COD** means 28 March 2005 or as the same may be altered pursuant to Clause 24 (Extension of Time);

Contractual Prison Expansion Opening Date means 15 December 2014 or as the same may be altered pursuant to Clause 24A.4 (Extension of Time - Increased Capacity);

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;

Cost of Funds has the meaning assigned to it in Clause 3.2(e) (Preliminary Information);

Council has the meaning assigned to it in Clause 12.1 (Planning Approval);

Credit Agreement has the meaning assigned to it in the Direct Agreement;

Crown includes the Authority;

Custodial Duties means "custodial duties" at the Prison as defined in Section 86(3) of the Criminal Justice Act 1991;

Custodial Service means all services to be provided by the Contractor from time to time in relation to the operation and maintenance of the Prison and the Site under this Contract (other than the Prison Expansion Works) after the Actual Opening Date;

Daily Report means the daily report to be completed by the Contractor and made available to the Controller via the Prison's computer network within one (1) hour of Prisoners' lock-up with details (inter alia) as to the number of Available Prisoner Places and Additional Prisoner Places during the Day prior to lock-up and since the previous lock-up and presented in hard form to the Controller (or his/her nominated representative) as pursuant to Clause 35.4 substantially in the form of Schedule I;

Data Network Access Point means an independent data communications connection outlet and cable connecting the Authority's server to the Authority's data network;

Data Subject has the meaning assigned to it in Clause 65.1 (Data Protection);

Database System means a method of creating, reading, updating or deleting data within a database and the production of management information reports from this data;

Day means a calendar day, unless otherwise specified;

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

Delay Notice has the meaning assigned to it in Clause 24.1 (Extension of Time);

Demobilisation Costs means:

- (a) the reasonable costs which are incurred directly as a result of the termination of the Contract and are payable by the Contractor to third parties in respect of the termination of any agreements entered into with third parties at arms' length for the sole purpose of the Project, provided that, in relation to such agreement(s), no account shall be taken of (i) any payment to compensate for any loss of future revenue or profits (or similar payment) or (ii) any action, award, benefit, claim, compensation, damage, demand, liability or payment of any kind whatsoever in respect of any Person who is or was at any time employed under a contract of employment in connection with the Project (save to the extent included within sub-paragraphs (b) and (c) below); or (iii) any item other than costs incurred as a result of early termination;
- (b) the aggregate of all amounts properly payable by the Contractor or UK Detention Services Limited to employees (who are exclusively employed in the Project) under their contracts of employment for the period (immediately prior to the date of termination of the Contract) from the date of termination of the Contract until the earlier of (i) the date that is three (3) months after the date of termination of the Contract; and (ii) the date on which the employees have been redeployed to other activities (the Contractor having used, and undertaking to procure that UK Detention Services Limited uses, all reasonable endeavours to so redeploy such employees); and
- (c) the aggregate of all statutory redundancy payments (as defined in section 135 of the Employment Rights Act 1996) properly payable by the Contractor to any employee who has been exclusively employed in the Project for a period of at least 6 months and whose employment is terminated by reason of redundancy (as defined in section 139 of the Employment Rights Act 1996) during the period between the date of termination of the Contract and the date that is 3 (three) months after the date of termination of the Contract;

Development Cost has the meaning assigned to it in Clause 39.3 (Variation of Price);

Direct Agreement means the agreement dated 14 February 2003 between the Authority, the Contractor and the Agent for and on behalf of the Banks as amended on or about the date hereof and as may be further amended from time to time in accordance with its terms;

Direct Lines has the meaning assigned to it in Clause 56.1 (Facilities for Authority);

Direct Shareholders means that Person or those Persons owning shares of any class in the Contractor, and a **direct shareholding** is the interest the said Direct Shareholder derives from the shares;

Director means the Person or Persons appointed and employed by the Contractor in respect of the Prison, and approved by the Authority under Clause 31 (The Director) and Section 85(1)(a) of the Criminal Justice Act 1991;

Dispute means any difference or dispute of whatsoever nature relating to this Contract between the Authority and the Contractor arising under, out of or in connection with this Contract (including any questions of interpretation thereof) but for the avoidance of doubt excluding any dispute or difference in relation to the availability of Required Insurance which shall be determined in accordance with the procedure contained in Clause 5;

Distributions means repayment of share capital, dividend distributions, subordinated debt principal repayments and subordinated debt interest as set out in rows 26, 27, 29 and 31 of the Finance Plan (Schedule K);

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

Double Prison Cell means a Prison Cell with a floor area in excess of nine point eight square metres (9.8 m²);

Double Taxation Treaty means any convention between the government of the United Kingdom and any other government for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital;

Effective Date has the meaning assigned to it in Clause 59A.5(a) (Procurement of IP and IT);

Enabling Activities Agreement means the Agreement entered into between the Contractor and the Authority dated 1 March 2013 under Notice of Change Number PET-NOC-04-12, as amended from time to time in accordance with its terms;

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

Engineer's Prison Expansion Declaration has the meaning given to it in Clause 26A.3 (Engineer's Prison Expansion Declaration);

Environment means any and all living organisms (including man), ecosystems, property and the media of air (including air in buildings, natural or man-made structures, below or above ground), water (including without limitation water as defined in section 104(1) of the Water Resources Act 1991 and within drains and sewers) and land (including under any water as described above and whether above or below surface);

Environmental Information Regulations means the Environmental Regulations 2003 together with any guidance and/or codes of practice issued by the Information Commissioner or related Government Department in relation to such regulations;

Environmental Legislation means all statutes, regulations, laws, bylaws, orders, regulations, ordinances, decrees, codes of practice, circulars, guidance notes and equivalent controls (whether statutory or common law and whether civil or criminal) that relate to pollution or protection of the Environment or to health and safety and which are in force whether before or after the date of this Contract;

Environmental Proceedings means any written notice, claim, action, proceeding, demand or similar communication by any Regulatory Authority or other third party alleging liability or responsibility relating to any Hazardous Substance;

Equity Value means the aggregate nominal value of the paid up issued share capital of the Contractor to the extent consistent with the Finance Plan;

Escort Escape has the meaning assigned to it in Clause 41.8(b) (Plans and Performance Measures);

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

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

Excluded Parts means:

- (i) those parts of the Open Space Land to a depth of 600mm below either the ground level of the Open Space Land existing at 14 February 2003 or the finished ground level of the Open Space Land constructed by the Contractor and/or the Construction Sub-contractor under the provisions of this Contract whichever is the deeper, where, in accordance with the provisions of Schedule A, all existing structures buildings and fences are to be removed by the Contractor to a minimum depth of 600mm below either the ground level of the Open Space Land existing at the date of this Contract or the finished ground level of the Open Space Land constructed by the Contractor and/or the Construction Sub-contractor under the provisions of this Contract whichever is the deeper, and

- (ii) any extent of Open Space Land that is disturbed or otherwise dealt with by the Contractor and/or the Construction Sub-contractor under this Contract in the carrying out of the rights granted by the Lease and Licence in respect of the foul water sewer, the surface water sewer or the water supply pipe as referred to therein;

Excluded Substances means:

- (i) Hazardous Substances which existed at, on, in, or within the Excluded Parts as at the Date of this Contract or that migrate from the Excluded Parts at any time before, at or after the date of this Contract and which have or should have been removed or treated or contained or otherwise dealt with by the Contractor and/or the Construction Sub-contractor in observing its or their obligations under this Contract; or
- (ii) Hazardous Substances which are introduced to the Open Space Land by the Contractor and/or the Construction Sub-Contractor and/or the Operating Sub-contractor after the date of this Contract;

Excusing Cause means any of the events listed in the second column of Table 1 in Schedule Z to the extent that such events arise as a result of the carrying out of the Prison Expansion Works by the Prison Expansion Construction Sub-contractor (or by the Authority where Clause 45.2B applies) in accordance with the terms of this Contract;

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

Existing Work Product means any Work Product, the Intellectual Property Rights subsisting in or relating to which at 14 February 2003 are owned by the Contractor or any third party (whether or not licensed to the Contractor or a Sub-contractor at 14 February 2003), as the Work Product may be modified, redeveloped or rewritten from time to time;

Expert shall have the meaning assigned to it in Clause 5.18 (Insurance);

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

Extended Licence has the meaning assigned to it in Clause 59.5(b)(ii) (Existing Work Products incorporated into Contractor's Work Products);

Extended Termination Date means the Termination Date or such date on which the Contract terminates in accordance with the Direct Agreement;

Extracted Cashflows shall have the meaning assigned to it in Schedule H;

Facilities has the meaning assigned to it in Clause 35.1 (Monitoring and Inspection);

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

FF&E Prison Expansion Schedule shall have the meaning assigned to it in Schedule B;

FF&E Schedule shall have the meaning assigned to it in Schedule B;

Final Notice has the meaning assigned to it in Clause 44.1(a) (Default by Contractor);

Final Pay Details has the meaning assigned to it in Clause 33B.12 (TUPE Transfers);

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

Financing Agreements means:

- (a) Original Financing Agreements; and
- (b) Subsequent Financing Agreements;

First Notice has the meaning assigned to it in Clause 44.1(a) (Default by Contractor);

First Threshold has the meaning assigned to this term in Clause 5.13(a)(ii);

Fixed Charge means the agreement dated 14 February 2003 between the Contractor and the Authority relating to the equipment referred to in Clause 14 (Supply of Equipment);

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

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 order of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

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

Forecast Debt Service Cover Ratio has the meaning assigned to it in the Credit Agreement;

Formula for Daily Payment has the meaning assigned to it in Clause 41.7 (Plans and Performance Measures);

Full Operation Date means 8 August 2005 or as the same may be altered pursuant to Clause 24 (Extension of Time);

Further Female Prisoner Place means a Further Prisoner Place to be occupied by a female Prisoner;

Further Male Prisoner Place means a Further Prisoner Place to be occupied by a male Prisoner;

Further Prisoner Place has the meaning assigned to it in Clause 22.1 (Phase-in Period) and Clause 22A.1 (Increased Capacity Phase-in Period);

Good Industry Practice means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor and/or operator (as applicable) of custodial facilities seeking in good faith to comply with its contractual obligations, complying with all legislation (whether or not binding on the Authority) and engaged in the same type of undertaking and under the same or similar circumstances and conditions as those envisaged by this Contract;

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

Group has the meaning which would have been given by section 170 of the Taxation of Chargeable Gains Act 1992 if in that section references to residence in the United Kingdom were omitted and for references to seventy five per cent. (75%) subsidiaries there were substituted references to fifty one per cent. (51%) subsidiaries;

Hazardous Substance means any natural or artificial substance, matter or waste (whether solid, liquid, gas, ion, vapour, electromagnetic or radiation, and whether alone

or in combination with any other substance) which is capable of causing significant harm to the Environment or a nuisance;

Holding Company has the meaning assigned to it in Clause 50.3(b) (Change of Control);

Increased Capacity means an increase in the capacity of the Prison by two hundred and ninety two (292) Available Male Prisoner Places;

Increased Capacity Delay Notice has the meaning assigned to it in Clause 24A.1 (Extension of Time - Increased Capacity);

Increased Capacity Operational Proposals has the meaning assigned to it in Clause 20A.1 (Preparation for Operation of the Increased Capacity);

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

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

Increased Capacity Phase-in Period Timetable means the timetable set out in paragraph 2B of Schedule E (Payment Mechanism) as the same may be adjusted from time to time in accordance with Clause 26A (Engineer's Prison Expansion Declaration);

Independent Engineer means the Person or firm appointed by the Authority to act as an independent engineer for the purposes of the Contract being:

- (a) in respect of the Prison but excluding the Prison Expansion, Mouchel Consulting Limited; and
- (b) in respect of the Prison Expansion Works WYG Management Services Limited or such replacement party jointly appointed by the authority and the contractor;

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

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 Report has the meaning assigned to it in Clause 6.4 (Liability for Loss and Damage);

Indexed has the meaning assigned to the process varying the Indexed Fee as set out in paragraphs 6(a) and 14(a), as applicable, of Schedule E;

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

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

Indirect Shareholder means that Person or those Persons owning shares of any class in the Direct Shareholder, and an **indirect shareholding** is the interest the said Indirect Shareholder derives from its shares;

Information has the meaning given under Section 84 of the FOIA;

Inmate Related System(s) means the inmate management system(s) and application(s) referred to in Part 2 of Schedule B, as replaced, upgraded or modified from time to time that transmits and processes inmate related information;

Insurance means the insurance policies required to be effected and maintained in accordance with the Contract;

Insurance Claim has the meaning assigned to it in Schedule 2 to the Direct Agreement;

Insurance Costs Fee or **ICF** has the meaning assigned to this term in Schedule E;

Insurance Notice shall have the meaning set out in Clause 5.14 (Unavailability of Insurance);

Insurance Proceeds has the meaning assigned to it in Schedule 2 to the Direct Agreement;

Insurance Review Date means the date falling:

- (a) 30 Days prior to the Actual Opening Date; and
- (b) thereafter the date that is agreed between the parties from time to time or otherwise determined by the Expert pursuant to Clause 5.13A;

Insurance Termination Notice has the meaning assigned to it in Clause 5.18.9

Insurance Threshold Amount has the meaning assigned to it in Schedule 2 to the Direct Agreement;

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

IT/IP Contract means a licence granted to the Contractor or any Sub-contractor of Intellectual Property Rights owned by any third party, or a contract to which the Contractor or any Sub-contractor is a party for the procurement of computer or communications technology and/or services, or other services concerning information or communications technology or services, in each case entered into in relation to this Project the benefit of which (or part thereof) is to be used or is intended to be used by the Contractor or any Sub-contractor in connection with the Services;

Joint Insurance Proceeds Account means the account referred to in Clause 5.6(a)(i) (Insurance);

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

Landlord has the meaning assigned to it in the Lease;

Lease means the Lease dated 14 February 2003 entered into by the Authority, the Contractor and Kalyx Limited (formerly UK Detention Services Limited; company number: 02147491) as transferred (in relation to the interests of the Contractor and Kalyx Limited) to the Contractor and the Operating Sub-contractor on or around 27 January 2012;

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

Lender Liabilities means (subject as stated below) that amount which represents the aggregate, determined in accordance with Clause 16 and Schedule 3, both of the Direct Agreement, of:

- (a) all (i) principal outstanding as at the Termination Date and, (ii) interest (excluding default interest) which has accrued and not been paid as at the Termination Date provided such amounts are owing to Banks under the Financing Agreements; and
- (b) all amounts (if any) payable by the Contractor as at the Termination Date under the terms of any agreements entered into by the Contractor and approved by the

Authority hedging the interest rate exposure of the Contractor under the agreements referred to in paragraph (a) above;

less the aggregate of:

- (i) all amounts (if any) payable to the Contractor under the terms of any of the Financing Agreements; and
- (ii) any amounts of Cash deposited or placed by or on behalf of the Contractor to secure obligations owed under any of the Financing Agreements (including any interest on deposits that has been added to the original deposit for the purpose of security);

calculated on the basis that the relevant Financing Agreements have been terminated, accelerated, cancelled and/or closed out as the case may be provided that Lender Liabilities shall not include:

- (a) any principal which has been advanced after a Rectification Notice or Termination Notice has been served unless:
 - (i) the Authority has consented to that advance being included in any Lender Liabilities; or
 - (ii) that advance was in accordance with the Finance Plan and spent by the Contractor in the performance of its obligations under the Contract;

provided that:

- (x) in respect of termination pursuant to Clause 5.18.9(a) or 5.18.9(c), Lender Liabilities shall include all principal which has been advanced and is outstanding as at the Termination Date but under no circumstances shall the Lender Liabilities be more than the sum of (aa) the amount which the Lender Liabilities would have been without the operation of this paragraph (x) (the **Relevant Lender Liability Amount**) plus (bb) an amount equal to ten per cent. (10%) of the Relevant Lender Liability Amount provided further that Lender Liabilities shall only include such additional ten per cent. (10%) if:
 - (i) the Authority is notified that the Contractor has made a written request for an advance not contemplated by the Finance Plan (and such notification, including the intended amount of any such advance, is made to the Authority at least fourteen (14) Days prior to such intended advance being made) and that the Authority is notified of the amount of the actual advance at least three (3) Business Days prior to the actual advance being made; and
 - (ii) such advance is in respect of those costs referred to in paragraphs (a), (b), (c) and (f) of the definition of Project Costs contained in the Credit Agreement;
- (b) any principal advanced to finance the payment of default interest or any fee or other amount not specifically identified as being an item to be funded by an advance of principal in a Financing Agreement;
- (c) any interest on any advance of principal referred to in (a) in this paragraph; or
- (d) any amount that is in any way attributable to any obligation in respect of subordinated debt;

LIBOR means the rate notified to the Authority by the Agent from time to time pursuant to Clause 14.1(m) of the Direct Agreement whilst the Credit Agreement is in effect, and thereafter, in respect of any month, the three (3) month London Interbank offer rate on the first business day of such month, as shown in the Financial Times;

Local Policing Body has the meaning assigned to the expression by Section 91(3)(a) of the Police Reform and Social Responsibility Act 2011;

Loan Life Cover Ratio has the meaning assigned to it in the Credit Agreement;

Long Stop Date means the date twelve (12) months after the Contractual Prison Expansion Opening Date;

Losses has the meaning assigned to it in Clause 4.1 (Indemnities);

Minimum Additional Contracted Capacity shall mean those Additional Prisoner Places, which the Authority is obliged to pay for on an Availability Basis as set out in paragraphs 7 and 15 of Schedule E;

Minimum Contracted Capacity shall mean those Available Prisoner Places, which the Authority is obliged to pay for on an Availability Basis pursuant to Clauses 22.2 and 23.2;

Minimum Period has the meaning assigned to it in Clause 40A.4 (Additional Prisoner Places);

Monitoring Contract means the contract dated 7 July 2000 between the Authority and the Independent Engineer setting out the terms of the Independent Engineer's appointment as amended from time to time, an unpriced certified copy of which will be provided to the Contractor upon request;

Mother and Baby Unit means an area within the Prison that is designated as separate accommodation for occupation by Prisoners and their babies;

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

Named Representatives of the Contractor means those representatives of the Contractor whose names appear in Schedule J Part 2 or such other Person(s) notified to the Authority by the Contractor in writing attaching a resolution of the Board of Directors of the Contractor appointing such Person(s);

National Computing Centre has the meaning assigned to it in Clause 59.4(b) (Contractor's Work Products);

Net Insurance Cost means the difference in cost between the Base Cost and the Actual Cost;

New Contractor has the meaning assigned to it in Clause 33B.12 (TUPE Transfers);

New Lease has the meaning assigned to it in Clause 11.6 (The Land);

Non-Compliance Notice has the meaning assigned to it in Clause 27.3 (Cell Certification);

Notice of Acceptance has the meaning assigned to it in Clause 72.2 (Dispute Resolution);

Notice of Adjudication has the meaning assigned to it in Clause 72.1 (Dispute Resolution);

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

Notification Date shall have the meaning assigned to it in Clause 5.14 (Insurance);

Notified Termination Date has the meaning assigned to it in the Direct Agreement;

OECD Country means a member country of the Organisation for Economic Co-operation and Development;

Open Space Land has the meaning assigned to it in Clause 11.1.2;

Open Space Licence has the meaning assigned to it in Clause 11.1.2;

Operating Defect has the meaning assigned to it in Clause 59A.6 (Procurement of IP and IT);

Operating Model means the Document set out in Schedule ZZZ of this Contract setting out the roles and responsibilities of the Contractor and the SIP Service Provider in relation to the delivery of the SIP Services;

Operating Sub-contract means the agreement dated 14 February 2003 as amended by a deed of amendment dated 25 March 2003 which was subject to a deed of novation dated 27 January 2012 and which has been further amended and restated by a deed of amendment dated on or around the date of the Amending Agreement, in respect of the provision of certain operation and maintenance services to be provided by the Contractor hereunder, as the same may be amended from time to time in accordance with its terms and Clause 7.1 of the Contract;

Operating Sub-contract Dispute has the meaning assigned to it in Clause 72.6 (Dispute Resolution);

Operating Sub-contractor means Sodexo Limited (registered in England and Wales under Company No 00842846) or, with the prior written consent of the Authority and subject to the provisions of Clause 7 (Sub-contracting), such other sub-contractor(s) appointed by the Contractor from time to time to perform the Custodial Service (other than those undertaken by the Construction Sub-contractor and/or the Prison Expansion Sub-contractor in their capacity as such);

Operational Premiums means the aggregate market cost of insurance premiums in order for the Contractor and/or Authority to effect the Required Insurances for a period of at least one Year commencing on the next renewal date;

Operational Proposals has the meaning assigned to it in Clause 20.1 (Preparation for Operation of the Prison);

Operational Staff shall mean a Person who is required to Work or perform duties at the Prison at any time during the period from Actual Opening Date to the end of the Contract Term and who is an employee of the Contractor, or an employee of any Sub-contractor or is self-employed, including the Director and any Prisoner Custody Officer;

Original Financing Agreements means all agreements (including any agreements hedging the exposure of the Contractor to interest rate variations) entered into, on or prior to 14 February 2003 by the Contractor and any Banks for the provision of finance to the Contractor for the purpose of its obligations under the Contract, as initialled by the Authority in accordance with Clause 3.1;

Original Notice has the meaning assigned to it in Clause 33.7 (The Operational Staff);

Original Projected Distributions Amount has the meaning assigned to it in Clause 3.2(e) (Preliminary Information);

Outline Permission has the meaning assigned to it in Clause 12.1 (Planning Approval);

Performance Measure means an event or circumstance listed as such in Schedule F in respect of which there may be a reduction in the amount payable hereunder as provided in Clause 41.7;

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

Performance Quarter means each of the four (4) successive periods of three (3) calendar months during the Performance Year;

Performance Year means the Year commencing on the first Day of the April following the Full Operation Date and each Year commencing on each anniversary of such Day;

Permitted Level means on any date during the Contract Term the aggregate of:

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

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

Personal Data shall have the same meaning as in Section 1(1) of the Data Protection Act 1998;

Phase-in Period means the period starting on the Contractual Opening Date and ending on the date falling seven (7) Days after the Full Operation Date;

Phase-in Timetable means the timetable set out in paragraphs 2 and 10 of Schedule E as the same may be adjusted from time to time in accordance with Clause 24 (Extension of Time);

PI Insurance has the meaning assigned to it in Clause 5.2 (Insurance);

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

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

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

Prison Expansion Works Opening Date means the date of issue of Engineer's Prison Expansion Declaration;

Prison Expansion means the new houseblock building at the Prison and the associated facilities and infrastructure to be provided by the Contractor pursuant to the Prison Expansion Works;

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

Prison Expansion Construction Sub-contract Dispute has the meaning assigned to it in Clause 72 (Dispute Resolution);

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

Prison Expansion Documents means any of the documents listed in Schedule W (Prison Expansion Documents);

Prison Expansion Event of Default means any of the events listed in Clause 44A (Prison Expansion Default);

Prison Expansion PI Insurance has the meaning assigned to it in paragraph 4A, part 1A of Schedule O (Construction Sub-contract PI Insurance);

Prison Expansion Relevant Event means any of the following events:

- (a) a change of Service is required by the Authority under, or Prison Legislation is enacted as contemplated in, **Clause 9** (Change to Services Required) or Prison Legislation is enacted as contemplated in Clause 39 (Variation of Price) and that change or Prison Legislation requires the Contractor to:
 - (i) perform or procure additional building works at the Prison Expansion Works Areas; or
 - (ii) to change the nature of, or reprogramme, the Prison Expansion Works; or
 - (iii) to redesign or amend the nature or extent of the Custodial Service
- (b) any failure or delay by the Authority to comply with any of its obligations under this Contract or the Lease, or any delay by the Authority or any Representative of the Authority or other Person deriving authority from the Authority in allowing the Contractor or the Prison Expansion Construction Sub-Contractor to have access to the Prison Expansion Works Areas or any obstruction by the Authority or any Representative of the Authority insofar as such failure or delay is relevant to the Prison Expansion Works and/or the provision of the Increased Capacity;
- (c) strikes or other industrial action in the nature of go slows, lock-outs, blockades by any parties other than any of the employees of the Contractor or any of the Sub-contractors or suppliers to the Contractor or the Sub-contractors affecting the Prison Expansion Works;
- (d) civil commotion including any blockage or embargo relating to the cost of fuel (other than any civil commotion the primary intention of which is to disrupt the Prison Expansion Works or the opening of the Prison Expansion) or terrorism;
- (e) exceptionally adverse weather conditions (at least significantly exceeding the worst conditions that have occurred in the area of the Site at the same time of Year over the previous ten (10) Years);
- (f) specified perils under the Prison Expansion Construction Sub-contract being fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them (except where such specified perils caused by the wilful or reckless default or breach of a relevant obligation under the Prison Expansion Construction Sub contract by the Operating Sub-contractor or the Prison Expansion Construction Sub-contractor);
- (g) the discovery of fossils, antiquities or other objects of interest and value, which may be found on the Land or in excavating the same during the progress of the Prison Expansion Works;
- (h) any award by an Arbitrator or an Adjudicator (which award is not referred to arbitration) pursuant to Clause 72 (Dispute Resolution) to the extent such award includes a determination that the Contractual Opening Date and/or the Full Operation Date should be deferred and/or necessary adjustments be made to the Increase Capacity Phase-in Period Timetable;
- (i) any works undertaken by the Statutory Undertaker to supply services to the Prison Expansion Areas or any other part of the Site;

- (j) adverse weather conditions (as defined in the Construction Sub-contract); and
- (k) any subsisting Relevant Event (as defined in the Enabling Activities Agreement) which occurred on or prior to the date of the Amending Agreement;

Prison Expansion Removal Works has the meaning assigned to it in Clause 45B.6 (Prison Expansion Works Consequential Arrangements on Termination);

Prison Expansion Works means all the works which the Contractor is required to carry out pursuant to Part 2 of Schedule A (Part B - Design and Construction Specification - Prison Expansion Works);

Prison Expansion Works Areas means during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Increased Capacity Date and the date of termination of the Prison Expansion Works, those areas of land shown edged blue on the plan attached at Schedule X (Prison Expansion Works Area);

Prison Expansion Works Fee has the meaning given to the term Interim Agreed Maximum Price in Schedule U (Prison Expansion Works Fee) as the same may be adjusted pursuant to Schedule U (Prison Expansion Works Fee);

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

Prison Expansion Works Opening Date means the date upon which the Engineer's Prison Expansion Declaration is issued;

Prison Expansion Works Rectification Notice has the meaning given to it in Clause 45A.1 (Prison Expansion Works Termination);

Prison Expansion Works Rectification Period has the meaning given to it in Clause 45A.1 (Prison Expansion Works Termination);

Prison Expansion Works Termination Date has the meaning given to it in Clause 45A.5 (Prison Expansion Works Termination)

Prison Expansion Works Termination Notice has the meaning given to it in Clause 45A.5 (Prison Expansion Works Termination);

Prison Population means the number of Prisoners occupying the Prison at any given time;

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

Prisoner Custody Officer or **PCO** means a Person, as defined in Section 89(1) of the Criminal Justice Act 1991, in respect of whom a certificate is for the time being in force certifying that he has been approved by the Authority for the purpose of performing Custodial Duties in accordance with Clause 32 (Prisoner Custody Officers);

Prisoner Day shall mean any complete Day in which a Prisoner is in custody at the Prison;

Prison Escape has the meaning assigned to it in Clause 41.8(a) (Plans and Performance Measures);

Prison Legislation means any Legislation or any amendment or modification of any Legislation (whether on re-enactment or otherwise) first having legal effect after 14 February 2003 which expressly refers to the provision (including building), holding shares in and/or running of the Prison, prisons generally, contracted out prisons or which otherwise discriminates solely against those in the business of the provision (including

building), holding shares in and/or running of prisons generally, contracted out prisons or the provision of prisoner escort services of the type to be provided under Clause 36 (Escort Arrangements) of this Contract (other than any such Legislation which, on 14 February 2003, has been published in substantially the same form as such Legislation takes when it has legal effect, as a draft Bill in a Governmental Departmental Consultation Paper, a Bill, or a draft statutory instrument or published as a proposal, in the Official Journal of the European Communities);

Prisoner Escort Fee means the fee for the Prisoner Escort Service to be provided in accordance with Clause 36.1 (Escort Arrangements);

Prisoner Escort Service shall have the same meaning as "prisoner escort arrangements" in Section 80 of the Criminal Justice Act 1991 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 segregation unit) at the Prison;

Product of a Prisoner's Labour has that meaning assigned to it in Clause 59.12 (Miscellaneous);

Prohibited Act means committing any offence under the Bribery Act;

Project means the provision of the Services;

Project Cash Flow shall have the meaning set out in Schedule H;

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

Quarterly Performance Measure means an event or circumstance listed as such in Schedule F in respect of which there may be a reduction in the amount payable hereunder as provided in Clause 41.7;

Recipient has the meaning, for the purpose of Clause 30 only, assigned to it in Clause 30.7 (Conduct of Operation);

Recognised Securities Exchange shall mean a recognised investment exchange within the meaning of the Financial Services and Markets Act 2000;

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

Rectification Period has the meaning assigned to it in Clause 45.1 (Rectification and Termination for Default);

Refinancing Date means the date on which Subsequent Financing Agreements are or are to be effective;

Refinancing Information has the meaning assigned to it in Clause 3.2(a) (Preliminary Information);

Regulations has the meaning assigned to it in Clause 13.2 (Provision of the Prison);

Regulatory Authority means the authority having statutory responsibility under Environmental Legislation for the regulation enforcement or control of any Hazardous Substance which is the subject of Clause 11.10;

Reinstatement Date has the meaning assigned to it in Clause 6.4(iii) (Liability for Loss and Damage);

Relevant Amount has the meaning, for the purpose of Clause 4.8 only, assigned to it in Clause 4.8(f) (Indemnities);

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 Available Period has the meaning assigned to it in Clause 40A.2 (Additional Prisoner Places);

Relevant Date means any date on or after the third anniversary of the Full Operation Date **PROVIDED THAT** prior to that date the Prison Population has exceeded four hundred and fifty-five (455) Available Male Prisoner Places and three hundred and forty five (345) Available Female Prisoner Places for not less than sixty (60) Days out of any period of ninety (90) Days;

Relevant Event means any of the following events:

- (a) a change of service is required by the Authority under Clause 9 (Change to Services Required) or Prison Legislation is enacted as contemplated in Clause 39 (Variation of Price) and that change or Prison Legislation requires the Contractor to perform or procure building works upon the Site or to change the nature or extent of, or to reprogramme, the Works or to redesign or amend the nature or extent of the Custodial Service;
- (b) Not Used;
- (c) any failure or delay by the Authority to comply with any of its obligations under the Contract or the Lease, or any delay by the Authority in allowing the Contractor or Construction Sub-contractor to have access to the Site or any obstruction by the Authority or its contractors or the employees of either;
- (d) strikes or other industrial action in the nature of go slows, lock-outs, blockades by any parties other than any of the employees of the Contractor or any of the Sub-contractors or suppliers to the Contractor or the Sub-contractors;
- (e) civil commotion (other than any civil commotion the primary intention of which is to disrupt the Works or the opening of the Prison) or terrorism;
- (f) exceptionally adverse weather conditions (at least significantly exceeding the worst conditions that have occurred in the area of the Site at the same time of Year over the previous ten (10) Years) other than those which are specified perils under the Construction Sub-contract; or
- (g) specified perils under the Construction Sub-contract, being (except where caused by the wilful or reckless default or breach of a relevant obligation under a Sub-contract by any of the Contractor and the Sub-contractors) fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom;
- (h) the discovery of fossils, antiquities or other objects of interest and value, which may be found on the Land or in excavating the same during the progress of the Works;
- (i) any award by an Arbitrator or an Adjudicator (which award is not referred to arbitration) pursuant to Clause 72 (Dispute Resolution) to the extent such award includes a determination that the Contractual Opening Date and/or the Full Operation Date should be deferred and/or necessary adjustments be made to the Phase-in Timetable;
- (j) any works undertaken by the Statutory Undertaker to supply services to the Site;
- (k) adverse weather conditions (as defined in the Construction Sub-contract);

Relevant Extent has the meaning assigned to this term in Clause 5.13(c);

Relevant Insurance Review Date has the meaning ascribed to this term in Clause 5.13A.1;

Relevant IP Event means any of the events to which Clause 59A.3 refers;

Relevant IT/IP Contracts has the meaning assigned to it in Clause 59A.3 (Procurement of IP and IT);

Relevant Lender Liability Amount has the meaning, for the purpose of the definition of Lender Liabilities only, assigned to it in the definition of Lender Liabilities;

Relevant Party has the meaning assigned to it in Clause 59A.1(b) (Procurement of IP and IT);

Relevant Personnel Documentation has the meaning assigned to it in Clause 33B.12 (TUPE Transfers);

Relevant Successor has the meaning specified in Clause 59.A.3 (Procurement of IP and IT);

Renewal Date means, in respect of a policy of Insurance, its expiry date or any earlier date when it would cease to be available in accordance with its terms;

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

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

Required Insurance means those policies of Insurance set out in paragraphs 1 to 8 (inclusive) of Part 1B of Schedule O to be maintained or required to be maintained (or which but for Clauses 5.14 – 5.21 (inclusive) (Unavailability of Insurance) would be required to be maintained) by the Contractor pursuant to the Contract;

Required Licence has the meaning assigned to it in Clause 59.5 (Existing Work Products incorporated into Contractor's Work Products);

Reserved Matters Approval has the meaning assigned to it in Clause 12.1 (Planning Approval);

Retail Prices Index or **RPI** means the Retail Prices Index as published from time to time in Table 14 (in respect of all items other than mortgage interest payments (**RPIX**)) of Labour Market trends (ISSN 1361-4819) published by the Office of National Statistics or such index in such other journal as shall replace such table (and, for the avoidance of doubt, if RPI is rebased following the date referred to in the definition of **RPI_B** and **RPI_D** in paragraph 6(a) of Schedule E, it shall nevertheless be determined for the purposes hereof as if no such rebasing had occurred);

Review Date means 1 April of each Year during the term of the Contract save that in the first Year of the Contract Term, it shall mean 1 April of the preceding Year;

Riot shall be construed in accordance with Sections 1 and 10 (Part 1) of the Public Order Act 1986;

Second Notice has the meaning assigned to it in Clause 33.7 (The Operational Staff);

Second Threshold has the meaning assigned to this term in Clause 5.13(a)(ii);

Section 88 has the meaning assigned to it in Clause 55.1 (Intervention by the Secretary of State under Section 88 of the Criminal Justice Act 1991);

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

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

Shareholders means the Direct Shareholders and the Indirect Shareholders;

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

SIP Effective Date means the date on which the Contractor is given written notification by the Authority that all the conditions precedent specified in the SIP Services Agreement are satisfied;

SIP Services means the services to be provided by the SIP Service Provider as more particularly described in the SIP Services Agreement;

SIP Services Agreement means the agreement to provide the SIP Services dated 17 March 2010 and made between the Authority and the SIP Service Provider;

SIP Service Provider means collectively Social Impact Partnership LP and Social Finance Limited;

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

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

Staff means the Operational Staff, unless otherwise specified;

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

Statutory Obligations has the meaning assigned to it in Clause 16.1 (Statutory Obligations, Notices, Fees and Charges);

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

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

Sub-contractor means the Construction Sub-contractor, the Operating Sub-contractor, the Prison Expansion Construction Sub-contractor or any Person who has directly contracted with the Contractor (otherwise than under a direct agreement or warranty) for the performance of any obligations of the Contractor hereunder (excluding, for the avoidance of doubt, the Banks), and has been approved by the Authority in accordance with Clause 7 (Sub-contracting);

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

Subsequent Financing Agreements means all agreements entered into after 14 February 2003 by the Contractor with any Banks or other financial institutions which amend, reschedule, refinance or replace the Original Financing Agreements and any changes to the financing structure or arrangements, interest rates, repayment dates, maintenance of reserve accounts requirements, margins or level of debt under the Finance Plan;

Subsidiary has the meaning assigned to it in Clause 50.3(b) (Change of Control);

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

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

Supplemental Unilateral Undertaking has the meaning assigned to it in Clause 12.2 (Planning Approval);

Supplier has the meaning assigned to it in Clause 59A.1 (Procurement of IP and IT);

Taxation has the meaning, for the purpose of Clause 49.5 only, assigned to it in Clause 49.5(b) (Payment for Termination);

Tenant has the meaning assigned to it in the Lease;

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

Termination Notice means a notice issued in accordance with Clause 45.5 (Rectification and Termination for Default);

Termination Payment has the meaning assigned to it in Clause 49.5(a) (Payment for Termination);

Third Threshold has the meaning assigned to this term in Clause 5.13(a)(iii);

Transferring Employees has the meaning assigned to it in Clause 33B.12 (TUPE Transfers);

Transitory Escape has the meaning assigned to it in Clause 41.8(c) (Plans and Performance Measures);

Treaty Entity means a Person who is resident (as such term is defined in the Double Taxation Treaty) in a country with which the United Kingdom has a Double Taxation Treaty pursuant to which that Person is entitled to complete exemption from the United Kingdom taxation on interest and who does not carry on business in the United Kingdom through a permanent establishment (as such term is defined in the appropriate Double Taxation Treaty) with which the indebtedness under this Contract in respect of which the interest is paid is effectively connected;

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

TUPE Transfer Date has the meaning assigned to it in Clause 33B.12 (TUPE Transfers);

Unavailable shall subject to Clauses 1.4 and 1.5 mean, in respect of a relevant Required Insurance, where any of the limits of indemnities or the scope of cover are not available at levels and in accordance with the terms set out in this Contract, or where it is so available but not at a Commercial Premium and provided that in all instances such unavailability (including unavailability at a Commercial Premium) is not caused by an act or omission of:

(a) the Contractor; or

- (b) any Sub-contractor; or
- (c) any Subsidiary of (a) and (b) above; or
- (d) any other company within the Sodexo Alliance S.A. Group which has responsibility for managing custodial services at any custody facility,

where such act or omission is not in accordance with Good Industry Practice, is negligent or is in breach of the relevant entity's contractual provisions, and **Available** shall be construed accordingly.

Unilateral Undertaking has the meaning assigned to it in Clause 12.2 (Planning Approval);

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 by the Contractor by a director of the National Offender Management Service (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 Crown Prosecution Service about the unsuitability of the proposed new third party to act in relation to the Project;

Utilised Available Prisoner Places means Available Prisoner Places after the Relevant Date, which the Authority is obliged to pay for on a Utilised Basis;

Utilised Basis means paying for each Available Prisoner Place or Additional Prisoner Place, which is available and occupied by a Prisoner for each Day or part of a Day during the relevant period;

Value Added Tax means value added tax as referred to in Section 1 of the Value Added Tax Act 1994 or any similar tax replacing or substituting the same;

Variation has the meaning assigned to it in Clause 12.1 (Planning Approval);

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

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

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

Works means all the works which the Contractor is required to carry out under this Contract as set out in Part 1 of Schedule A;

Year means calendar year unless otherwise specified; and

Young Offender means a Prisoner aged between 18 and 21.

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

- (a) the masculine includes the feminine;
- (b) the singular includes the plural and vice versa;
- (c) references to **the Contract** or to **this Contract** mean this agreement as concluded between the Authority and the Contractor including all Schedules, annexes, plans and drawings attached thereto, together with any variations agreed by the Authority in accordance with Clause 62 (Authority to Commit and Variation);
- (d) any reference to any enactment, order, regulation, 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; and
- (e) the headings to the Clauses contained herein are for the convenience of the parties and are not intended to affect the interpretation thereof.

1.3 This Contract is entered into under the private finance initiative and the consideration due under this Contract is determined in part by reference to the standards attained in the performance of a service and one party to this Contract is a Minister of the Crown. Accordingly, this Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of Clause 4 (Indemnities) of the Construction Contracts Exclusion (England and Wales) Order 1998. The Contractor acknowledges, that the operation of the Housing Grants, Construction and Regeneration Act 1996 or the Local Democracy Economic Development and Construction Act 2009 upon any Sub-contract shall not affect the parties' rights or obligations under this Contract.

1.4 Required Insurance shall, for the purposes of the definition of Unavailable and Clauses 5.13(a)(iv)(bb) and 5.18.5.1(b), only be deemed not to be Available at a commercial premium where the cost of the Operational Premiums is equal to or more than one hundred per cent. (100%) over the Base Cost, and otherwise shall be deemed to be Available at a commercial premium.

1.5 Any change to the level of any deductible in respect of a relevant Required Insurance shall not be taken into account for the purpose of determining whether a relevant Required Insurance is Available save for an increase to the level of the deductible set out in paragraphs 1 and 2 of Part 1B of Schedule O that is equal to or more than [REDACTED].

1.6 For the purposes of the definition of Actual Cost and Clause 5.13 and 5.13A, the cost of the Operational Premiums for Required Insurance shall be the aggregate of the following:

- (a) the actual cost of the premium for each of the Required Insurances detailed in paragraphs 1, 2, 3 and 4 of Part 1B of Schedule O, save for those insurances and extensions referred to in Sub-Clause (d) below;
- (b) [REDACTED] (being an amount representing the initial insurance premium tax) (Indexed);

- (c) [REDACTED] (being an amount representing the initial Broker Fees) (Indexed); and
 - (d) [REDACTED] (being an amount representing the initial actual cost of the premiums for (i) those insurances set out in paragraphs 5, 6, 7 and 8 of Part 1B of Schedule O, (ii) Machinery and Computer Breakdown detailed in paragraph 1 of Part 1B of Schedule O, and (iii) the Increased Additional Cost of Working Extension detailed in paragraph 2 of Part 1B of Schedule O) (Indexed).
- 1.7 The Authority and the Contractor hereby confirm that the payments to be made by the Authority pursuant to clause 38.6 and Schedule U (Prison Expansion Works Fee) (referred to herein for convenience as the "Prison Expansion Works Fee") actually represents the Authority's contribution towards the construction costs of the Prison Expansion Works
- 1.8 The Parties acknowledge that this Contract has been entered into as part of PET-NOC-04-12 and therefore upon the date of the Amending Agreement:
- (a) the Enabling Activities Agreement shall terminate with immediate effect in accordance with its terms;
 - (b) this Contract shall apply to the Prison Expansion Works whether carried out by the Contractor before, on or after the date of the Amending Agreement;
 - (c) any payments which have been made under the Enabling Activities Agreement (such payments being identifiable as such in Schedule U) shall be deemed to be part of the Prison Expansion Fee; and
 - (d) any payments which are due under the Enabling Activities Agreement (such payments being identifiable as such in Schedule U) will become due under this Contract as part of the Prison Expansion Works Fee.

2. Duration Of Contract

2.1 The obligations and rights of the parties to this Contract shall commence on the date on which this Contract is executed.

2.2 Subject to the terms of Part VII of the Contract (Termination) and any other provisions herein relating to termination and the Direct Agreement, the contract term will be twenty five (25) Years from 28 March 2005.

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

2A. Prison Expansion Documents

2A. On or before the date of the Amending Agreement, the Contractor shall provide to the Authority the Prison Expansion Documents.

3. Preliminary Information

3.1 The Contractor confirms that it has, on or prior to 14 February 2003 provided to the Authority the following Documents:

- (a) the Original Financing Agreements; and
- (b) all Documents creating or purporting to create security interests granted by the Contractor, the Operating Sub-contractor or the Construction Sub-contractor in

respect of the Original Financing Agreements or any obligations which relate to the obligations under the Original Financing Agreements and which are Documents referred to as conditions precedent to drawdown under the Original Financing Agreements.

Provided such Documents are in a form and substance satisfactory to the Authority, the Authority shall signify its approval of the Documents referred to in (a) and (b) above by initialling each of them for identification.

3.2(a) Prior to concluding any Subsequent Financing Agreements the Contractor shall provide to the Authority the following information and documentation (**Refinancing Information**) relating thereto:-

- (i) certified copies of all relevant documentation;
 - (ii) a written summary of the principal commercial and financial terms and the benefits to be obtained from the transaction;
 - (iii) a statement from the Contractor's financial advisers as to whether or not, in their opinion, the arrangements, if implemented, would increase or might increase those amounts owing to Banks comprised within the definition of Lender Liabilities, with supporting reasons; and
 - (iv) any other relevant information.
- (b) The Authority shall provide any comments it may have on the Refinancing Information within twenty eight (28) Days of receipt.
- (c) The Contractor shall respond as promptly as practicable to any questions the Authority may have regarding any of the Refinancing Information.
- (d) The Contractor shall not enter into any Subsequent Financing Agreements which might reasonably be expected to render it incapable of performing any of its obligations under this Contract or to prejudice in any material respect the rights of the Authority under this Contract.
- (e) The Contractor shall not enter into any Subsequent Financing Agreements which directly or indirectly reduce its Cost of Funds or increase the Original Projected Distributions Amount unless the financial benefit resulting from such reduction or increase, as the case may be, has been agreed with the Authority and the Contractor has entered into such documentation as the Authority may reasonably require to pass on to the Authority fifty per cent. (50%) of such financial benefit in the form of a lower Contract Price, a lump sum payment to the Authority or a combination of a lower Contract Price and a lump sum payment to the Authority (as the Authority may elect). For the purposes of the foregoing, **Cost of Funds** shall include (i) an amount equal to the net present value of the aggregate of interest or amounts in the nature of interest and any other sums payable by the Contractor (or a member of any Group of which a Shareholder is a member) to the Banks other than repayments of principal, that would have been payable from the Refinancing Date to the Expiry Date in the absence of any Subsequent Financing Agreements, using a discount rate equal to the forecast weighted average cost of the senior debt facilities available to the Contractor in the absence of any Subsequent Financing Agreements (ii) costs directly associated with entering into Subsequent Financing Agreements, (iii) any amount of revenue foregone on any sum required to be held as security, and (iv) any other costs which should properly be regarded as part of the cost of debt funding; and **Original Projected Distributions Amount** shall mean an amount equal to the net present value, using a discount rate of fifteen per cent. (15%) per annum

applied on a semi-annual basis, of the Distributions projected to be available to the holders of equity share capital and subordinated debt in the Contractor from the Refinancing Date to the Expiry Date in the absence of any Subsequent Financing Agreements and as determined from the Finance Plan; provided that whenever the financial benefit referred to in this paragraph is to be determined, double counting shall be avoided.

- (f) Notwithstanding any other provision of this Contract, unless the Authority expressly agrees otherwise in writing (with express reference to this Clause 3.2), it shall not be obliged to make any payment in respect of Lender Liabilities which would be greater than the payment which it would have been required to make if the Original Financing Agreements had not in any way been amended, rescheduled, refinanced or replaced as the case may be. The Agent may request the Authority to give such agreement but the Authority may withhold its agreement at its discretion or give its agreement subject to such conditions as it thinks fit.
- (g) The Contractor shall pay all reasonable costs of any advisers of the Authority retained in connection with any matter referred to in this Clause 3.2.

4. Indemnities

4.1 Subject to Clauses 4.2, 4.4, 4.6 and 4.8, the Contractor shall fully and effectively indemnify the Authority or any servant, agent or Representative of the Authority in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses (**Losses**) suffered or incurred by the Authority, its servants, agents or representatives including any payment or charge payable by or on behalf of the Authority to an entity, or a division or agency of an entity, in the public sector which arise in connection with the Contract or its breach, the Lease or its breach, the Project, the Site or the Prison including, without limitation to the generality of the foregoing:

- (a) any Losses which may be incurred or suffered by the Authority or any servant, agent or Representative of the Authority, in respect of personal injury (including injury resulting in death);
- (b) any Losses in respect of any redundancy costs in relation to Persons employed to provide any part of the Services except (i) those arising as a result of the Authority exercising its right under Clause 46 (Voluntary Termination) to terminate the Contract and (ii) any other employment costs for which the Authority is liable as provided in Clauses 9.7 and 33.7;
- (c) subject to Clause 4.8 below, any Losses suffered or incurred by the Authority in connection with its housing Prisoners outside the Prison due to any failure by the Contractor to fulfil its obligation hereunder to provide Available Prisoner Places or Additional Prisoner Places;
- (d) any Losses suffered or incurred by the Authority as a result of any breach by the Contractor of its obligations under Clause 33B2.1;
- (e) any Losses suffered or incurred by the Authority that are covered by a policy of insurance of the Contractor and/or any Sub-contractor taken out and/or maintained pursuant to the terms of this Contract or any Sub contract (to the extent of such cover); and
- (f) any Losses (including, without limitation to the generality of the foregoing, any legal and professional costs and expenses) suffered or incurred by the Authority in

respect of any application for a consent or licence required pursuant to the Lease whether such consent or licence is granted.

4.1A.1 For the purposes of this Contract, the SIP Service Provider shall be construed as an agent, servant or representative of the Contractor.

4.1A.2 For the purposes of clause 4.1, 4.2(b) and 4.5 of this Contract, the SIP Service Provider shall not be construed as an agent, servant or Representative of the Authority.

4.1A.3 Subject to Clause 4.1A.5 below, where the Authority incurs or suffers Losses pursuant to this Contract as a direct and sole result of any act or omission of the SIP Service Provider whilst at the Prison, such Losses shall be recoverable by the Authority from the Contractor pursuant to Clause 4.1 of this Contract but only to the extent that such Losses are not otherwise fully recovered by the Authority from the SIP Service Provider pursuant to the terms of the SIP Services Agreement, the Authority having used all reasonable endeavours (which in the event of a dispute shall be demonstrated to the reasonable satisfaction of the Adjudicator appointed jointly by the Parties) to recover the same from the SIP Service Provider prior to making any claim against the Contractor pursuant to this Clause 4.1A.3.

4.1A.4 Subject to Clause 4.1A.5 below, where the Authority incurs or suffers Losses pursuant to the Contract other than in the circumstances set out in Clause 4.1A.3 above, as the result of any act or omission of, or made on behalf of, the Contractor and the SIP Service Provider whilst at the Prison, such Losses shall be recoverable by the Authority from the Contractor pursuant to Clause 4.1 of the Contract.

4.1A.5 In the event of a claim by the Authority against the Contractor pursuant to Clause 4.1A.3 or Clause 4.1A.4 above:

- (a) the Authority may not settle any claim it has against the SIP Service Provider pursuant to the terms of the SIP Services Agreement in respect of the same Losses without the prior written consent of the Contractor; and
- (b) the Authority shall assign to the Contractor and/or the Operating Sub-contractor (as directed by the Contractor) all rights to any claim the Authority has against the SIP Service Provider pursuant to the terms of the SIP Services Agreement in respect of the same Losses.

4.1A.6 The provisions of Clause 4.1A.5 above shall cease to be in force and effect in the event that the Contractor and the Operating Sub-contractor enter into an interface agreement with the SIP Service Provider on terms to be agreed at the discretion of the Contractor, the Operating Sub-contractor and the SIP Service Provider.

4.2 Clause 4.1 shall not apply to:

- (a) any Losses to the extent that they arise directly from the negligence or wilful default of the Authority or any servant, agent or Representative of the Authority or any failure of the Authority to comply with its obligations under this Contract, statute or common law other than in respect of any action taken by the Authority pursuant to Section 88 of the Criminal Justice Act 1991;
- (b) Losses to the extent:

- (i) arising directly from the performance by the Authority, its servants, agents or representatives of its obligations under or in respect of the Contract (including, but not limited to, the payment of any part of the Contract Price, any payments due to the Independent Engineer or any other servants, agents or representatives appointed by the Authority in connection with the Contract and any internal costs or expenses incurred by the Authority in monitoring the Contract) or Losses to the extent that the Authority is reasonably able to mitigate them; or
- (ii) recovered in full by the Authority from the SIP Service Provider pursuant to the terms of the SIP Services Agreement;
- (c) any business rates or council tax in respect of the Prison or the Site (or any contributions made by or requested from a Minister of the Crown in lieu thereof) or any tax or charge imposed in substitution therefor;
- (d) any Losses attributable to any act, event, matter or omission after the expiry of the Contract Term, excluding, for the avoidance of doubt, those attributable to any matters for which the Contractor has accepted responsibility under Clause 10 (Provision and Interpretation of Information);
- (e) any Losses incurred by the Authority or any servant, agent or Representative of the Authority in connection with a breach by the Authority of any public procurement rules; and
- (f) (except as expressly provided in Clause 4.1(c) above) any indirect or consequential Losses except to the extent that such Losses are (or would have been, had the Contractor not been in default of its obligations under Clause 5 (Insurance)) covered by a policy of insurance which is maintained by the Contractor and/or any Sub-contractor or which the Contractor is obliged to maintain pursuant to Clause 5 and has failed to maintain.

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

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

4.4(a) Unless otherwise expressly provided, the maximum amount for which the Contractor shall be liable under this Clause in respect of Losses against which the Contractor is not required to maintain insurance pursuant hereto shall:

- (i) for the first Year from the 14 February 2003 be [REDACTED] for any one incident or series of related incidents and [REDACTED] in aggregate. In subsequent Years, up to but not including the Actual Increased Capacity Date, the maximum of [REDACTED] and [REDACTED] shall be increased on each anniversary of 14 February 2003 cumulatively by the annual increase in RPI;

(ii) for the first Year from the Actual Increased Capacity Date be [REDACTED] for any one incident or series of related incidents and [REDACTED] in aggregate. In subsequent Years the maximum of [REDACTED] for any one incidence or series of related incidents and [REDACTED] shall be increased on each anniversary of the Actual Increased Capacity Date cumulatively by the annual increase in RPI.

- (b) In respect of other Losses, the maximum amount for which the Contractor shall be liable to indemnify the Authority at any time under the indemnities contained in this Clause 4 (Indemnities) shall be the greater of (i) the maximum amount for which the Contractor could at such time be liable pursuant to Clause 4.4(a) and (ii) the amount of insurance procured or maintained or (if greater) required to be procured or maintained pursuant hereto at such time by or on behalf of the Contractor in respect of such Losses.
- (c) The liability of the Contractor pursuant to Clause 4.1 shall arise at the time the relevant Losses are incurred by the Authority; provided, however, that to the extent the amount referred to in Clause 4.4(b)(ii) exceeds the amount referred to in Clause 4.4(b)(i) in respect of any Losses, the Contractor shall not be required to remit the amount of the excess to the Authority except insofar as the relevant claim has been paid by the Contractor's insurer. The Contractor will use its best endeavours to ensure the prompt settlement of any such claim. Nothing in this Clause 4.4(c) shall in any way affect the Contractor's obligation to make payment up to the amount specified in Clause 4.4(b)(i) in respect of any Losses.

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

4.6 The Contractor agrees (and undertakes to procure that its Operating Sub-contractor and Construction Sub-contractor agree) that the Authority has the sole right, on giving written notice to such effect to the Contractor at any time, to control the conduct of any proceedings in relation to any claim from third parties, including employees of the parties hereto (other than employees of the Construction Sub-contractor), to which the Authority is a party as a defendant, regardless of whether the Contractor (or any Sub-contractor) is also a party thereto.

The Authority agrees that it shall not settle or compromise any claim giving rise to losses exceeding ten thousand pounds [REDACTED] (as such figure is increased by the percentage increase in RPI from 14 February 2003) for which the Contractor is liable to indemnify the Authority under Clause 4.1 without prior consultation with the Contractor. The Authority shall keep the Contractor reasonably informed as to the progress and status of any such claim until such claim is settled or withdrawn.

If, in contesting, settling or compromising any 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 the Contract, the liability of the Contractor to indemnify the Authority in respect of such claim shall be reduced by such portion.

The Contractor undertakes that:

- (i) it will 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;
- (ii) 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 will not settle or compromise any claim exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from 14 February 2003) without prior consultation with the Authority; and
- (iii) it will ensure that its Sub-contractors give undertakings identical to those given by the Contractor to the Authority under this Clause 4.6.

If conduct of a claim is so assumed by the Authority pursuant to this Clause 4.6, the Authority shall hold the Contractor and its insurers harmless against all or any Losses which either of them may incur by reason of its conduct of the claim, any settlement of the relevant claim or judgement being given if the settlement is made without their prior written approval (not to be unreasonably withheld or delayed).

4.7 This Clause 4.7 relates solely to the provision of mutual aid within the terms of paragraph 3.3 of Part 1 of Schedule D.

- (a) Where any prison officer is instructed to report for mutual aid purposes to the Prison and either:
 - (i) he sustains personal injury; or
 - (ii) by his act or omission he causes or contributes to injury, loss or damage to a third party (other than the Contractor, the Operating Sub-contractor and their agents, representatives or employees),

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

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

- (b) Where a Prisoner Custody Officer employed by the Contractor or the Operating Sub-contractor is instructed to report for mutual aid purposes to a directly managed state prison or another contracted-out prison and either:
 - (i) he sustains personal injury; or
 - (ii) by his act or omission he causes or contributes to injury, loss or damage to a third party (other than the Authority and its employees),

in circumstances giving rise to a liability on the part of the Authority, then, subject to the following provisions of this Clause 4.7(b), such liability shall be the responsibility of the Contractor and the Contractor will, notwithstanding the limits

set out in Clause 4.4(a), fully and effectively indemnify the Authority in that respect.

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

- (c) For the avoidance of doubt, the limits set out in Clause 4.4 shall not apply to any liability arising pursuant to this Clause 4.7.

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

- (b) Losses shall not be recoverable under Clause 4.1(c) in respect of a failure by the Contractor to provide Available Prisoner Places, during the period up to and ending on the Actual Full Operation Date and the Contractor shall not otherwise be liable for damages as a result of a breach of Clauses 21 (Contractual Opening Date), 22 (Phase-in Period) and/or 23 (Full Operation Date) where the Contractor has fully complied with its obligations under Clause 25 (Liquidated Damages).

- (c) If the Authority has to house Prisoners outside the Prison as a result of a failure by the Contractor to fulfil its obligations under the Contract to provide Available Prisoner Places and/or Additional Prisoner Places, the Authority shall:

- (i) on the Contractor's written request, increase the Permitted Level (either on a temporary or a permanent basis) if and to the extent that such increase, in the Authority's opinion, will not prejudice the level of security and safety in the Prison and the control of Prisoners as required under the operating procedures referred to in the Operational Proposals;

- (ii) to mitigate the relevant Losses where it is reasonably practicable to do so, for example taking reasonable steps to arrange for 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

- (iii) to the extent practicable (having regard to the then existing circumstances) consult with the Contractor as to where the relevant Prisoners should be accommodated.

- (d) In the case of Prisoners housed in alternative accommodation not managed by the Authority, the Authority shall not be entitled to recover Losses under Clause 4.1(c) to the extent that the payment by the Authority for such accommodation exceeds that which the Authority ordinarily makes to the relevant provider of that accommodation for such services.

- (e) The amount of Losses recoverable under Clause 4.1(c) shall be calculated by deducting (to the extent not already taken into account) from the total of the relevant Losses the aggregate of the following:

- (i) any damages for breach of contract received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places and/or Additional Prisoner Places (whether pursuant to Clause 22 (Phase-in

Period), Clause 23 (Full Operation Date) or Clause 40A (Additional Prisoner Places) or otherwise);

- (ii) any insurance proceeds received by the Authority in respect of the failure by the Contractor to provide such Available Prisoner Places and/or Additional Prisoner Places; and
 - (iii) the amount of the Contract Price the Authority would have paid the Contractor if the Contractor had provided the required number of Available Prisoner Places and/or Additional Prisoner Places.
- (f) If the Authority recovers any amount (the **Relevant Amount**) pursuant to Clause 4.1(c) and subsequently receives amounts of the type described in (e)(i) or (ii) above or Clause 25 (Liquidated Damages) in circumstances which amount to double recovery, the Authority shall (subject to the other provisions hereof and any rights of set-off) to the extent of such double recovery reimburse the party from whom the Relevant Amount was received within thirty (30) Days of written demand for reimbursement.
- (g) No amount shall be due under Clause 4.1(c) in respect of an Available Prisoner Place or an Additional Prisoner Place if the Agent and/or the Banks are required to make a payment in respect of the relevant place pursuant to Clause 6 and Schedule 1, both of the Direct Agreement.

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

5. Insurance

5.1 Subject to Clauses 5.14, 5.15, 5.16, 5.17, 5.18, 5.19, 5.20 and 5.21, but without prejudice to any of its obligations hereunder, including, without limitation, Clauses 4 (Indemnities) and 6 (Liability for Loss and Damage), the Contractor shall effect and maintain in full force and effect insurances naming the Contractor and the Authority as co-insured as detailed in the Minimum Insurances Requirements specified in Schedule O except for the insurance required in paragraphs 2 (Delay in Start-Up), 2A (Delay in Start-up - Prison Expansion Works) and 7 (Statutory Insurance) of Part 1A of Schedule O (Minimum Insurance Requirements - Insurance During Construction Phase) and in paragraphs 2 (Business Interruption), 5 (Comprehensive Crime), 6 (Employers Liability) and 7 (Directors' and Officers' Liability) of Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period) as detailed in Part 1A of Schedule O (Minimum Insurance Requirements - Insurance During Construction Phase) and Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Phase) in respect of the Site and, from the date of the Amending Agreement, the Prison Expansion Works, together with the plant, fixtures, fittings, materials, chattels, machinery or other equipment therein or thereupon (the **Assets**).

5.2 Such insurances except the insurance required in Schedule O, Part 1A, paragraph 4 (Professional Indemnity) (**PI Insurance**) and the Prison Expansion PI Insurance shall include (except to the extent otherwise agreed with the Authority and save in respect of Sub-Clause (j) below) in the form set out in the endorsements in Schedule O:

- (a) a waiver of subrogation against the Crown, its agents, servants, officers, employees and contractors (including, for the avoidance of doubt and without prejudice to Clause 5A, any Police and Crime Commissioner) and a waiver of subrogation against the Construction Sub-contractor and the Operating Sub-contractor (as applicable), their agents, servants, officers, employees and

contractors (except that this requirement shall not apply to the insurance required in Schedule O, Part 1B, paragraph 7 (Directors' and Officers' Liability));

- (b) a provision whereby such insurances shall apply to each of the insured parties as if a separate policy had been issued to each of them other than in the event of exhaustion of the sum insured or limit of indemnity (except that this requirement shall not apply to the insurance required in Schedule O, Part 1B, paragraph 7 (Directors' and Officers' Liability));
- (c) a breach of condition or warranty/severability/non vitiation provision acceptable to the Authority or if such provision is not generally available in equivalent policies written in the appropriate insurance market (after taking appropriate insurance advice), each of the Contractor and the Sub-contractors shall covenant, for the duration of such non-availability, with the Authority in writing that it will not make any misrepresentation to, or breach any condition or warranty made to, the insurer or take or omit to take any action which would cause the relevant insurance policy to fail (except that this requirement shall not apply to the insurances required in Schedule O, Part 1B, paragraph 7 (Directors' and Officers' Liability));
- (d) a provision which requires the insurer to send copies of all notices of cancellation or any other notices given under or in relation to the policy to the Authority;
- (e) a cancellation Clause in the form set out in the endorsements in Schedule O. However in respect of Construction All Risks, Advance Loss of Profits and Third Party Liability (as such terms are defined in Schedule O) insurances during the construction period, there shall be no provision for cancellation except in respect of non payment of premium;
- (f) a provision that a notice of a claim given to the insurer by the Authority or the Contractor or any other insured party under the policy, shall in the absence of manifest error, be accepted by the insurer as valid notification of a claim in respect of the interests of all insured parties;
- (g) a provision that such insurance shall be primary and no other policy shall be called into contribution;
- (h) a loss payee provision in accordance with Clause 5.6(a) or the relevant provisions of Schedule 2 to the Direct Agreement; and
- (i) a provision providing the Authority with the right to negotiate and settle any claims received from third parties, subject to prior consultation with the Contractor and insurers on any claim exceeding [REDACTED] (as such figure is increased by the percentage increase in RPI from 14 February 2003) and;
- (j) a waiver from the insurer of any rights it may have (as subrogee or otherwise) to bring any claim under the Riot (Damages) Act 1886 in respect of (i) any damage to, or (ii) any monies paid for or in respect of, the Prison, the Site or any Assets. Such waiver shall be expressed to be binding upon each of the insurer's successors and permitted assigns and shall be expressly provided for the benefit of any Local Policing Body and the statutory successors of any such Local Policing Body, each of which may enforce such waiver against the insurer and/or its successors and permitted assigns (as appropriate).

5.2A.1 In relation to paragraph 4 (Medical Malpractice Insurance) of Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period), the

Contractor will be deemed to have satisfied its obligations under Sub-clauses 5.2(c) and (e) if it uses its best endeavours to include the provisions referred to in such Sub-Clause in the insurance detailed in that paragraph 4.

5.2A.2 In relation to paragraph 5 (Comprehensive Crime) of Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period), the Contractor will be deemed to have satisfied its obligations under Sub-clauses 5.2(b) to (i) if it uses its best endeavours to include the provisions referred to in such Sub-clauses in the insurance detailed in that paragraph 5 (provided that there shall be a waiver of subrogation against the Crown in respect of such insurance).

5.2A.3 In relation to paragraph 6 (Employers Liability) of Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period), the Contractor will be deemed to have satisfied its obligations under Clauses 5.2(b), (c), (e), (f), and (h) if it uses its best endeavours to include the provisions referred to in those Sub-clauses in the insurance detailed in that paragraph 6.

5.2A.4 In relation to paragraph 7 (Directors' and Officers' Liability) of Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period), the Contractor will be deemed to have satisfied its obligations under Clause 5.2 if it uses its best endeavours to include the provisions referred to in that Clause in the insurance detailed in that paragraph 7.

5.2A.5 In relation to paragraph 8 (Motor) of Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Period), the Contractor will be deemed to have satisfied its obligations under Sub-clauses 5.2(c), (e) and (h) if it uses its best endeavours to include the provisions referred to in those Sub-clauses in the insurance detailed in that paragraph 8 (Motor).

5.3 Such insurances shall be taken out with an insurer approved by the Authority in writing (such approval shall not be unreasonably withheld or delayed).

5.4 The insurances to be effected under Schedule O, Part 1A (Construction Phase) shall be effected from the date of this Contract and continue in force in accordance with Schedule O.

5.4A The insurances to be effected under paragraphs 1A (Construction All Risk Insurances - Prison Expansion Works), 2A (Advance Loss of Profits for CAR (Delay in Start-Up – Prison Expansion Works), 3A (Third Party Liability - Prison Expansion Works) and 4A (Professional Indemnity - Prison Expansion Works) of Schedule O (Minimum Insurance Requirements), Part 1A (Construction Phase) shall be effected from the date of the Amending Agreement and continue in force in accordance with Schedule O (Minimum Insurance Requirements).

5.5 The insurances to be effected under Schedule O, Part 1B (Operational Phase) shall be effected from the date of commencement of operations or the date when the Construction Period insurances lapse, whichever is the earlier, and remain in force until the end of the Contract Term.

5.6(a) Save only as provided in clause 5.6A, unless otherwise agreed by the Authority, on each and every occasion when any part or the whole of the Prison, the Site or the Assets is destroyed or damaged, where the amount of the Insurance Proceeds (excluding proceeds from the insurances detailed in paragraph 2 (Advance Loss of Profits for CAR (Delay in Start-Up)), paragraph 2A (Advance Loss of Profits for CAR (Delay in Start-Up) – Prison Expansion Works) of Part 1A of Schedule O and paragraph 2 (Loss of revenue (Business Interruption)) of Part 1B of Schedule O and required to be maintained under this Clause 5 (Insurance)) in respect of any one event is less than or equal to the Insurance Threshold Amount:

- (i) the Contractor shall (and shall procure that the Construction Sub-contractor and the Operating Sub-contractor shall) pay the amount of the Insurance Proceeds received under any insurance policy taken out in

accordance with this Clause 5.6(a) into an account in the joint names of the Authority and the Contractor at a bank to be nominated by the Authority (and advised to the insurers accordingly) (the **Joint Insurance Proceeds Account**);

- (ii) the Contractor shall certify to the Agent (within a reasonable time of the relevant damage or destruction being sustained and in any event not later than six (6) months thereafter) that it wishes to reinstate or repair the asset which is the subject of the Insurance Claim;
 - (iii) the Insurance Proceeds referred to in this Clause 5.6(a) shall be released to the Contractor upon its application to the Authority, provided the Contractor has provided all information which the Authority reasonably requires in determining whether to grant its consent and the Authority is satisfied (acting reasonably) that the proceeds will be used to comply with its obligations set out in this paragraph (iii). Subject to receiving such consent from the Authority (which consent may not be unreasonably withheld or delayed), the Contractor shall forthwith lay out all Insurance Proceeds and at its own expense all such other money as shall be necessary (including the fees of the Independent Engineer acting in connection with the claims and the reinstatement, replacement or rebuilding of the Prison as the case may be) (x) pursuant to Clause 6 (Liability for Loss and Damage), fully to reinstate, rebuild and/or replace the Prison in a workmanlike manner to the reasonable satisfaction of the Independent Engineer mutatis mutandis in accordance with Clause 26 (Engineer's Declaration) and Clause 26A (Engineer's Prison Expansion Declaration) and in accordance with all such consents and approvals as shall be necessary and (to the extent that the Authority and the Contractor agree that any reinstatement, rebuilding or replacement shall not be to a specification as set out in Schedule A) in accordance with drawings and specifications which shall first be submitted for approval in writing by the Authority and/or (y) subject to Clause 4 (Indemnities), to make good any loss sustained or settle any claim made as a result of the relevant damage/destruction. The Independent Engineer will, in such case of reinstatement, rebuilding or replacement have the same rights and obligations as those contained in Clause 13 (Provision of the Prison) and clause 13A (Provision of Increased Capacity).
- (b) Where the amount of the Insurance Proceeds referred to in Clause 5.6(a) in respect of any one event received in respect of damage to the Prison, the Site or the Assets exceeds the Insurance Threshold Amount, the Contractor shall, unless the Authority otherwise agrees, certify to the Agent that it wishes to reinstate or repair the asset which was the subject of the Insurance Claim and submit a certificate to the Agent in accordance with paragraph 3(a) of Schedule 2 to the Direct Agreement and shall, in the circumstances set out in paragraph 3(b) of Schedule 2 to the Direct Agreement, apply such proceeds as provided in Clause 5.6(a)(iii)(x) or (y). In the circumstances set out in paragraph 4 of Schedule 2 to the Direct Agreement, the Authority undertakes to authorise the joint insurance account bank to release forthwith the Insurance Proceeds received into the Joint Insurance Proceeds Account to the Agent.
- (c) Any certification, submission or report required under (a) or (b) above to be provided to the Agent shall no longer be required once all sums due to the Banks under the Financing Agreements have been irrevocably paid in full and the Credit Agreement has been cancelled, in which case all Insurance Proceeds shall be applied as provided in Clause 5.6(a)(iii)(x) or (y) above.

- (d) The Authority shall pay all Insurance Proceeds it receives under any insurance policy taken out in accordance with this Clause 5 (Insurance) into the Joint Insurance Proceeds Account to be applied in accordance with the terms of Schedule 2 to the Direct Agreement, except to the extent such Insurance Proceeds are in respect of a liability of the Authority under a third party liability policy or a loss suffered by the Authority.

5.6A

- (i) On each and every occasion when any part or the whole of the Prison Expansion is destroyed or damaged (and where no claim may be made in respect of the relevant event under the insurance effected under paragraph 1 (Material Damage All Risks) of Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Phase)), the amount of the Insurance Proceeds received under the insurance effected under paragraph 1A (Construction All Risk Insurances - Prison Expansion Works) of Part 1A of Schedule O (Minimum Insurance Requirements - Insurance During Construction Phase) shall be paid into the Joint Insurance Proceeds Account. All such insurance proceeds shall be applied to repair, reinstate and replace each part or parts of the Prison Expansion in respect of which the proceeds were received as agreed with the Authority. If the Contractor and the Authority are unable to agree on the application of such proceeds, the matter shall be determined pursuant to Clause 72 (Dispute Resolution).

For the avoidance of doubt, if an event gives rise to claims under each of the insurances effected under paragraph 1A (Construction All Risk Insurances - Prison Expansion Works) of Part 1A of Schedule O (Minimum Insurance Requirements - Insurance During Construction Phase) and under paragraph 1 (Material Damage All Risks) of Part 1B of Schedule O (Minimum Insurance Requirements - Insurance During Operational Phase), the provisions of Clause 5.6(a), (b), (c) and (d) (Insurance) shall apply (and reference in those clauses to "Prison" shall include the Prison Expansion).

- (ii) If the Authority confirms that no repair or reinstatement is required pursuant to Clause 5.6A(i)(Insurance) or if no agreement is reached between the Contractor and the Authority (or no determination is made pursuant to Clause 72 (Dispute Resolution)) on the restatement works within six (6) months of receipt of the insurance proceeds, the Authority undertakes to authorise the joint insurance account bank to release forthwith the insurance proceeds received into the Joint Insurance Proceeds Account pursuant to Clause 5.6A(i) (Insurance) to the Agent.

5.7 The Contractor shall within thirty (30) Days from the date of this Contract, and within sixty (60) Days after any renewal or replacement of any insurance policy maintained pursuant to this Clause, and further whenever required by the Authority, provide evidence, including copies of all insurance policies to the Authority confirming that insurance has been taken out and is being maintained by the Contractor as required by this Clause. The Contractor shall also on or immediately after execution of this Contract, and within seven (7) Days after any renewal or replacement of any Required Insurance, provide satisfactory evidence to the Authority that the Required Insurance has been taken out and is being maintained as required by this Contract.

5.8 The Contractor shall inform the Authority in writing as soon as reasonably practicable after it becomes aware of the occurrence of any event that may give rise to a claim under a policy of insurance required by this Clause and will ensure that the Authority is kept fully informed of subsequent action and developments concerning the claim; such written information shall not be required in relation to any claim of less than [REDACTED] (as such figure is increased by the percentage increase in RPI from the 14 February 2003). The Contractor will take such steps as are necessary

or appropriate to ensure that each Sub-contractor, in respect of any event or claim of a like nature arising out of or relating to the operation or responsibility of the Sub-contractor, takes in relation to the Contractor like action to that which the Contractor is required to take under this Clause 5.8 in relation to the Authority, and shall inform the Authority promptly of information thus received from any Sub-contractor. Notwithstanding, and without prejudice to, any other provision hereof, the Contractor undertakes that it will not (and that it shall procure that its Construction Sub-contractor and Operating Sub-contractor will not) settle any insurance claim (except in respect of a claim under the insurances to be effected under paragraph 2 (Delay in Start-Up) of Part 1A to Schedule O (Insurances) and paragraph 2 (Business Interruption) of Part 1B to Schedule O (Insurances) and except in accordance with the provisions in respect of settling claims set out in Clause 4.6) without the prior written agreement of the Authority.

5.9 The Contractor shall procure (within seven (7) Days of execution of this Contract and thereafter on or before the effective date of the relevant insurance policy, relevant Renewal Date and the date of appointment of any replacement broker) the issue of a broker's letter of undertaking in the form of Schedule O, Part 2A or Schedule O, Part 2B (as appropriate) in relation to each policy of insurance maintained in accordance with this Clause 5.

5.10 Without prejudice to Clauses 5.14 – 5.20 (inclusive), where the Contractor has failed to take out or procure insurance pursuant to its obligations hereunder, the Contractor shall notify the Authority of such failure immediately and, where relevant, the insurance broker shall notify the Authority pursuant to the broker's letter of undertaking in the form set out in Part 2 of Schedule O and the Authority shall have the right to take out such insurance in the Contractor's name and to be indemnified by the Contractor in respect of any costs or expenses incurred in so doing.

5.11 Without prejudice to the obligations of the Contractor under this Clause 5 (Insurance), the Contractor shall effect and maintain in full force those insurances, which it is required to have by any applicable law.

5.12 The Contractor undertakes with the Authority in relation to the insurances referred to in this Clause (and undertakes to procure that the Construction Sub-contractor and Operating Sub-contractor shall give the same undertakings to the Authority):

- (a) to comply with all requirements and recommendations of the insurers to the extent reasonable or necessary to preserve the benefit of the relevant cover;
- (b) not to do or omit to do anything that could cause any policy of insurance to become void or voidable wholly or in part;
- (c) to comply with all requirements and reasonable recommendations of the fire authority as to fire precautions relating to the Prison, the Site and the Assets; and
- (d) to give notice to the Authority immediately upon the happening of any event that might adversely affect any policy of insurance effected in accordance with this Clause.

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

5.13(a) Subject to Clause 5.13(c), if on any Insurance Review Date and annually during the relevant period, during the Contract Term, the annual Actual Cost exceeds the annual Base Cost then the parties shall bear the Net Insurance Cost as follows:

- (i) if the Actual Cost exceeds the Base Cost at the Insurance Review Date but is not more than 17.5% over the Base Cost, the Contractor shall bear the full amount of the Net Insurance Cost;
 - (ii) if the Actual Cost is more than 17.5% over the Base Cost (the **First Threshold**), but less than or equal to 40% over the Base Cost (the **Second Threshold**), then the Contractor shall bear that part of the Actual Cost below the First Threshold and 20% of any amount of the Actual Cost exceeding the First Threshold, and the Authority will bear 80% of any amount of the Actual Cost that exceeds the First Threshold. The Authority shall pay to the Contractor the Authority's share of the Actual Cost by increasing accordingly the "ICF" payment (based on full availability of Prisoner Places) set out in Schedule E, until the next Insurance Review Date;
 - (iii) if the Actual Cost exceeds the Second Threshold but is less than or equal to 100% over the Base Cost (the **Third Threshold**), then the Contractor shall bear (A) that part of the Actual Cost below the First Threshold; and (B) 20% of any amount of the Actual Cost that exceeds the First Threshold but is less than or equal to the Second Threshold; and (C) 10% of any amount of the Actual Cost that exceeds the Second Threshold but is less than or equal to the Third Threshold, and the Authority will bear (A) 80% of any amount of the Actual Cost that exceeds the First Threshold but is less than or equal to the Second Threshold, and (B) 90% of that amount of the Actual Cost that exceeds the Second Threshold but is less than or equal to the Third Threshold. The Authority shall pay to the Contractor the Authority's share of the Actual Cost by increasing accordingly the "ICF" payment (based on full availability of Prisoner Places) set out in Schedule E, until the next Insurance Review Date; and
 - (iv) if the Actual Cost exceeds 100% over the Base Cost, then, at the sole discretion of the Authority, either:
 - (aa) the Contractor shall bear (A) that part of the Actual Cost below the First Threshold; and (B) 20% of any amount of the Actual Cost that exceeds the First Threshold but is less than or equal to the Second Threshold; and (C) 10% of any amount of the Actual Cost that exceeds the Second Threshold but is less than or equal to the Third Threshold, and the Authority will bear (A) 80% of any amount of the Actual Cost that exceeds the First Threshold but is less than or equal to the Second Threshold; (B) 90% of any amount of the Actual Cost that exceeds the Second Threshold but is less than or equal to the Third Threshold; and (C) 100% of any amount that exceeds the Third Threshold. The Authority shall pay to the Contractor the Authority's share of the Actual Cost by increasing accordingly the "ICF" payment (based on full availability of Prisoner Places) set out in Schedule E, until the next Insurance Review Date; or
 - (bb) the Contractor shall be deemed to be unable to obtain the Required Insurance at a Commercial Premium, for the purposes of Clauses 5.14-5.20 (inclusive) of the Contract.
- (b) Subject to Clause 5.13(c), if on any Insurance Review Date and annually during the relevant period, during the Contract Term, the annual Actual Cost is lower than the annual Base Cost then the savings received by each of the parties in respect of the amount by which the Actual Cost is lower than the Base Cost shall be calculated as follows:

- (i) if the difference between the Base Cost and the Actual Cost is less than or equal to 10% of Base Cost, then the Contractor shall retain the whole of the Net Insurance Cost savings;
 - (ii) if the difference between the Base Cost and the Actual Cost is greater than 10% of Base Cost but is less than or equal to 40% of Base Cost, then the Contractor shall retain the initial 10% of the Net Insurance Cost saving and 20% of any additional saving by which the Actual Cost is less than the amount which is 10% less than the Base Cost. The Authority shall be entitled to adjust accordingly the "ICF" payment (based on full availability of Prisoner Places) in Schedule E, until the next Insurance Review Date; and
 - (iii) if the difference between the Base Cost and the Actual Cost is greater than 40% of Base Cost, then the Contractor shall retain (A) the initial 10% of the Net Insurance Cost saving; and (B) 20% of any additional saving by which the Actual Cost is less than the amount which is 10% less than Base Cost, and (C) 10% of any amount by which the Actual Cost is less than the amount which 40% less than the Base Cost. The Authority shall be entitled to adjust accordingly the "ICF" payment (based on full availability of Prisoner Places) set out in Schedule E, until the next Insurance Review Date.
- (c) Notwithstanding the foregoing, the Authority will in no circumstances be liable to pay any increase (which, for the avoidance of doubt, shall include the amount of any decrease that would have occurred) to the Actual Cost to the extent (the **Relevant Extent**) that such increase has been caused by, or is the result of, a breach of this Contract by the Contractor, the claims history or any act or omission of:
- (i) the Contractor;
 - (ii) any Sub-contractor;
 - (iii) any Subsidiary of (a) and (b) above; or
 - (iv) or any other company within the Sodexo Alliance S.A. Group that has responsibility for managing custodial services at any custodial facility,
- where such act or omission is not in accordance with Good Industry Practice, is negligent or is in breach of the relevant entity's contractual provisions, and accordingly any increase in the Actual Cost shall be ignored for the purposes of this Clause 5 to the extent of the Relevant Extent.
- (d) The Contractor shall use its reasonable endeavours to minimise any increase and maximise any reduction to the Operational Premiums provided that nothing herein will require the Contractor to act in breach of this Contract and/or the Credit Agreement.

5.13A.1 Not later than 60 Days prior to the expiry of the relevant period of insurance for the immediately preceding period (the **Relevant Insurance Review Date**), the parties shall meet to discuss, in respect of the relevant Required Insurance, the options available to the parties with regard to the period of insurance cover which is obtainable by the Contractor in the relevant insurance market and shall agree, by the date falling 50 Days prior to the Relevant Insurance Review Date, which option represents best value for money in the context of this Project taking into account:

- (a) the Operational Premiums;

- (b) the terms upon which the relevant Required Insurance is available;
- (c) the likely changes to Operational Premiums over the relevant period; and
- (d) the identity and credit standing of the relevant insurers.

5.13A.2 If the parties are unable to agree which option represents the best value for money then, notwithstanding the dispute resolution provisions of Clause 72 (Dispute Resolution), this matter will be referred to an expert for determination and the provisions of Clauses 5.18.2, 5.18.7 and 5.18.8 shall apply save that, for the purposes of this Clause:

- (a) the reference in Clause 5.18.2.3 to "Deadline Date" shall be replaced with "request referred to in Clause 5.18.2.1"; and
- (b) the reference in Clause 5.18.7 to "Renewal Date" shall be replaced with the "Relevant Insurance Review Date" and the words "Subject to Clause 5.18.9 and" shall be deleted.

5.13A.3 Where the matter is referred to the Expert pursuant to this Clause, the Expert shall determine which option represents the best value for money for the Project (after taking into account those matters referred to in Sub-clauses 5.13A.1(a) to (d) (inclusive)) and shall decide such matter taking due and proper account of the submissions of the parties (copies of such submissions, if any, to be provided by each party to the Expert and the other party within five (5) Days of the Expert being appointed in accordance with Clause 5.18.2).

5.14 If the Contractor considers that a Required Insurance will be or is likely to be Unavailable after the Renewal Date, it shall no later than forty five (45) Days before the Renewal Date (the **Notification Date**) provide the Authority with written notification of such Unavailability (**Insurance Notice**), which Insurance Notice shall be headed "Insurance Unavailability Notice", make clear reference to this Clause 5.14 and contain:

- (a) one or more proposals for effecting, or as the case may be, replacing the Required Insurance for at least the twelve (12) month period following the Renewal Date; and
- (b) all information that the Authority might reasonably require to determine whether the relevant Required Insurance is or will be likely to be Unavailable including, but not limited to, full details of the terms on which the relevant Required Insurance will, or is likely to, be available in the appropriate insurance market (having taken appropriate insurance advice) as at the Renewal Date.

5.15(a) If the Contractor fails to notify the Authority in accordance with Clause 5.14, then the Contractor shall pay all amounts and take all action necessary in order to obtain the relevant Required Insurance on the Renewal Date.

- (b) The Authority shall have the right to terminate the Contract if the Contractor fails to comply with paragraph (a) of this Clause 5.15.

5.16 If, following receipt of the Insurance Notice, the Authority:

- (a) considers that a Required Insurance referred to in the Insurance Notice is Unavailable; and
- (b) agrees with the Contractor's proposals as set out in the Insurance Notice,

then the Authority shall notify the Contractor within ten (10) Days of receipt of the Insurance Notice, that it accepts a proposal set out in the Insurance Notice. The parties will take all action necessary to ensure that this proposal is put into effect by the Renewal Date.

5.17.1 If, following receipt of an Insurance Notice, the Authority does not:

- (a) consider that the relevant Required Insurance referred to in the Insurance Notice is Unavailable; and/or
- (b) agree with any of the Contractor's proposals set out in the Insurance Notice,

then the Authority shall notify the Contractor, within ten (10) Days of receipt of the Insurance Notice, that it does not consider that the relevant Required Insurance is Unavailable and/or agree with the Contractor's proposals set out in the Insurance Notice.

5.17.2 The parties shall meet as soon as is reasonably practicable, and in any event no later than five (5) Days, following the service of the Authority's notification in accordance with Clause 5.17.1, to hold discussions in good faith to resolve any area(s) of disagreement arising out of the proposal(s) set out in the Insurance Notice. The discussions will take into account the following matters:

- (a) the state of the insurance market generally and whether other commercial enterprises are paying premiums and obtaining cover which is broadly comparable to the Required Insurance that the Contractor has notified is Unavailable; and
- (b) the terms obtained by the Contractor when the Required Insurance was last Available, any claims made during that period and any changes in the insurance market; and
- (c) any circumstances particular to the custodial sector; and
- (d) the terms of any proposal(s) submitted by the Authority in accordance with Clause 5.17.3.

5.17.3 The Authority may (notwithstanding and without prejudice to the fact that it may dispute whether the relevant Required Insurance is Unavailable), within five (5) Days following the issuance of its notification pursuant to Clause 5.17.1, submit one or more of its own proposals for effecting the Required Insurance for at least the twelve (12) month period following the Renewal Date, including, without limitation, proposals providing for the Authority to insure one or more of the insured risks. If the Authority submits one or more proposals in accordance with this Clause 5.17.3, the Contractor shall consider such proposal(s) in good faith.

5.17.4 If the parties are unable to reach agreement within twenty five (25) Days before the Renewal Date (the **Deadline Date**) then, notwithstanding the provisions of Clause 72 (Dispute Resolution), the matter will be referred to an expert pursuant to Clause 5.18.

5.18.1 Where pursuant to Clause 5.17.4 a matter is to be referred to an expert, the terms of reference of such expert (the **Expert**) shall require limits to resolve the matter in accordance with the following provisions of Clause 5.18.

5.18.2 The Expert shall be selected as follows:

5.18.2.1 the parties shall, in the first instance, request that Mr Stephen Tester accept an appointment as the expert for the purpose of Clause 5.18.

5.18.2.2 if, for whatever reason, the individual referred to in Clause 15.18.2.1:

- (a) is unavailable or declines; or
- (b) fails to respond to any request submitted in accordance with Clause 15.18.2 within two (2) Days of such a request,

the parties shall jointly nominate and appoint an Expert by agreement; or

5.18.2.3 if the parties are unable to reach an agreement pursuant to Sub-Clause 15.18.2.2 within 5 (five) Days of the Deadline Date, the president for the time being of the Association of British Insurers, upon application by either of the parties, shall within 5 Days of the receipt of such an application appoint an appropriately qualified and experienced professional who is knowledgeable of and experienced in:

- (a) United Kingdom insurance matters, and is an appropriately qualified independent insurance consultant competent to act as the Expert in relation to insurance matters arising under or in connection with this Contract, and
- (b) the United Kingdom custodial services sector.

5.18.3 Where the matter is referred to the Expert pursuant to Clause 5.17.4, the Expert shall determine whether the Required Insurance which is the subject of the Insurance Notice is Unavailable and shall decide such matter taking due and proper account of the submissions of the parties (copies of such submissions, if any, to be provided by each party to the Expert and the other party within five (5) Days of the Expert being appointed in accordance with Clause 5.18.2).

5.18.4 If the Expert determines that the relevant insurance is Available then the Contractor shall effect such insurance cover in accordance with the requirements of this Contract.

5.18.5.1 If the parties agree or the Expert determines that the relevant Required Insurance is Unavailable, then the Expert shall:

- (a) assess the Contractor's proposal(s) submitted in accordance with Clause 5.14(a) and the Authority's proposal(s), if any, submitted in accordance with Clause 5.17.3;
- (b) determine which of the parties' proposals should be implemented. In making this determination, the Expert shall not be entitled to choose a proposal where, following the implementation of the proposal, risks which were intended to be insured against in accordance with Schedule O (Minimum Insurance Requirements) will thereafter be uninsured or where the premium payable in respect of insurances set out in the proposal does not constitute a Commercial Premium (as that term is used in Clause 1.4), provided that:
 - (i) a risk shall not be regarded as uninsured for the purpose of this Clause 5.18.5.1(b) to the extent that a proposal submitted in accordance with Clauses 5.14(a) or 5.17.3 provides that an uninsured risk is to be assumed by the Authority; and/or
 - (ii) a proposal shall be regarded as constituting the provision of Insurance at a Commercial Premium where:
 - (AA) the aggregate cost of any Operational Premiums payable, and/or any additional measures to be assumed, by the Contractor in order to implement a proposal does not exceed an amount that would be considered to be a Commercial Premium in accordance with Clause 1.4; and
 - (BB) any additional measures included within a proposal are reasonable, relevant to and shall assist in the prevention, management or mitigation of a particular risk; and

- (c) specify a timetable (including a deadline) for the implementation of the proposal selected by the Expert that shall, in any event, be implemented no later than the Renewal Date save in respect of the implementation of any additional measures referred to in sub-paragraph (BB) which shall implemented as soon as is reasonably practicable.
- 5.18.5.2 For the purposes of this Clause 5.18.5, the Authority shall be deemed to have assumed an uninsured risk notwithstanding that the Authority has the right to terminate the Contract instead of making a payment under the insurance it provides provided that, upon such termination, the Authority is required to pay at least the sums referred to in Clauses 5.19.3(b) and (f).
- 5.18.5.3 Prior to making his determination, the Expert shall have the right, upon giving reasonable notice, to convene meetings with either or both of the parties at which he may require either of them to clarify and explain their respective proposals. Each party may present its own expert opinion or evidence at any such meeting.
- 5.18.5.4 The Expert may suggest his own proposal(s) but the parties shall be under no obligation to accept such proposal(s).
- 5.18.6 The Expert shall be required to select either the Contractor's or the Authority's proposal when making a determination as to what proposal should be implemented by the parties, unless the parties agree to accept his proposal (if any). The parties shall ensure that the implementation of the proposal selected by the Expert is undertaken in accordance with the timetable specified by the Expert and, in any event, shall procure that the proposal is implemented no later than the Renewal Date.
- 5.18.7 The Expert shall be required to make his determination and provide to both parties his written decision on the matter, no later than ten (10) Days prior to the Renewal Date. Subject to Clause 5.18.9 and save in the case of fraud, impartiality or manifest error, any determination by the Expert made in accordance with Clause 5.18.5 shall be final and binding upon the parties.
- 5.18.8 All information, data or documentation disclosed or delivered by a party to the Expert in consequence of or in connection with his appointment as an Expert shall be treated as confidential. The Expert shall not, save as is permitted by Clause 58 (Information and Confidentiality), disclose to any Person or company such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Expert's work.
- 5.18.9 Subject to Clauses 5.19.2 and 5.19.3 the Authority shall have the right to terminate the Contract:
- (a) within five (5) Days of any determination by the Expert except where the determination is that the relevant Required Insurance is Available; or
 - (b) if the Contractor fails to accept or act in accordance with any determination made by the Expert; or
 - (c) if the Expert fails to comply with Clause 5.18.7.

Where the Authority elects to terminate this Contract pursuant to this Clause 5.18.9, it shall serve notice thereof in writing (the **Insurance Termination Notice**) to the Contractor, receiver, liquidator, or any Person in whom the Contract may be vested, specifying the Termination Date which, shall be at least ninety (90) Days after the date of the Insurance Termination Notice provided that, if the Authority elects to serve an Insurance Termination Notice pursuant to this Clause 5.18.9 following receipt of an Insurance Notice and prior to the Renewal Date, the Contract shall terminate no later than the Renewal Date which, in this instance, shall be the Termination Date. The

Contract shall terminate on the Termination Date and the termination shall take effect in accordance with the provisions of Clause 5.19 and Clause 54 (Consequential Arrangements on Termination).

Where the Authority elects to terminate this Contract pursuant to this Clause 5.18.9, the service of an Insurance Termination Notice shall be irrevocable. A Named Representative of the Authority shall serve any Insurance Termination Notice served pursuant to this Clause 5.18.9.

5.18.10

(a) If:

(i) the Authority puts forward a proposal pursuant to Clause 5.17.3 that the Contractor rejects but which the Expert determines would be reasonable for the parties to adopt; and/or

(ii) the Expert determines that the insurance is not Unavailable,

then the Contractor shall be liable for all of the Expert's costs in making his determination.

(b) If:

(i) the Expert determines that the insurance is Unavailable; and

(ii) the Expert determines it would be reasonable for the parties to adopt a proposal made by the Contractor pursuant to Clause 5.14(a) but which the Authority had rejected,

then the Authority shall be liable for all of the Expert's costs in making his determination.

(c) Except to the extent set out in paragraphs (a) and (b), each of the parties shall bear its own costs (including legal costs and the costs and expenses of any witnesses), and the costs incurred by the Expert in making his determination will be split equally between the parties.

5.19.1 The rights of the Authority to terminate the Contract pursuant to Clause 5 are in addition to and without prejudice to any other rights of the Authority under the Contract to terminate the Contract including, without limitation under Clauses 45 (Rectification and Termination for Default), 46 (Voluntary Termination), 47 (Unilateral Termination) and 48 (Force Majeure).

5.19.2 If the Authority terminates the Contract pursuant to Clauses 5.15(b) or 5.18.9(b) then the provisions of Clause 49 (Payment for Termination) shall apply as if the Contract had been terminated pursuant to Clause 45.

5.19.3 If the Authority terminates the Contract pursuant to Clauses 5.18.9(a) or 5.18.9(c), then the Authority shall pay the Contractor:

(a) any amounts fallen due pursuant to Schedule E but that has not yet been paid;

(b) the Lender Liabilities as at the Termination Date less any costs (if any) required to remedy any breach by the Contractor of its obligations under the terms of the Contract;

(c) an amount representing the amount payable pursuant to the Contract for the Services performed from the end of the previous Performance Month until the Termination Date (assuming no Performance Points or Significant Performance Failures);

- (d) any Demobilisation Costs up to a maximum of [REDACTED] (Indexed) provided that:
 - (i) in each case, the Contractor shall use all reasonable endeavours to minimise the amount in question and provide the Authority with reasonable evidence supporting each amount claimed;
 - (ii) without prejudice to the generality of (i) above the Contractor shall mitigate the cost related to employees by allowing any such employees to be redeployed on other facilities of the Authority to the extent reasonable and practicable;
- (e) the amount payable shall take account of the (A) period between the date of termination and the scheduled expiry of the Contract; and (B) the amount that the Contractor would reasonably be expected to pay in respect of Demobilisation Costs on such scheduled expiry; and
- (f) equity and subordinated debt subscribed and/or advanced by the Shareholders at par value.

5.20 Where the Insurance Notice has been provided pursuant to Clause 5.14 and the parties have not reached agreement and/or the Expert has not made a determination by the Renewal Date, then, the Contractor's obligation to effect the relevant Required Insurance shall be suspended until the earlier of the (i) the parties agreeing otherwise, (ii) 3 Days after the Expert making a determination, or (iii) the Required Insurance becoming Available provided that, on the occurrence of a risk which, but for the Unavailability, would have been the subject of any Required Insurance, the Authority shall:

- (a) pay to the Contractor an amount equal to the insurance proceeds that would have been payable had the relevant Required Insurance continued to be Available in accordance with terms and conditions set out in this Contract as at the date of service of an Insurance Notice pursuant to Clause 5.14; and
- (b) have the right to terminate the Contract and the provisions of Clause 5.19 shall apply as if the Contract had been terminated pursuant to Clauses 5.18.9(a) or (c).

Where the Authority exercises its right to terminate the Contract pursuant to paragraph (b) above, the Authority shall be relieved from paying to the Contractor any amount pursuant to paragraph (a) above to the extent that such amount is to be used to meet a liability or perform an obligation from which the Contractor has been relieved as a result of such termination of the Contract.

For the avoidance of doubt, where the Authority does not terminate the Contract, the Contractor shall continue to remain liable for all its other obligations under the Contract.

5.21 Without prejudice to any of the Contractor's other obligations under this Contract, where any of the Required Insurances are not Available, and such unavailability is caused by an act or omission of:

- (a) the Contractor; or
- (b) any Sub-contractor; or
- (c) any Subsidiary of (a) and (b) above; or
- (d) any other company within the Sodexo Alliance S.A. Group that has responsibility for managing custodial services at any custodial facility,

where such act or omission is not in accordance with Good Industry Practice, is negligent or is in breach of the relevant entity's contractual provisions, the Contractor shall be

relieved from its obligations to effect such insurance to the extent affected by such acts or omissions. Every three (3) months the Contractor shall review, in respect of any such insurance which is not Available, whether such insurance remains not Available. In the event that such insurance becomes Available, the Contractor shall effect and maintain such insurance in accordance with the provisions of this Clause 5 (Insurance) as soon as reasonably practicable thereafter.

5.22 Without prejudice to the Authority's rights under Clause 9 (Change to Services Required), the Authority retains the right to require the Contractor to amend the insurance programme detailed in Schedule O throughout the Contract Term as it may reasonably require to reflect changes in the circumstances surrounding the Contract save that, the prior written consent of the Contractor shall be required where the Authority requires the insurance programme to be amended in a manner that would result in a reduction to the level of insurance cover detailed in Schedule O. Any such amendment shall be deemed an amendment to an obligation of the Contractor under the Contract for the purposes of Clause 9.1, and shall be effected in accordance with Clause 9.1.

5.23 Except for Clauses 5.3, 5.4, 5.9, 5.12 and 5.20 the provisions of Clause 5 (Insurance) shall not apply to the PI Insurance. The Contractor undertakes in respect of the PI Insurance, and to procure that the Construction Sub-contractor undertakes to the Authority, to:

- (a) effect and maintain in full force and effect the PI Insurance referred to in paragraph 4 of Part 1A of Schedule O (minimum Insurance Requirements – Insurance during Construction phase) from the date of Contract signature;
- (b) provide evidence satisfactory to the Authority (as and when reasonably required by the Authority) that the PI Insurance is in full force and effect from the date of Contract signature (such evidence to include details of the cover (including confirmation of vicarious liability and retro cover as specified in Schedule O), territorial limits, indemnity limit, levels of excess, insurers and policy number);
- (c) provide the Authority with copies of all notices under the PI Insurance relative to the Project;
- (d) provide the Authority with notice of:
 - (i) any cancellation of the PI Insurance not less than ninety (90) Days prior to the relevant cancellation date;
 - (ii) any material changes to or suspension of cover relevant to the Project;
 - (iii) any event of which it becomes aware, or could reasonably be expected to become aware which may vitiate the PI Insurance; and
 - (iv) any act, omission or event which may adversely affect the terms and scope of the PI Insurance relevant to the Project or invalidate or render it unenforceable;
- (e) provide information to the Authority regarding any claim or circumstance notified under the PI Insurance in respect of the Project to the Authority as may be reasonably required and of any potential breach of the aggregate limit of the policy;
- (f) disclose to the relevant insurers any matters, which could reasonably be expected to be material in the context of the Project and any of the other insurances required to be maintained under this Clause 5;

- (g) indemnify the Authority in respect of any subrogation claim by the insurers brought in connection with any claim made under the PI Insurance; and
- (h) include the interests of the Authority (if any) in any claim or circumstances notified under the PI Insurance and provide a copy of such notification to the Authority.

5.23A Except for Clauses 5.3 (Insurance), 5.4 (Insurance), 5.4A (Insurance), 5.9 (Insurance), 5.12 (Insurance) and 5.20 (Unavailability of Insurance) the provisions of Clause 5 (Insurance) shall not apply to the Prison Expansion PI Insurance. In respect of the Prison Expansion PI Insurance, the Contractor undertakes and shall procure that the Prison Expansion Construction Sub-contractor undertakes to the Authority, to:

- (a) effect and maintain in full force and effect the Prison Expansion PI Insurance referred to in paragraph 4A of Part 1A of Schedule O (Minimum Insurance Requirements – Insurance during Construction Phase) from the date of the Amending Agreement;
- (b) provide evidence satisfactory to the Authority (as and when reasonably required by the Authority) that the Prison Expansion PI Insurance is in full force and effect from the date of the Amending Agreement (such evidence to include details of the cover (including confirmation of vicarious liability and retro cover as specified in Schedule O (Insurance)), territorial limits, indemnity limit, levels of excess, insurers and policy number);
- (c) provide the Authority with copies of all notices under the Prison Expansion PI Insurance relative to the Project;
- (d) provide the Authority with notice of:
 - (i) any cancellation of the Prison Expansion PI Insurance not less than ninety (90) Days prior to the relevant cancellation date;
 - (ii) any material changes to or suspension of cover relevant to the Project;
 - (iii) any event of which it becomes aware, or could reasonably be expected to become aware which may vitiate the Prison Expansion PI Insurance; and
 - (iv) any act, omission or event which may adversely affect the terms and scope of the Prison Expansion PI Insurance relevant to the Project or invalidate or render it unenforceable;
- (e) provide information to the Authority regarding any claim or circumstance notified under the Prison Expansion PI Insurance in respect of the Project to the Authority as may be reasonably required and of any potential breach of the aggregate limit of the policy;
- (f) disclose to the relevant insurers any matters, which could reasonably be expected to be material in the context of the Project and any of the other insurances required to be maintained under this Clause 5 (Insurance);

- (g) indemnify the Authority in respect of any subrogation claim by the insurers brought in connection with any claim made under the Prison Expansion PI Insurance; and
- (h) include the interests of the Authority (if any) in any claim or circumstances notified under the Prison Expansion PI Insurance and provide a copy of such notification to the Authority.

5A. Riot (Damages) Act 1886

5A.1 The Contractor shall not, and undertakes to procure that no (i) Commercial Insurer; or (ii) Commercial Insurer's successors or permitted assigns; or (iii) 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, the Site or any Assets. This undertaking shall be for the benefit of any Local Policing Body in the United Kingdom and the statutory successors of any such Local Policing Body, each of which may enforce the terms of this Clause against the Contractor and/or its successors and permitted assigns (as appropriate).

5A.2 For the purposes of this Clause 5A:

- (a) '**Commercial Insurer**' shall mean a Person providing commercial insurance in respect of the Prison and/or Prison Expansion.

5A.3 Clause 5A.1 shall be binding upon the Contractor and each of its successors and permitted assigns.

6. Liability for Loss and Damage

6.1 The Contractor shall be liable for all loss and/or damage to the Prison, the Site or the Assets except to the extent that such loss or damage was caused or contributed to by an act or omission by, or directly as a result of, an express written request or instruction of the Authority, its servants or agents or the breach by the Authority of any of its obligations under the Contract; provided that the Contractor shall remain liable for any such loss and/or damage occurring by reason of the exercise by the Authority of its powers under Section 88 of the Criminal Justice Act 1991 except to the extent such loss or damage is caused by the negligence of an employee of the Authority in exercising such powers.

6.1A The Contractor shall be liable for any loss and/or damage in accordance with Clause 6.1 where any such loss and/or damage is caused or contributed to by any act or omission of the SIP Service Provider but only to the extent that such loss and/or damage is not otherwise recovered in full by the Authority from the SIP Service Provider pursuant to the terms of the SIP Services Agreement, the Authority having used all reasonable endeavours (which in the event of a dispute shall be demonstrated to the reasonable satisfaction of the Adjudicator appointed jointly by the Parties) to recover the same from the SIP Service Provider, prior to making any claim against the Contractor pursuant to this Clause 6.1A;

6.2 The Contractor shall at its own cost reinstate, replace or make good to the reasonable satisfaction of the Authority, or if the Authority agrees, compensate the Authority for, any loss or damage for which the Contractor is responsible under Clause 6.1.

6.3 The Contractor shall perform its obligations under Clause 6.2 as soon as practicable and shall in any event following the issuance of the Engineer's Declaration pursuant to Clause 26 use all reasonable endeavours to complete any works required within forty eight (48) hours of the loss or damage occurring, subject to the following provisions of this Clause 6.

6.4 In circumstances following the issuance of the Engineer's Declaration pursuant to Clause 26 where any of:

- (a) the Prison;
- (b) the Site; or
- (c) the Assets,

is destroyed or damaged with the result that the Certified Normal Accommodation is not provided the Contractor shall, at its own cost provide the Authority with a report from an independent expert (the **Independent Report**) identifying:

- (i) the work required to reinstate, replace or make good the relevant loss or damage;
- (ii) the estimated cost of such work; and
- (iii) the earliest date (the **Reinstatement Date**) by which such work may reasonably be expected to be completed, having regard to such factors as shall be identified in the Independent Report.

PROVIDED THAT an Independent Report shall not be required if the cost of repair or reinstatement is less than [REDACTED] if the Contractor provides its own report to the Authority on the above matters within five (5) Days of the relevant loss or damage occurring.

6.5 The Contractor shall ensure that the Independent Report is produced as soon as possible and in any event within fourteen (14) Days of the date the relevant loss or damage occurs.

6.6 If the Authority does not agree with the Independent Report or any report provided by the Contractor, it shall as soon as reasonably practicable and in any event within fourteen (14) Days of the date on which it receives the Independent Report, or the report provided by the Contractor, inform the Contractor in writing and the parties shall agree such changes thereto as may be appropriate within fourteen (14) Days from the date the Authority informs the Contractor in writing. Failing such agreement the matter shall be referred for resolution pursuant to Clause 72 (Dispute Resolution). Notwithstanding Clause 72.2, the Adjudicator shall be required to resolve such matter within twenty one (21) Days of the matter being referred to him.

6.7 The Contractor shall undertake the work required by the Independent Report (or by the report of the Contractor if no Independent Report is required) and shall use its reasonable endeavours to complete the same on or before the Reinstatement Date.

7. Sub-contracting

7.1(a) The Contractor shall not at any time permit any of its obligations under the Contract to be performed or undertaken by any other Person without the Authority's prior written consent to both the identity of such other Person and the terms of such performance or undertaking, provided that the Authority in executing this Contract hereby provides such prior written consent to the sub-contracting to the Construction Sub-contractor and the Operating Sub-contractor of such of the Contractor's obligations hereunder as are contained in, respectively, the Construction Sub-contract and the Operating Sub-contract (but, for the avoidance of doubt, not to any replacements or changes to either Sub-contract or Sub-contractor). In executing the Amended Agreement the Authority provides its prior written consent to the Sub-contacting of the Prison Expansion Works to the Prison Expansion Construction Sub-contractor.

(b) The Contractor agrees not to make any amendment to, nor grant any extension of time, nor waive any right to liquidated damages under, either the Construction Sub-contract or the Operating Sub-contract without the prior written consent of the Authority unless the Authority has agreed to a like amendment, extension or

waiver under this Contract provided that in respect of any Sub-contract which has been approved by the Authority in accordance with this Clause 7.1 such consent may not be withheld or delayed where the Sub-contractor is legally entitled to such extensions of time under the relevant Sub-contract.

- (c) 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).
- (d) If the Contractor wishes to replace any Sub-contractor, the procedure set out in Schedule Q shall apply and the Contractor shall provide the Authority with the information set out therein in relation to any replacement Sub-contractor together with any other information which the Authority requests for the purpose of deciding whether or not it should consent to any Sub-contractor or Sub-contract.

For the avoidance of doubt neither the giving of consent by the Authority to the identity of any Sub-contractor nor the knowledge, review or approval of the terms of any Sub-contract shall relieve the Contractor of any of its obligations under this Contract nor render the Authority in any way liable to any Sub-contractor or in any way bound by the terms of any Sub-contract.

7.2 In the event that the Authority does consent to any Sub-contract pursuant to Clause 7.1, the Contractor shall, unless the Authority otherwise agrees, ensure that such Sub-contractor (whether self employed or otherwise) and its employees (which shall, for the purpose of this Clause, save in respect of Clause 33B, include any of its agents and representatives providing services to the Prison and Site) assume obligations directly to the Authority corresponding to those imposed in Clauses 33.3, 33.6 and 33.9 (The Operational Staff), 33A (The Construction Staff), 33B (TUPE Transfers), 57 (Public Relations and Publicity) and 58 (Information and Confidentiality).

7.3 The Contractor shall procure that the Construction Sub-contractor and the Operating Sub-contractor each provide an undertaking to the Authority in respect of the amounts equal to those payable under Clause 25 (Liquidated Damages) and that the Construction Sub-contractor provides a collateral warranty to the Authority in respect of the construction of the Prison in accordance with Schedule A in each case substantially in the form agreed between the Authority and the Contractor and that any limitation of the liability of the Construction Sub-contractor and the Operating Sub-contractor is at a level agreed to in writing by the Authority. The Contractor shall further take all reasonable steps to secure the due observance by the Construction Sub-contractor and the Operating Sub-contractor of all obligations under such undertakings and collateral warranty and the relevant Sub-contract and, at the Authority's request, will provide any assistance reasonably required by the Authority in its pursuit of any claim against the Construction Sub-contractor and/or the Operating Sub-contractor pursuant to such collateral warranty and/or undertaking.

7.3A The Contractor shall procure that the Prison Expansion Construction Sub-contractor provides, pursuant to Clause 2A (Prison Expansion Documents) the Sub-Contractor's Prison Expansion Collateral Warranty in respect of the performance of the Prison Expansion Works in accordance with Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works) and that any limitation of the liability of the Prison Expansion Construction Sub-contractor does not fall below a minimum level agreed to in writing by the Authority; and the Contractor shall take all reasonable steps to secure the due observance by the Prison Expansion Construction Sub-contractor of all such obligations.

7.4 The Contractor shall be directly responsible for the management and supervision of approved Sub-contractors.

7.5 Where the Contractor enters into an approved Sub-contract with a Sub-contractor for the purpose of performing any of the obligations of the Contract, it shall cause a term to be included in such Sub-contract which requires payment by the Contractor to the Sub-contractor within a specified period not exceeding forty five (45) Days from receipt of a valid invoice as required by the terms of the Sub-contract.

8. Assignment

8. Subject to Clause 7 (Sub-contracting) and any security, charge or assignment by way of security or other encumbrance in favour of the Banks pursuant to the Financing Agreements, the Contractor shall not (and shall not purport to) give, bargain, sell, assign, sub-let, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, or grant, declare, create or dispose of any right or interest in it or any part of it save that nothing in this Clause shall prevent the assignment and/or transfer of the Contract with the consent of the Authority in accordance with the provisions of the Direct Agreement.

9. Change to Services Required

9.1(a) Subject to Clauses 9.2 and 9.8, the Authority may delete, amend or alter the extent of any obligation to be met by the Contractor under the Contract in respect of the Works, the Prison Expansion Works, the Custodial Service, or add to such obligations of the Contractor under the Contract, by giving written notice (the **Notice of Change**) to the Contractor of the required change.

(b) In the case of emergency, the requirements set out in the Notice of Change shall come into immediate effect, and the Contract Price and/or Prison Expansion Works Fee shall be varied as set out below.

(c) Otherwise than in the case of emergency, following service of any Notice of Change, the Authority will consult with the Contractor with respect to the deletion, alteration, extension of or addition to the obligations hereunder, and the Contractor shall provide the Authority on or before the date falling ten (10) Business Days after the date of the Notice of Change with either:

- (i) a reasonable estimate of the increase or reduction in the Contract Price and/or Prison Expansion Works Fee (if any), such estimate to be accompanied by a reasonably detailed breakdown of the manner in which that estimate is calculated and to include as a separate item and not as part of the estimated Contract Price and/or Prison Expansion Works Fee details of any redundancy costs which are reasonably expected to be incurred by reason of the proposed change; or
- (ii) proposal of other changes to the terms set out herein (including any extension of time for completion), which it believes should occur as a result of the changes set out in the Notice of Change.

The Authority may accept or reject such estimate or proposal.

(d) In the event that the Authority accepts such estimate or proposal:

- (i) the changes referred to in the Notice of Change shall come into immediate effect;
- (ii) the Contract Price and/or Prison Expansion Works Fee (or other relevant terms hereof) shall change as set out in the Contractor's estimate or proposal; and

- (iii) the terms of the Contract shall be deemed changed as set out in the Notice of Change (except where the changes referred to in the Notice of Change require the Contractor to procure building works upon the Site or the changes cannot be reasonably effected immediately, in which case the Authority shall allow the Contractor such further period to effect such changes as is reasonably necessary).
- (e) If the Authority rejects such estimate or proposal, it may either:
 - (i) elect to allow the Notice of Change to lapse; or
 - (ii) elect that the changes referred to in the Notice of Change shall come into immediate effect (in the same manner as set out in Sub-Clause (d)) but that the Contract Price and/or Prison Expansion Works Fee shall be varied or not varied in accordance with Clause 72 (Dispute Resolution).
- (f) In the case of an emergency, or when the Authority elects as referred to in Sub-Clause (e)(ii) above, the Authority shall set such provisional change to the Contract Price and/or Prison Expansion Works Fee and extension of time as it considers fair, such change to be effective until such time as the Contract Price and/or Prison Expansion Works Fee is varied (or not varied) and/or a time extension granted as agreed by the Authority and the Contractor (or determined in accordance with Clause 72 (Dispute Resolution)), and the Contract Price and/or Prison Expansion Works Fee shall be deemed to be so changed on a provisional basis.
- (g) In the event that the provisional Contract Price and/or Prison Expansion Works Fee set by the Authority is less than the Contract Price and/or Prison Expansion Works Fee as so agreed or determined pursuant to Clause 72 (Dispute Resolution), an adjusting payment shall be made by the Authority to the Contractor. Such payment will be made on or before the date falling thirty (30) Days after the date of such agreement or determination, in the amount of such difference, covering the period from the date the changes referred to in the Notice of Change became effective until the date upon which the Contract Price and/or Prison Expansion Works Fee was so agreed or determined pursuant to Clause 72 (Dispute Resolution) and vice versa by the Contractor to the Authority if the provisional Contract Price and/or Prison Expansion Works Fee set by the Authority is more than the Contract Price and/or Prison Expansion Works Fee as so agreed or determined pursuant to Clause 72 (Dispute Resolution).

For the avoidance of doubt, no Notice of Change may require the Contractor to provide Additional Prisoner Places (as to which the provisions of Clause 40A (Additional Prisoner Places) shall apply).

- 9.2(a) In the event that the Notice of Change would result in an obligation on the Contractor to incur any Capital Expenditure following 14 February 2003, the Contractor shall use all reasonable endeavours to obtain finance at a reasonable cost from the Banks or other commercial sources for such Capital Expenditure.
- (b) If the Contractor successfully obtains an offer of such reasonable finance within two (2) weeks (or, in respect of any Notice of Change served after the date of the Engineer's Declaration, within four (4) weeks) of the date of the Notice of Change, the Contractor shall (within fourteen (14) Days of receiving such offer of finance) provide the following two (2) estimates of the increase or decrease in the Contract Price which it believes should occur as a result of the changes set out in the Notice of Change:
 - (i) one to include the cost of such reasonable finance; and

- (ii) the other to exclude the cost of such reasonable finance, but to estimate the amount of the relevant Capital Expenditure which the Contractor believes is required to comply with the Notice of Change.
 - (c) If despite the use of the Contractor's reasonable endeavours and the operation of Clause 39 (Variation of Price) the Contractor fails to obtain finance for such Capital Expenditure, the Contractor shall within two (2) weeks of the date of the Notice of Change provide the Authority with a written estimate of the amount of such Capital Expenditure together with its estimate of any increase or decrease in the Contract Price and/or Prison Expansion Works Fee which it believes should occur as a result of the changes set out in the Notice of Change. Any such estimate or estimates shall be accompanied by a reasonably detailed breakdown of the manner in which that estimate is calculated. The Authority may accept such estimate or estimates or request that it or they be changed, and following such request the Contractor may submit a different estimate or estimates within two (2) weeks of receipt of such request.
 - (d) Following the submission by the Contractor of a different estimate or estimates:
 - (i) if the Authority accepts the Contractor's estimate (which includes the cost of financing the relevant Capital Expenditure), the Notice of Change shall come into effect in the same manner and subject to the same conditions as those referred in Clause 9.1 (assuming for these purposes that no emergency has occurred) following the Authority's acceptance of the Contractor's estimate;
 - (ii) if the Authority rejects the Contractor's estimate (which includes the cost of financing the relevant Capital Expenditure), or the Contractor fails to provide such an estimate, but accepts the Contractor's estimate which excludes the cost of financing the relevant Capital Expenditure, then:
 - (A) the Authority shall be liable to reimburse, or pay on behalf of, the Contractor the amount of such Capital Expenditure as is set out in such estimate in accordance with Clause 9.3 or, if the Authority does not accept such estimate, for such amount of Capital Expenditure as is agreed or determined in accordance with Clause 9.3;
 - (B) the Notice of Change shall come into effect once the amount of the Capital Expenditure has been agreed or determined as set out in Clause 9.3; and
 - (C) the Contract Price and/or Prison Expansion Works Fee shall be varied once the Notice of Change comes into effect;
 - (e) if the Authority rejects the Contractor's single estimate or both its estimates submitted pursuant to Clause 9.2(b) and any different estimates submitted in accordance with Clause 9.2(d) (as appropriate), then the Authority may elect either to allow the Notice of Change to lapse, or that the amount of the Capital Expenditure be agreed or determined in accordance with Clause 9.3 and any change to the Contract Price and/or Prison Expansion Works Fee be determined in accordance with Clause 72 (Dispute Resolution).
- 9.3(a) Where either (i) the Contractor fails to obtain finance at a reasonable cost for the relevant Capital Expenditure from the Banks or other commercial sources and the Authority rejects the Contractor's estimate of the amount of the relevant Capital Expenditure, or (ii) the Authority rejects any estimate from the Contractor which

includes the cost of such financing, the amount of such Capital Expenditure and the manner of its payment shall be determined in accordance with this Clause 9.3.

- (b) The parties shall attempt to agree an estimate of such Capital Expenditure but if no agreement is reached within seven (7) Days of the Authority's rejection of the initial and different estimates, the amount of the Capital Expenditure shall be determined in accordance with Clause 72 (Dispute Resolution).
 - (c) Once the estimate has been agreed or determined, the Contractor shall procure that all that is necessary is done in order to comply with the Notice of Change (unless the Authority notifies the Contractor within seven (7) Days of the date of determination of the estimate that the Notice of Change should lapse). During execution by the Contractor of all necessary works to comply with the Notice of Change, the Authority shall either (a) promptly reimburse the Contractor, or, (b) at the option of the Contractor, pay on behalf of the Contractor against invoices in respect of those parts of such works which have been completed, subject to an aggregate maximum payment of the agreed estimate or, as the case may be, the amount determined in accordance with Clause 72 (Dispute Resolution), in either case within thirty (30) Days of presentation of the relevant invoice(s) by the Contractor.
- 9.4(a) At the same time that the Contractor provides any estimate or estimates to the Authority under either Clause 9.1 or 9.2, it shall also provide the Authority with a proposal as to whether the Finance Plan should change, and if so, in what manner. Subject to Clause 9.4(b), once the contents of the Notice of Change have come into effect, the Authority must accept such proposal or reject it within seven (7) Days. If the Authority accepts the proposal, the Finance Plan will automatically be deemed changed as proposed; if the Authority rejects the proposal, the parties shall attempt to agree the manner in which the Finance Plan should be changed but if no agreement is reached within seven (7) Days of the Authority's rejection, the matter shall be decided in accordance with Clause 72 (Dispute Resolution).
- (b) Notwithstanding the above, if any matter referred to in Clauses 9.1, 9.2 or 9.3 is determined pursuant to Clause 72 (Dispute Resolution), the manner in which the Finance Plan is to be changed shall also be determined at the same time and in the same way in accordance with Clause 72 (Dispute Resolution).
- 9.5(a) The Contractor may (and shall, if necessary to ensure that the Works and Prison Expansion Works comply with applicable Legislation) propose changes to the Custodial Service or to the Works or the Prison Expansion Works pursuant to this Clause 9.5 which may be accompanied by proposed changes to the Contract Price and/or Prison Expansion Works Fee or the other terms hereof. Any such changes shall require the prior written consent of the Authority, provided that the Authority shall not be entitled to withhold or delay its consent (i) where the proposed change to the Custodial Service or the Works or the Prison Expansion Works is necessary to enable the Contractor to comply with any applicable Legislation first having effect after the date of this Contract; (ii) such proposed change is the minimum change necessary to enable the Contractor to comply with such Legislation and (iii) it would as a result of such legislation be illegal for the Contractor to perform the relevant obligation relating to the Custodial Service or the Works or the Prison Expansion Works unless the proposed change was implemented. A change to the Works may only be requested by the Contractor in the manner set out in Schedule M, Part 3 (Change Control Procedure) or Part 4 (Change Control Procedure Post Engineer's Declaration), as appropriate. A change to the Prison Expansion Works may only be requested by the Contractor in the manner set out in Schedule M, Part 3A (Change Control Procedure – Prison

Expansion Works) or Part 4A (Change Control Procedure Post Engineer's Prison Expansion Works), as appropriate.

- (b) In the event of any increase in the costs to the Contractor, the Operating Sub-contractor, the Construction Sub-contractor or the Prison Expansion Construction Sub-contractor resulting from any changes to the Custodial Service, the Works, the Prison Expansion Works or to their design requested by the Contractor pursuant to this Clause 9.5, there shall be no variation in the Contract Price and/or Prison Expansion Works Fee unless such changes in cost arise from Prison Legislation, in which case Clause 39.2 shall apply or unless the Authority otherwise agrees.
- (c) If any change proposed by the Contractor arises from a Security Technology Change, the provisions of Clause 39.3 shall take precedence over this Clause 9.5.

9.6(a) If at any time the costs incurred by the Contractor, the Construction Sub-contractor, the Operating Sub-contractor or the Prison Expansion Construction Sub-contractor have decreased as a result of any changes to the Custodial Service, or the Works, the Prison Expansion Works, or any change to their design proposed, in each case, by the Contractor pursuant to Clause 9.5 (but not as a result of any Design Development as defined in Schedule M), then the Authority may request a variation in the Contract Price and/or the Prison Expansion Works Fee pursuant to this Clause 9 (Change to Services Required).

- (b) Such variation shall take into account such cost savings to the Contractor, the Construction Sub-contractor, the Operating Sub-contractor and/or the Prison Expansion Construction Sub-contractor to reduce the amount of the Contract Price and/or the Prison Expansion Works Fee as though the request of the Authority under this Clause 9.6 were a Notice of Change.

9.7 If a Notice of Change served by the Authority under Clause 9.1 is implemented, then the Authority shall reimburse to the Contractor any redundancy costs estimated in the Notice of Change and reasonably suffered by the Contractor and/or the Sub-contractors as a result of the implementation of the Notice of Change within thirty (30) Days from the presentation by the Contractor of a valid notice and such other documentation as may reasonably be required by the Authority.

9.8 Any change to the Contract Price and/or Prison Expansion Works Fee which is determined under this Clause 9 shall be determined in accordance with the principles set out in Clause 39.4 and shall include any costs arising as a result of any delay in completion caused by a Notice of Change becoming effective and shall take into account the reimbursement by the Authority of any redundancy costs, as provided in Clause 9.7.

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

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

9.10 The Authority will be entitled to serve a notice under Clause 9.1 which deletes, amends or alters the extent of any obligation hereunder provided that such deletion,

amendment or alteration would not result in the Prison being used as a fully juvenile prison under the auspices of the Youth Justice Board or as an open prison.

10. Provision and Interpretation of Information

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

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

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

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

10A. Provision and Interpretation of Information - Prison Expansion Works

10A.1 The Contractor shall be deemed to have inspected the Prison Expansion Works Areas and its surroundings and to be in possession of information connected therewith and to have satisfied itself before signing the Amending Agreement as to all matters relating to the Prison Expansion Works, including, without limitation:

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

10A.2 The Contractor is responsible for obtaining all surveys and information necessary for carrying out its obligations in relation to the Prison Expansion Works and the Increased Capacity. The Contractor shall not rely on any information provided by the Authority with regard to these matters.

10A.3 The Authority shall not be liable for any costs arising from the Contractor's failure to perform its obligations under this Clause 10A (Provision and Interpretation of Information - Prison Expansion Works) or from any lack of knowledge which the Contractor is deemed to have under Clause 10A.1 (Provision and Interpretation of Information - Prison Expansion Works).

PART II – PROVISION

11. The Land

- 11.1.1 The Land upon which the Contractor shall provide the Prison shall be all that piece of land edged in red upon the plan attached to the Lease.
- 11.1.2 The Authority will grant to the Contractor and the Construction Sub-contractor a Licence (the **Open Space Licence**) to permit the Contractor and the Construction Sub-contractor access to the Authority's adjoining land as shown edged red on the plan attached to the Open Space Licence (the **Open Space Land**) for the purposes specified in the Open Space Licence.
- 11.2.1 The Lease for the demise of the Land to the Contractor and the Operating Sub-contractor is for a term of 28 Years. The Lease shall be completed on the Day on which the Contractor enters into the Contract and the Contractor hereby agrees that it will enter into and procure that the Operating Sub-contractor enters into the Lease.
- 11.2.2 The Open Space Licence shall also be completed on the Day on which the Contractor enters into the Contract and the Authority and the Contractor hereby agree that they will enter into the Open Space Licence and the Contractor agrees that it will procure that the Construction Sub-contractor enters into the Open Space Licence.
- 11.3.1 It is hereby acknowledged that in accordance with the terms of the Lease any and all interests in the Land and in the Prison shall vest in the Landlord thereunder upon the termination of the leasehold interest of the Contractor and/or the Operating Sub-contractor whether through forfeiture, surrender, effluxion of time or some other cause and the Contractor agrees that it will comply with all the provisions of the Lease and will procure that the Operating Sub-contractor will comply with all the provisions of the Lease.
- 11.3.2 It is hereby acknowledged that in accordance with the terms of the Open Space Licence any and all interests in the Open Space Land shall vest in the Landlord thereunder upon the termination of the Open Space Licence whether through forfeiture, surrender, effluxion of time or some other cause and the Contractor agrees that it will comply with all the provisions of the Open Space Licence and will procure that the Construction Sub-contractor will comply with all the provisions of the Open Space Licence.
- 11.4.1 The Land made available to the Contractor for the purpose of providing the Prison under the Contract shall not be used for any purpose other than the purposes of the Contract save with the prior written approval of the Authority.
- 11.4.2 The Open Space Land made available to the Contractor and the Construction Sub-contractor for the purpose of the Contractor complying with the obligations under the Contract shall not be used for any purpose other than for the uses specified in the Open Space Licence.
- 11.5.1 The Contractor shall not, without prior written approval from the Authority (such approval (except in the case of sub-Clause (iii) below) not to be unreasonably withheld or delayed), except in the performance of the obligations of the Contract:
- (i) execute any structural or other material work to the Prison;
 - (ii) carry out any business or trading activity within the confines of the Prison except activities in the ordinary course of delivering custodial services associated with a prison which are permitted by Legislation nor display any advertisement, sign or notice of any description outside the Prison, unless such sign or notice is required to be displayed by Legislation;

- (iii) permit the Prison to be used for any purpose other than the performance of the Contract.

11.5.2 The Contractor shall not, without prior written approval from the Authority (such approval not to be unreasonably withheld or delayed) except in the performance of the obligations under the Contract or as permitted by the rights granted and obligations contained in the Open Space Licence carry out any trading activity on the Open Space Land nor display any advertisement, sign or notice on the Open Space Land unless such sign or notice is required by Legislation.

11.6 In the event of the assignment and/or transfer of the Contract with the consent of the Authority in accordance with the provisions of the Contract or the Direct Agreement or in the event of another Operating Sub-contractor being appointed by the Contractor from time to time to perform the Custodial Service in accordance with the provisions of this Contract, the Tenant and the Operating Sub-contractor named in the Lease then subsisting will surrender their Lease to the Authority and immediately thereafter the Authority shall grant a new lease (the **New Lease**) to the Person who has the benefit of the Contract and the Person who has been appointed by the Contractor to perform the Custodial Service (such Persons respectively constituting the new Tenant and the new Operating Sub-contractor for the purposes of the New Lease) save that nothing in this Clause shall prevent the assignment of the Lease to a Substitute Entity in the circumstances envisaged by Clause 6.10 of the Lease. This procedure shall be repeated whenever there is a change in the identity of the Contractor and/or the Operating Sub-contractor (save in the circumstances envisaged by Clause 6.10 of the Lease) whilst the Contract is subsisting.

11.7 The New Lease shall contain all those covenants, conditions and provisions as are set out in the Lease except that the term of Years granted by the New Lease shall be equal to the unexpired residue at the date the New Lease is granted of the term of Years granted by the Lease that was completed on the Day the Contract was executed.

11.8 In the event of the assignment and/or transfer of the Contract as set out in Clause 11.6, the Contractor and Construction Sub-contractor shall surrender the Open Space Licence to the Authority and immediately thereafter the Authority shall grant a new licence on similar terms to the Open Space Licence to the Person who has the benefit of the Contract and the Person appointed by the Contractor as construction sub-contractor in order to fulfil the obligations contained in the Contract in so far as such obligations remain to be fulfilled.

11.9 Under the provisions of the Lease the Tenant has entered into the following covenant with the Landlord:

"Following the construction of the Foul Water Sewer and the Surface Water Sewer and the Water Supply Pipe to keep the same in good repair and condition to the satisfaction of the Landlord or his successor in title to the Retained Land"

For the purposes of this Contract the Contractor agrees with the Authority to observe and perform such covenant and the parties hereby expressly agree that in the event of the Contractor breaching this covenant the Authority's remedies lie under the provisions of this Contract and that no action will be taken by the Landlord against the Tenant in respect of any breach of the covenant contained in clause 6.3.2 of the Lease.

For the avoidance of doubt and for the purposes of this sub-clause the following words have the respective meanings as defined in the Lease

1. The Foul Water Sewer means the foul water sewer to be constructed in the approximate position shown by a brown line on the plan attached to the Lease;

2. The Surface Water Sewer means the surface water sewer to be constructed in the approximate position shown by a blue line on the plan attached to the Lease;
3. The Water Supply Pipe means the water supply pipe to be constructed in the approximate position shown by a broken blue line on the plan attached to the Lease;
4. The Retained Land means the lands adjoining the Land and shown edged green on the plan attached to the Lease.

11.10

11.10.1 Subject to the provisions of this Clause 11.10, the Authority will from the date of this Contract, indemnify the Contractor against any reasonable and proper costs, expenses, losses or damages which are incurred or suffered by the Contractor after the date of this Contract and which result or arise from the presence or migration of any Hazardous Substance which is present in soil and/or groundwater at, on, in or within or migrating from the Open Space Land at or prior to the date of this Contract provided that this indemnity shall not apply to:

- (i) the Excluded Parts; or
- (ii) the Excluded Substances.

11.10.2 Promptly following the Contractor becoming aware of the existence of any Hazardous Substances which are likely to give rise to a claim under Clause 11.10.1, the Contractor shall give notice to the Authority setting out in reasonable detail all relevant information known by the Contractor and both parties shall discuss in good faith an appropriate method of dealing with such Hazardous Substances according to this clause 11.10.

11.10.3 Without prejudice to the provisions of clause 11.10.1, the Authority shall be entitled to delete, amend or alter the extent of the Works being carried out or to be carried out by the Contractor in relation to the Open Space Land by giving written notice to the Contractor of the required change. Such a notice from the Authority pursuant to this clause shall be deemed to be a Notice of Change from the Authority under this Contract and the provisions of Clause 9 (Change to Services Required) and Clause 39 (Variation of Price) shall apply to such notice.

11.10.4 Notwithstanding the provisions of Clause 11.10.3:

- (a) the Authority shall not be entitled to delete, amend or alter the extent of the Works being carried out or to be carried out by the Contractor in relation to the Open Space Land if such deletion, amendment or alteration would prevent the Contractor complying with any Applicable Legislation or complying with the provisions of Clauses 12.1 or 12.2; and
- (b) the provisions of Clause 12.5 shall apply to any notice given by the Authority under Clause 11.10.3.

11.10.5 The Authority shall not be liable under Clause 11.10.1 in respect of any claim to the extent that such claim would not have arisen but for, or is increased by:

- (a) any negligence by the Contractor and/or the Construction Sub-contractor and/or the Operating Sub-contractor or the failure by the Contractor and/or the Construction Sub-contractor and/or the Operating Sub-contractor to comply with its or their obligations under this Contract; or
- (b) any failure by the Contractor to act in accordance with Good Industry Practice and Environmental Legislation in performing its obligations under the Contract in respect of the Open Space Land or in relation to any

development, extension, expansion, construction or demolition or intensification of any part of the Prison and/or Site by the Contractor after the issue of the Engineer's Declaration; or

- (c) (save to the extent required by Legislation and in order to comply with this Contract, the Lease, the Licence, the Operating Sub-contract, the Construction Sub-contract, the Collateral Warranty and/or the Credit Agreement) the voluntary instigation or initiation by the Contractor and/or the Construction Sub-contractor and/or the Operating Sub-contractor of any Environmental Proceedings, other than with the prior written consent of the Authority;
- (d) the disclosure, following the date of this Contract, of information to a Regulatory Authority or other third party by the Contractor and/or the Construction Sub-contractor and/or the Operating Sub-contractor concerning any Hazardous Substance at, on, in, or within or that has at any time migrated from the Open Space Land without the prior written consent of the Authority, except where any such disclosure is necessary and required in order to comply with an express written or oral request by a Regulatory Authority or with a specific requirement under Legislation or in order to comply with an obligation under this Contract, the Lease, the Licence, the Operating Sub-contract, the Construction Sub-contract, the Collateral Warranty, the Credit Agreement (including for the avoidance of doubt the Outline Permission, the Reserved Matters Approval, the Unilateral Undertaking, the Supplemental Unilateral Undertaking and/or Variation); or
- (e) any investigative Works without the prior written consent of the Authority (such consent not to be unreasonably withheld to the extent investigative Works are required under this Contract, the Lease, the Licence, the Operating Sub-contract, the Construction Sub-contract, the Collateral Warranty and/or the Credit Agreement) except those which are expressly and lawfully required by a Regulatory Authority exercising its powers under Environmental Legislation or which are necessary in response to Environmental Proceedings or which are necessary in order to comply with a specific requirement under Environmental Legislation and/or in order to comply with an express and specific obligation under this Contract, the Lease, the Licence, the Operating Sub-contract, the Construction Sub-contract, the Collateral Warranty and/or the Credit Agreement or as is expressly and specifically permitted by this Contract, the Lease, the Licence, the Operating Sub-contract, the Construction Sub-contract, the Collateral Warranty and/or the Credit Agreement; or
- (f) any voluntary act, omission or transaction carried out following the date of this Contract by the Contractor and/or the Construction Sub-contractor and/or the Operating Sub-contractor (the **Relevant Person**) where the Relevant Person knows or ought reasonably to have known that such act omission or transaction would result in a claim under this Clause 11.10 but not including any act, omission or transaction which is reasonably necessary to comply with either:
 - (i) an express and lawful instruction, order, requirement or direction of a Regulatory Authority; or
 - (ii) a binding obligation arising under Environmental Legislation; or
 - (iii) an obligation or duty of the Contractor and/or the Construction Sub-Contractor and/or the Operating Sub-Contractor under this Contract, the Lease, the Licence, the Operating Sub-contract, the Construction Sub-contract, the Collateral Warranty and/or the Credit Agreement .

11.10.6 The Contractor shall take and shall procure that the Construction Sub-contractor and/or the Operating Sub-contractor takes, all reasonable steps to avoid or mitigate any losses which may give rise to a claim under Clause 11.10.1

11.10.7 Any claim made pursuant to the provisions of this Clause shall be dealt with in accordance with the provisions of the Contract.

11.11 It shall be the responsibility of the Contractor to procure the demolishing of the existing buildings and structures situate on the Land and the Open Space Land to the extent required by and in accordance with the provisions of Schedule A.

11.12 The Contractor will carry out all remediation Works to the Site and the Open Space Land in accordance with the provisions of Schedule A.

11.13 It shall be the responsibility of the Contractor, at its own expense, to obtain all easements, rights, licences and privileges that the Contractor and the Operating Sub-contractor require to enable them to carry out their obligations under the Contract where such easements, rights, licences and privileges are:

- (i) not specified or referred to in the Lease; and
- (ii) are under, over and upon the property and land that does not form part of the Land.

The Contractor shall inform the Authority in writing of any such easements, rights, licences and privileges which have been obtained or are being sought by the Contractor and/or the Operating Sub-contractor and where requested in writing by the Authority the Contractor shall (and shall procure that the Operating Sub-contractor shall) at its (or their) own expense take all appropriate and necessary steps to ensure that the freehold owner of the property and land over, under and upon which easements, rights, licences and privileges have been or are to be granted also grants such easements, rights, licences and privileges to the Authority in fee simple as owner of the freehold interest in the Land for the benefit of the Land and each and every part thereof and the Contractor shall (and shall procure that the Operating Sub-contractor shall) indemnify the Authority against all liabilities and obligations that the Authority enters into with such freehold owner in respect of the easements, rights, licences and privileges that are granted to the Authority pursuant to this Clause 11 for so long as the Lease subsists. For the avoidance of doubt, the maximum amount payable under this indemnity shall be limited as specified in Clause 4.4.

11.14.1 The Contractor shall be responsible for the maintenance of the Open Space Land (including any grass-cutting arboricultural operations or maintenance of equipment thereon) until such time as the Engineer's Certificate is issued in accordance with the provisions of the Preamble to Schedule A and following such issue the Contractor shall remain responsible for the carrying out of any remaining outstanding obligations in respect of the Open Space Land as contained in condition (i) to the Outline Permission.

11.14.2 The Contractor hereby agrees with the Authority not to dismantle any protective fencing erected on or around the Open Space Land unless requested to do so by the Authority and the parties hereby agree that following the issue of the Engineer's Certificate in accordance with the provisions of the Preamble to Schedule A all responsibility for such fencing will pass to the Authority. If the Authority requires the Contractor to dismantle such protective fencing on or around the Open Space Land at such time as the Engineer's Certificate is issued in accordance with the provisions of the Preamble to Schedule A then the Authority shall advise the Contractor accordingly on receipt of the notice given to the Authority by the Contractor in accordance with the provisions of the Preamble to Schedule A and Clause 26.2.

11.15 Notwithstanding any other provisions of this Contract the Authority will indemnify and keep indemnified the Contractor against any actions proceedings costs charges claims demands losses and damages (liquidated or otherwise) suffered or incurred by the Contractor or any of its sub-contractors:

11.15.1 arising out of any breach by the Contractor or any of its sub-contractors during the subsistence of the Lease and the Open Space Licence of the restrictive covenant referred to in Entry Number 1 to the Charges Register to Title Number CB139771 and contained in a Conveyance dated 4 February 1904 made between (1) The Ecclesiastical Commissioners for England (the Commissioners) and (2) Werner Pfleiderer and Perkins Limited (Purchasers) as follows:

"the Purchasers for themselves their successors and assigns hereby covenant with and grant to the Commissioners their successors and assignsthat no building or buildings erected or to be erected on the said scheduled hereditaments or any part thereof shall be used as or for a Public House Hotel Inn Tavern or Beershop nor for the sale of wine beer or spirits AND ALSO nothing shall be done or permitted or suffered upon the said scheduled hereditaments or upon any part or parts thereof which shall or may be or grow to be in any way a damage nuisance annoyance or disturbance to the Commissioners or their successors or assigns or their lessees underlessees tenants or occupiers or the owners or occupiers of any property in the neighbourhood.....and no messuage or building fronting or facing and overlooking the opposite hereditaments situate on the South Side of Westwood Road and on the South Side of the said hereditaments hereby conveyed except in accordance with such plans sections decisions and elevations thereof as shall have been previously submitted in duplicate to and approved in writing by the Commissioner's Surveyors (hereinafter referred to as "the said Surveyors") and that one of such duplicate shall be retained by the said Surveyors AND ALSO that the Purchasers shall from time to time pay on demand the fee of One Guinea to the said Surveyors for approving and examining each set of plans sections designs and elevations of any such messuage or buildings the plans sections designs and elevations whereof have to be so submitted and approved as aforesaid AND ALSO THAT no messuage or building whatsoever shall be erected built or set up on any part or parts of the said scheduled hereditaments within a distance of 10 feet from the Southern and Northern and Western boundaries respectively of the scheduled hereditaments AND ALSO that no private dwellinghouse or shop which shall be erected upon the scheduled hereditaments shall be of less clear annual letting value than Sixteen Pounds (exclusive of fixtures and fittings)"

in so far as such restrictive covenant relates to the Land and the Open Space Land respectively;

11.15.2 arising out of any breach by the Contractor or any of its sub-contractors during the subsistence of the Lease of the restrictive covenants referred to in Entry Number 8 (being any restrictive covenants that may have been imposed on the land edged and numbered 18 in blue on the Filed Plan to Title Number CB139771 before 11 November 1955 and which are still subsisting and capable of being enforced) and Entry Number 9 (being restrictive covenants imposed by a Conveyance of the land edged and numbered 17 and 18 in blue on the Filed Plan to Title Number CB139771 dated 30 April 1990 and made between (1) The Secretary of State for the Environment and (2) SL limited) to the Charges Register to Title Number CB139771 in so far as such restrictive covenants relate to the Land;

11.15.3 as a result of any rights of drainage and of local authorities and or British Telecommunications plc and rights in respect of water gas electricity and telephone services at any stage during the subsistence of the Contract being

exercised or attempting to be exercised by any party save where the existence of any such rights has been specifically disclosed to the Contractor by:-

- (a) Energis in a letter to Ashurst Morris Crisp dated 3rd April 2002
- (b) Transco in a letter to Ashurst Morris Crisp dated 27th February 2002
- (c) The National Grid Company plc in a letter to Ashurst Morris Crisp dated 8th March 2002
- (d) British Telecommunications plc in a letter to Ashurst Morris Crisp dated 7th March 2002
- (e) 24 Seven Utility Services Ltd in a letter to Ashurst Morris Crisp dated 21st February 2002
- (f) Geodesys Limited (Drainage Enquiries within the Anglian Water region) in a letter to Ashurst Morris Crisp dated 5th March.

11.16 Notwithstanding any other provision of this Contract the Authority will indemnify and keep indemnified the Contractor against all actions proceedings costs charges claims and demands losses and damages (liquidated or otherwise) suffered or incurred by the Contractor or any of its sub-contractors in respect of the exercise of the rights (including for the avoidance of doubt the enforcement or attempted enforcement of any restrictive covenant) benefiting that parcel of land marked as "10" on the Filed Plan to Title Number CB139771 as at 14 February 2003 where the exercise of such rights affects either:

- (i) the Contractors or any of its sub-contractors use and enjoyment of the Land; or
- (ii) the rights granted pursuant to either the Lease or the Open Space Licence for the purposes of carrying out its or their respective obligations under the Contract.

12.Planning Approval

12.1 The Contractor will note the decision of The Secretary of State for the Environment, Transport and the Regions dated 30 March 1999 whereby the Authority was granted planning permission and outline clearance under the Department of the Environment Circular 18/84 to proceed with the development of a prison in accordance with its notice of proposed development (the **Outline Permission**). The Contractor will further note the decision of Peterborough City Council (the **Council**) dated 24 April 2002 whereby the Contractor was granted reserved matters approval to proceed with the development of a prison in accordance with its planning application (the **Reserved Matters Approval**). The Contractor will further note the decision of the Council dated 4 October 2002 made under Section 73 of the Town and Country Planning Act 1990 whereby condition 'd' of the Outline Permission was varied (the **Variation**). Without prejudice to the generality of the foregoing, in the course of providing the Prison the Contractor shall be responsible for making application(s) for all necessary planning clearances and planning permission(s) for the development of the Prison not covered by the Outline Permission and the Reserved Matters Approval and the Variation. The Contractor shall bear any costs consequent upon and caused by such application including any costs in respect of any delay to the Works caused by such application.

12.2 During the subsistence of the Contract the Contractor shall comply with any conditions recommendations and obligations contained in the Outline Permission, the Reserved Matters Approval and/or the Variation as the case may be and any other clearance or planning permission implemented by the Contractor and shall comply with any conditions recommendations and obligations as may be subsequently amended or superseded and the Contractor shall observe and perform all of the agreements and obligations on the part of the Authority contained in a unilateral undertaking given under

Section 299A of the Town and Country Planning Act 1990 dated 27 October 1998 and given by the Authority (the **Unilateral Undertaking**) or as the case may be a Supplemental Unilateral Undertaking given under Section 299A of the Town and Country Planning Act 1990 dated 12 September 2002 and given by the Authority (the **Supplemental Unilateral Undertaking**) with the exception of those obligations contained in paragraph 2.1 (subject to Clause 12.4 below) and paragraphs 2.2 and 2.3 of the Schedule to the Unilateral Undertaking or as the case may be the Supplemental Unilateral Undertaking which the Authority shall comply with.

12.3 The Authority shall observe and perform the agreements and obligations contained in paragraph 2.1 (subject to Clause 12.4 below) and paragraphs 2.2 and 2.3 of the Schedule to the Unilateral Undertaking or as the case may be the Supplemental Unilateral Undertaking.

12.4 At any time which shall be not less than four (4) months prior to the Contractual Opening Date, the Authority will, within fourteen (14) Days of the receipt of a written request from the Contractor, offer to transfer the Open Space Land to the Council in accordance with the obligation contained in paragraph 2.1 of the Schedule to the Unilateral Undertaking or as the case may be the Supplemental Unilateral Undertaking and on receipt of such request from the Contractor, the Authority shall observe and perform the obligation contained in paragraph 2.1 of the Schedule to the Unilateral Undertaking or as the case may be the Supplemental Unilateral Undertaking.

12.5 If it is necessary to obtain planning permission in respect of Notices of Change (Clause 9) the Contractor shall use its reasonable endeavours to obtain such planning permission. The Contractor's obligation to comply with the Notice of Change shall be conditional upon the grant of such planning permission at first instance free from conditions whether in the permission or an associated legal agreement which prevent or unduly interfere with compliance with the Notice of Change. The Contractor shall keep the Authority fully informed of the progress of any such application for planning permission.

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

12.7 If the highway authority (for the purposes of the Highways Act 1980 (as amended)) or relevant planning authority (for the purposes of the Town and Country Planning Act 1990 (as amended)) requires the Contractor or the owner of the Land to enter into any agreement under either Sections 38 or 278 of the Highways Act 1980 or Section 106 of the Town and Country Planning Act 1990 in connection with the Project and the Authority is requested either to join in such agreement or enter into a separate agreement under either Sections 38 or 278 of the Highways Act 1980 or Section 299A of the Town and Country Planning Act 1990 then:

- (a) insofar as it is necessary for the Authority to enter into an agreement for the purposes of the Project and subject to the approval of the Treasury being given in relation to agreements to be entered into under the Highways Act 1980 under the provisions of Section 327 of the Highways Act 1980, the Authority shall at the cost of the Contractor also enter into the agreement or any separate agreement if reasonably required to do so by the Contractor and if it is necessary for it to do so to enable the Contractor to fulfil its obligations under such agreement; and
- (b) the Contractor shall indemnify the Authority in respect of all the Authority's liability and any reasonable expenses incurred by the Authority in connection with the entering into and performance of the relevant agreement during the subsistence of the Contract, or if shorter, whilst the relevant agreement is capable of being enforced against the Authority.

For the avoidance of doubt the Contractor shall not be obliged to indemnify the Authority for any liability incurred by the Authority for any agreement entered into by the Authority with the relevant highway authority (or the purposes of the Highways Act 1980 (as amended)) or the relevant planning authority (or the purposes of the Town and Country Planning Act 1990 (as amended)) otherwise as set out in this Clause 12.7 and the indemnity referred to in this Clause 12.7 shall be limited as specified in Clauses 4.2 4.3 and 4.4.

12A. Planning Approval - Increased Capacity

12A.1 The Contractor will note the decisions of the Council dated 20 July 2010 and 27 March 2013 whereby the Contractor was granted full planning permission in respect of the Prison Expansion Works under planning permission numbers 10/00296/FUL and 13/00129/FUL (the "Increased Capacity Permission").

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

12A.3 Subject to Clause 24A (Extension of Time - Increased Capacity), the Contractor shall use its reasonable endeavours to obtain all necessary planning permissions and/or clearances for the development of the Prison Expansion upon the Land and shall bear its own costs consequent upon and caused by such application, including its costs in respect of any delay to the Prison Expansion Works caused by such application.

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

12A.5 If the Highway Authority or relevant Planning Authority requires the Contractor or the owner of the Land to enter into any agreement under either section 278 of the Highways Act 1980 or section 106 of the Town and Country Planning Act 1990, in connection with the Prison Expansion Works, and the Authority is requested to either join in such agreement or enter into a separate agreement under either section 278 of the Highways Act 1980 or section 299A of the Town and Country Planning Act 1990 then:

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

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

13. Provision of the Prison

13.1 The Contractor shall design and construct the Prison subject to and in accordance with the terms of Schedule A (as varied from time to time (pursuant to Clause 9 (Change of Services Required))) and in accordance with the applicable Legislation.

13.2 The Authority hereby appoints the Contractor as the only client for the purposes of the Construction (Design & Management) Regulations 1994 (the **Regulations**) and for the design and construction of the Prison (including any changes and/or additions to such design and construction). The Contractor agrees to accept this appointment and undertakes to deliver a duly completed declaration in the form contained in Schedule L to The Health and Safety Executive within seven (7) Business Days from 14 February 2003. Failure by the Contractor to deliver such a declaration to The Health and Safety Executive shall constitute a material failure for the purposes of Clause 44.1(a)(i) and (ii) (Default by Contractor). The Contractor warrants to the Authority that it is competent to perform each and every duty imposed by the Regulations on the client (as such term is defined in the Regulations).

13.3 The Contractor shall (at its own cost) provide site accommodation (minimum twenty square metres (20m²) floor space) and all reasonable attendant services on the Site for the use of the Independent Engineer and its team for the duration of the Contract until such time as the Engineer's Declaration has been given in accordance with Clause 26 (Engineer's Declaration), including the provision of a dedicated combined telephone/fax machine for the sole use of the Independent Engineer (in respect of which all bills, costs and expenses of whatever nature shall be borne by the Contractor).

13A. Provision of Increased Capacity

The Contractor shall design and construct the Prison Expansion subject to and in accordance with the terms of Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works) and in accordance with the applicable legislation.

13A.2 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 Prison Expansion Works pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Prison Expansion Works, seek in any way to withdraw, terminate or derogate from such election.

13A.3 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 Prison Expansion Works (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the Contractual Prison Expansion Opening Date, provide a draft certified copy of the Health and Safety File (as defined in the CDM Regulations) to the Authority and within thirty (30) Business Days of issue of the Engineer's Prison Expansion Declaration, a certified copy of the full and complete Health and Safety File.

14. Supply of Equipment

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

14.1A Prior to the Actual Prison Expansion Opening Date the Contractor shall supply and install at the Prison Expansion all the fixtures, fittings, furnishings, chattels, and other equipment specified as being required in the Prison Expansion prior to the Contractual Prison Expansion Opening Date in Part 4 of Schedule B (Equipment). All equipment referred to in Part 4 of Schedule B (Equipment) shall become the property of the Contractor (subject to Clause 14.2 (Supply of Equipment) and Clause 14.3 (Supply of Equipment)) and all the equipment referred to in Part 4 of Schedule B (Equipment) shall be in good and serviceable condition for the period it is in the Prison or on the Site (or, if it is not capable of being kept in good and serviceable condition, shall be replaced as required with like equipment which is the property of the Contractor (subject to Clause 14.2 (Supply of Equipment) and Clause 14.3 (Supply of Equipment)) and in good and serviceable condition) in order to allow the Contractor to comply with the standards set out in Schedule C (Maintenance Management), and shall not be removed by the Contractor from the Prison except with the consent of the Authority.

14.2 Subject to Clause 14.3 and except as provided in Clause 59A (Procurement of IP and IT) at the end of the Contract Term, any property in such fixtures, fittings, furnishings, chattels, and other equipment referred to in Clause 14.1 (Supply of Equipment) and Clause 14.1A (Supply of Equipment) (including any replacement property or equipment) or which is otherwise used or present in the Prison or on the Site (other than personal possessions of Construction Staff or Operational Staff or Prisoners) shall pass to the Authority by delivery and the Contractor shall use all reasonable endeavours to procure that the benefit of all guarantees, warranties, documentation and service agreements then in force relating to the said fixtures, furniture, furnishings, chattels, and other equipment, and relating to any part of the Prison which is referred to in Schedule A is assigned to the Authority or, to the extent not assignable, is transferred in a manner agreed between the Contractor and Authority at the time.

14.3 Notwithstanding Clause 14.1 and Clause 14.1A, the Contractor may lease any equipment referred to in Part 3 and/or Part 4 of Schedule B, provided that the Contractor shall ensure that any lease entered into in respect of any such equipment shall be on such terms as to allow the Authority to use such equipment as if it were the Contractor on any occasion where it exercises its powers under Section 88 of the Criminal Justice Act 1991 or the Contract terminates before the Expiry Date. If the Contractor wishes to lease any equipment in Part 1 of Schedule B which is not referred to in Part 3 or Part 4 of Schedule B, it must obtain the Authority's prior written consent.

14.4 The Contractor shall at the request of the Authority from time to time provide the Authority with details of all equipment referred to in Part 3 of Schedule B that is for the time being leased, together with copies of the relevant leases and other relevant documentation to enable the Authority to satisfy itself that the provisions of this Clause 14 are being complied with.

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

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

15. Issue of Information Technology Equipment

15.1 The Authority or its appointed agents shall supply, install, configure, test and commission (i) the Inmate Related System(s) as specified in Part 2 of Schedule B of this Contract to the Prison on or prior to the date falling no later than ten (10) weeks before the Estimated Opening Date; and (ii) any replacement, upgrade or modification as may from time to time be made to or incorporated into the Inmate Related System(s). Notwithstanding any other provision of the Contract, all equipment which the Authority has supplied relating to the Inmate Related System(s) and all information which is stored on or which is required as an input to or an output from the Inmate Related System(s) shall remain the property of the Authority or other nominated agents to whom the

Authority has for any reason transferred or licensed ownership. Such equipment shall be used only in respect of the Services and for no other purpose whatsoever.

15.1A The Authority or its appointed agents shall supply, install, configure, test and commission 12 Quantum terminals and equipment as specified in Part 2A of Schedule B of this Contract to the Prison Expansion on or prior to the date falling no later than ten (10) weeks before the Contractual Prison Expansion Opening Date; and (ii) any replacement, upgrade or modification as may from time to time be made to or incorporated into the Quantum System. Notwithstanding any other provision of the Contract, all equipment which the Authority has supplied relating to the Quantum System and all information which is stored on or which is required as an input to or an output from the Quantum System shall remain the property of the Authority or other nominated agents to whom the Authority has for any reason transferred ownership. Such equipment shall be used only in respect of the Services and for no other purpose whatsoever.

15.2 The Contractor shall:

- (a) at its own expense provide, install and maintain all necessary ducts, wireways and a minimum of category 5 network cabling and such cabling and ancillary fixtures and fittings and power supplies as the Authority may require for the purpose of supplying, installing, maintaining, configuring, testing, commissioning and operating the Inmate Related System(s); and
- (b) at the Authority's request, make available appropriately qualified personnel to consult with the Authority, its nominated agents or their authorised engineers about the installation, configuration, testing, commissioning, maintenance, operation, upgrading, modification or replacement of any Inmate Related System(s); and
- (c) ensure that the Authority has the opportunity, for a reasonable time prior to any Inmate Related System going on line, to test such Inmate Related System's ability to send and receive data via the Data Network Access Point; and
- (d) use the Inmate Related System(s) provided by the Authority or as otherwise provided pursuant to Clause 15.3;
- (e) procure and provide free access to the Authority, its nominated agents or their authorised service engineers at any reasonable time on reasonable notice for the purpose of (i) routine maintenance and fault resolution of the Inmate Related System(s) and the Data Network Access Point and (ii) upgrading or replacing any Inmate Related System(s) and/or the Data Network Access Point.

15.2A The Contractor shall:

- (a) at its own expense provide, install and maintain all necessary ducts, wireways and category 6 network cabling and such cabling and ancillary fixtures and fittings and power supplies in accordance with the Authority's Cabling Specification Requirements;
- (b) at the Authority's request, make available appropriately qualified personnel to consult with the Authority, its nominated agents or their authorised engineers about the installation, configuration, testing, commissioning, maintenance, operation, upgrading, modification or replacement of any Quantum System to the Prison Expansion;
- (c) ensure that the Authority has the opportunity, for a reasonable time prior to any Quantum System to the Prison Expansion going on line, to test such Quantum System's ability to send and receive data;

- (d) use the Quantum System to the Prison Expansion provided by the Authority or as otherwise provided pursuant to Clause 15.3;
- (e) procure and provide free access to the Authority, its nominated agents or their authorised service engineers at any reasonable time on reasonable notice for the purpose of (i) routine maintenance and fault resolution of the Quantum System to the Prison Expansion and (ii) upgrading or replacing any Quantum System to the Prison Expansion.

15.3 Notwithstanding Clause 15.2 and Clause 15.2A the Contractor may seek approval from the Authority to use an Inmate Related System(s) or systems other than the one(s) provided by the Authority. In the event that such approval is granted in principle the Contractor shall agree with the Authority a testing and implementation programme to ensure that the system(s) meet all the interface and information assurance requirements of the Authority and, in such event, the Contractor's Inmate Related System shall be deemed to be and remain the property of the Contractor. The testing and implementation programme shall apply to a new Inmate Related System or to any modifications or upgrades to an existing Inmate Related System. Notwithstanding the provisions in this Clause 15.3, the Authority shall retain the right to require the Contractor to use the Authority's Inmate Related System(s) at any stage.

15.4 The Authority or its appointed agents will supply and install the equipment for the Data Network Access Point in the Prison following receipt of a written request therefore from the Contractor provided that the following provisions are met:

- (a) the Contractor's written request to the Authority to supply and install the Data Network Access Point is delivered to the Authority at least sixteen (16) weeks in advance of the proposed date for its installation; and
- (b) the installation date for the Data Network Access Point shall be at least twelve (12) weeks prior to the Estimated Opening Date.

15.4A The Authority will supply and install the Quantum System to the Prison Expansion upon receiving a written request for the same from the Contractor provided that the following provisions are met:

- (a) the Contractor's written request to the Authority to supply and install the Quantum System shall be delivered to the Authority at least ten (10) weeks in advance of the proposed date for its installation (the "Prison Expansion Installation Date");
- (b) all relevant cabling and patching certification has been provided to the Authority in accordance with Authority's Cabling Specification Requirements;
- (c) the Prison Expansion Installation Date for the Quantum System shall be at least ten (10) weeks prior to the Actual Prison Expansion Opening Date;

15.5 The Authority or its appointed agents shall be responsible for the provision, installation, maintenance and operation of the Data Network Access Point. The Contractor shall communicate with the Authority's or its appointed agents' service personnel by telephone on it becoming aware of any perceived faults in the operation of any Inmate Related System(s) or the Data Network Access Point and shall take such action in connection with such perceived fault as the Authority's or its appointed agents' service personnel reasonably instruct (including, without limitation, the taking of readings), provided that the Contractor shall not be liable to the Authority for any losses

whatsoever arising from such action as is carried out on the instructions of the Authority's or its appointed agents' service personnel.

15.5A The Authority shall be responsible for the provision, installation, maintenance and operation of the Quantum System for the Prison Expansion. The Contractor shall communicate with the Authority's service personnel by telephone on either party becoming aware of any perceived faults in the operation of the Quantum System and shall take such action in connection with such perceived fault as the Authority's service personnel reasonably instruct (including, without limitation, the taking of readings), provided that the Contractor shall not be liable to the Authority for any losses whatsoever arising from such action as is carried out on the instructions of the Authority's service personnel. The Contractor will provide free access to the Authority or its authorised service engineers at any reasonable time on reasonable notice for the purpose of routine maintenance and fault resolution of the Quantum System.

15.6 Without prejudice to any of its rights hereunder, if the Authority decides to replace the Inmate Related System(s) then installed it shall give written notice thereof to the Contractor which notice shall be deemed to be a Notice of Change for the purposes of Clause 9 (Change to Services Required).

15.6A Without prejudice to any of its rights hereunder, if the Authority decides to replace the Quantum System it shall give written notice thereof to the Contractor which notice shall be deemed to be a Notice of Change for the purposes of Clause 9 (Change to Services Required).

15.7 The information to be provided to the Authority or its appointed agents by the Contractor in accordance with this Clause 15 and paragraph 5.4 of Part 1 of Schedule D shall be transmitted at all times via the Inmate Related System(s) and the Data Network Access Point and the Quantum System.

15.8 The Authority shall provide, at its own expense, training on the Inmate Related System(s) for the following numbers of the Contractor's Staff in the following circumstances:

- (a) three hundred and fifty (350) Staff in the operation of the Inmate Related System(s) prior to the system going live;
- (b) fourteen (14) Staff in system administration duties for the Inmate Related System(s) prior to the system going live; and
- (c) fourteen (14) Staff in respect of and at the time of an administration upgrade or change to the Inmate Related System(s), and fourteen (14) Staff in respect of and at the time of an operational upgrade or change to the Inmate Related System(s).

It shall be the responsibility of the Contractor to arrange for the training, at its own expense, of any additional Staff not referred to in (a), (b) and (c) of this Clause 15.8.

15.9 The Contractor shall be responsible for ensuring the security of its own infrastructure, services, systems equipment, software, telecommunications and data up to the point at which there is a physical or logical interface with a system or systems provided by the Authority or its appointed agents. 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 a system or systems provided by the Contractor.

15.10 Notwithstanding the limitation on responsibilities in Clause 15.9 above the Contractor shall take all reasonable steps to ensure that the security of the Authority's systems is not jeopardised including, without limitation, erecting firewalls, providing protection against viruses and ensuring security of access to the Authority's systems.

16. Statutory Obligations, Notices, Fees and Charges

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

16.2(a) Where the terms of the Contract conflict with the Statutory Obligations, the Contractor shall as soon as reasonably possible inform the Authority of this fact, and where in the opinion of the Authority such conflict necessitates a variation of the terms of the Contract, the Contractor shall first use all reasonable endeavours to obtain the approval of the Authority to effect the variation in accordance with Clause 62 (Authority to Commit and Variation) prior to carrying out such variation, save where the Contractor is obliged to effect emergency compliance with a Statutory Obligation, in which case the Authority shall be informed as soon as practicable.

(b) The Contractor shall not otherwise be liable to the Authority for complying with the Statutory Obligations where they are in conflict with the terms hereof.

16.3 Without prejudice to the provisions of Clause 39 (Variation in Price) but subject to Clause 16.4, the Contractor shall pay any fees or charges required to be paid under any Legislation and shall pay any licence fees or charges pertaining to the provision of utilities in respect of the Prison and/or Prison Expansion Works.

16.4 The Contractor shall not be liable for any business rates or Council taxes payable (or any sum payable in lieu of such rates or taxes) in respect of the Prison and the Authority hereby acknowledges its liability for such rates, taxes or sum.

PART III – MAINTENANCE

17. Maintenance of Prison

17.1 Subject to Clause 18.1, the Contractor shall maintain at its own expense the Prison, the Site and all plant, fixtures, fittings, chattels, and other equipment and software specified in Schedule B in accordance with the terms of Schedule C.

17.2 In addition to the obligations set out in Schedule C, the Contractor shall ensure that the Prison is kept in good structural and decorative order during the Contract Term, so as to allow the Contractor to comply with the standards set out in Schedules C and D and shall ensure that all plant, fixtures, fittings and other equipment and software are kept in good and serviceable condition so as to allow the Contractor to comply with the standards set out in Schedule C or, if not capable of being kept in good and serviceable condition, shall at its own cost be replaced as required with like plant, fixtures, fittings, equipment or software which is in good and serviceable condition.

17.3 For the avoidance of doubt, and in addition to the requirements specifically set out in Schedule C, the Contractor is obliged to maintain, replace and renew the Assets, subject to reasonable wear and tear for a prison (and whether specified in Schedules A or B or otherwise), and will ensure as appropriate that:

17.3.1 following the date of the Engineer's Declaration, the Existing Prison; and

17.3.2 following the date of the Engineer's Prison Expansion Declaration, the Prison;

is and remains in such condition as to enable the Contractor to comply with its obligations under the Contract in all respects.

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

18. Maintenance of Authority's Equipment

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

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

19. Dilapidation Survey

19.1 The Authority may conduct a dilapidation survey for the purpose of determining the physical condition and state of maintenance of the Prison five (5) Years after 14 February 2003 and thereafter every two (2) Years. The dates of every such survey shall be notified to the Contractor not less than seven (7) Days in advance of the survey taking place. The costs of such surveys shall be borne by the Authority.

19.1A The surveys referred to in Clause 19.1 (Dilapidation Survey) above shall, from the first survey to be undertaken following the Actual Increased Capacity Date, include the Prison Expansion.

19.2 Where, following a survey referred to in Clause 19.1 or Clause 52.1 (Termination Survey), the condition of the Prison as shown by such survey is found in the opinion of the Authority to have fallen below the standards of repair and maintenance set out in Clause 17 (Maintenance of Prison) and Schedule C, the Authority shall notify the Contractor of the work it reasonably believes is required to be done to bring the Prison to the requisite contractual standard. Within seven (7) Days of such notification (or such longer period as is reasonable in the circumstances) the Contractor shall commence such works, or procure such works to be commenced, at the Contractor's cost. The works shall be completed within such period as is reasonably set by the Authority in the notice to the Contractor (or, in the case of a final dilapidation survey carried out in accordance with Clause 52.1, on or before the Termination Date or Expiry Date, as applicable).

19.3 Where, following any survey, the Contractor fails to effect any and all repairs and/or maintenance required pursuant to Clause 19.2 or required following resolution of any dispute regarding the same pursuant to Clause 72 (Dispute Resolution) to the reasonable satisfaction of the Authority, within the reasonable time specified (or, in the case of a final dilapidation survey carried out in accordance with Clause 52.1, on or before the Termination Date or Expiry Date, as applicable), the Authority shall be entitled to carry out such unremedied repairs and/or maintenance itself, or to procure the same, at the Contractor's cost and shall be entitled to set off its costs against any amounts payable to the Contractor hereunder.

PART IV - PRE-OPERATION PERIOD

20. Preparation for Operation of the Prison

20.1 The Contractor shall provide to the Authority the following matters in relation to the Contractor's proposed performance (which matters shall where the Authority considers appropriate provide for adequate testing procedures) (the **Operational Proposals**):

- (a) Not Used;

- (b) at least three (3) months prior to the Estimated Opening Date and to the extent not previously provided to the Authority under Clause 20.1(a):
 - (i) the operating procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the staff handbook; and
 - (iv) the public relations procedures; and
- (b) a reasonable period in advance of the Estimated Opening Date, such other information as the Authority reasonably requests including, but not limited to, all the documents listed in Schedule D as requiring submission before the Actual Full Operation Date.

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

20.3 When the Contractor considers that it has prepared the Operational Proposals it shall give written notice to the Authority. Within thirty (30) Days (in respect of the Operational Proposals provided under Clause 20.1(b) and 20.1(c)) and within sixty (60) Days (in respect of the Operational Proposals provided under Clause 20.1(a)), in each case of receipt of the written notice, the Authority shall either approve the Operational Proposals or shall provide the Contractor with a written record of the reasons why the Operational Proposals are not in accordance with the terms of the Contract.

20.4 If the Contractor is refused approval and a written record of the reasons has been provided by the Authority in accordance with Clause 20.3, the Contractor shall amend the Operational Proposals in accordance with the Authority's reasons as set out in the written record and shall then comply with the requirements of Clause 20.3. When seeking any new approval of the Operational Proposals save that the notice period shall be fourteen (14) Days instead of the thirty (30) Days and sixty (60) Days respectively specified in Clause 20.3.

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

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

20.7 Once approved by the Authority under Clauses 20.3 and 20.6, the Operational Proposals shall remain under review in accordance with Clause 35.3.

20.8 At least three (3) months prior to the Estimated Opening Date, the Contractor will submit to the Authority the names of, and such other information as the Authority may

require about, the proposed Director, the members of the senior management of the Prison and all other persons requiring certification or approval, as specified in Clauses 32 (Prisoner Custody Officers) and 33 (Staff).

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

20A. Preparation for Operation of the Increased Capacity

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

- (a) at least three (3) months prior to the Contractual Prison Expansion Opening Date:
 - (i) the operating procedures, including the inspection procedures, local security procedures and medical care procedures;
 - (ii) the emergency and contingency plans;
 - (iii) the staff handbook; and
 - (iv) the public relations procedures;
- (b) a reasonable period in advance of the Contractual Prison Expansion Opening Date such other information as the Authority reasonably requests.

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

20A.3 When the Contractor considers that it has prepared the Increased Capacity Operational Proposals it shall give written notice to the Authority. Within thirty (30) Days of receipt of the written notice, the Authority shall either approve the Increased Capacity Operational Proposals or shall provide the Contractor with a written record of the reasons why the Increased Capacity Operational Proposals are not in accordance with the terms of the Contract.

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

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

20A.6 Once the Authority has issued a certificate under Clause 20A.5 (Preparation for Operation of the Increased Capacity), the Increased Capacity Operational Proposals shall be tested in accordance with the proposals for testing in the Increased Capacity Operational Proposals. The Contractor shall give the Authority fourteen (14) Days' notice of the time and location of such tests and shall allow representatives of the Authority to attend. Within seven (7) Days of such tests, the Authority shall either finally approve the

Increased Capacity Operational Proposals or shall provide the Contractor with a written record of the reasons why the Increased Capacity Operational Proposals did not satisfy the tests conducted. If the Contractor is refused approval and a written record of the reasons has been provided by the Authority, the Contractor shall re run the tests in accordance with the above provisions except that the notice period to the Authority shall be two (2) Days instead of the fourteen (14) Days specified above.

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

21. Contractual Opening Date

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

21A. Contractual Prison Expansion Opening Date

21A. Upon the Contractual Prison Expansion Opening Date the Contractor will provide the Authority with thirty (30) Available Prisoner Places. In the event that the Contractor does not provide thirty (30) Available Prisoner Places to the Authority on the Contractual Prison Expansion Opening Date (and without prejudice to the Authority's rights under Clause 25A (Liquidated Damages - Increased Capacity) and Clause 44A (Prison Expansion Default)) the Contractor shall provide thirty (30) Available Prisoner Places as soon as possible thereafter.

22. Phase-in Period

22.1 On and from each date listed in the first column of the Phase-in Timetable the Contractor will provide to the Authority at least the number of Available Prisoner Places shown in the **corresponding** row of the second column of that timetable (each Available Prisoner Place provided on and from any such date in excess of the number of Available Prisoner Places shown in that row of the third column being a **Further Prisoner Place**).

22.2 Subject to Clause 38.2, the amount payable by the Authority to the Contractor in respect of any particular Day during the Phase-in Period shall be calculated by reference to the aggregate of:

- (a) the number of Available Prisoner Places shown in the row of the third column of the Phase-in Timetable which corresponds with the **relevant** date; and
- (b) the number of Further Prisoner Places occupied on such Day.

22.3 For the purposes of this Clause 22:

- (a) a date in the first column of a Phase-in Timetable **corresponds** with a number of Available Prisoner Places if that date is in the same row of that Phase-in Timetable;
- (b) a date in the first column of a Phase-in Timetable is **relevant** to a particular Day if it is the date in that column which first precedes such Day; and
- (c) all references to payments are to payments which are to be made in accordance with Schedule E.

22A. Increased Capacity Phase-in Period

- 22A.1 On and from each date listed in the first column of the Increased Capacity Phase-in Period Timetable the Contractor will provide to the Authority at least the number of Available Prisoner Places shown in the corresponding row of the second column of that timetable (each Available Prisoner Place provided on and from any such date in excess of the number of Available Prisoner Places shown in that row of the third column being a Further Prisoner Place).
- 22A.2 Subject to Clause 38.2 (Price), the amount payable by the Authority to the Contractor in respect of any particular Day during the Increased Capacity Phase-in Period shall be calculated by reference to the aggregate of:
- (a) the number of Available Prisoner Places shown in the row of the third column of the Increased Capacity Phase-in Timetable which corresponds with the relevant date;
 - (b) Not Used;
 - (c) the number of Further Prisoner Places occupied on such Day.
- 22A.3 For the purposes of this Clause 22A (Increased Capacity Phase-in Period):
- (a) a date in the first column of the Increased Capacity Phase-in Period Timetable corresponds with a number of Available Prisoner Places if that date is in the same row of that Increased Capacity Phase-in Period Timetable;
 - (b) a date in the first column of the Increased Capacity Phase-in Period Timetable is relevant to a particular Day if it is the date in that column which first precedes such Day; and
 - (c) all references to payments are to payments which are to be made in accordance with Schedule E (Payment Mechanism).

23. Full Operation Date

23.1 Subject to Clause 40A (Available Prisoner Places) at all times on and from the Full Operation Date, the Contractor shall provide to the Authority four hundred and eighty (480) Available Male Prisoner Places and three hundred and sixty (360) Available Female Prisoner Places, of which twelve (12) will be in the Mother and Baby Unit.

23.2 Subject to Clause 23A (Actual Increased Capacity Date) and Clause 40A (Available Prisoner Places), at no time shall the Authority be liable to make any payment in respect of more than four hundred and eighty (480) (or four hundred and fifty-five (455) if it has exercised the Option) Available Male Prisoner Places and three hundred and forty-five (345) Available Female Prisoner Places, except to the extent of its obligations under Clause 40A (Available Prisoner Places).

23A. Actual Increased Capacity Date

23A.1 Subject to **Clause 40A (Available Prisoner Places)** at all times on and from the Actual Increased Capacity Date, the Contractor shall provide to the Authority seven hundred and seventy two (772) Available Male Prisoner Places and three hundred and sixty (360) Available Female Prisoner Places of which twelve (12) will be in the Mother and Baby Unit and thirty four (34) will be places for Young Offenders.

23A.2 Subject to **Clause 40A (Available Prisoner Places)**, at no time shall the Authority be liable to make any payment in respect of more than seven hundred and seventy two (772) Available Male Prisoner Places and three hundred and sixty (360)

Available Female Prisoner Places except to the extent of its obligations under **Clause 40A (Available Prisoner Places)**.

24. Extension of Time

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

24.2 The Delay Notice shall:

- (a) identify the cause or causes of the delay;
- (b) state whether and to what extent the delay is caused by a Relevant Event;
- (c) provide details of the nature of the Relevant Event and its duration (or the Contractor's estimate (with supporting reasons) of its likely continued duration);
- (d) identify clearly which of the Contractual Opening Date, the Full Operation Date, or the date(s) in the Phase-in Timetable are to be affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Relevant Event;
- (e) in the case of a Relevant Event being claimed under paragraphs (a) or (c) of the definition of Relevant Event, contain the Contractor's estimate (with supporting reasons) of the costs it is likely to incur directly as a result of such Relevant Event; and
- (f) in the case of a Relevant Event being claimed under paragraph (k) of the definition of Relevant Event, be received by the Authority on or prior to the date falling nine (9) months before the Contractual Opening Date.

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

24.3 If a Relevant Event is the cause of any delay to the Contractual Opening Date, the Full Operation Date or any date in the Phase-in Timetable, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Opening Date or the relevant date in the Phase-in Timetable and/or the Full Operation Date as is reasonable taking into account the effect of the Relevant Event (whereupon such other dates shall become the Contractual Opening Date, the Full Operation Date or the relevant date in the Phase-in Timetable for the purposes of this Contract). In the case of an event within paragraph (i) of the definition of Relevant Event, the extension shall be consistent with the relevant arbitral award and/or as determined by the Arbitrator (as appropriate) or the relevant adjudication award and/or as determined by the Adjudicator (as appropriate but in either case only where such award or determination is not referred to arbitration).

24.4 Without prejudice to the Contractor's rights to bring claims for damages in respect of any breach of this Contract by the Authority, where a Relevant Event has caused or will cause a delay and such Relevant Event is one of the events referred to in

paragraphs (a) or (c) of the definition of Relevant Event, the Authority shall on written demand supported by particulars of the loss or expenses claimed (within thirty (30) Days of such written demand) reimburse to the Contractor any reasonable loss or expenses incurred by the Contractor as a result of such Relevant Event.

24A. Extension Of Time - Increased Capacity

24A.1 If and whenever it becomes reasonably apparent to the Contractor that the fulfilment of its obligations in respect of the Prison Expansion Works are being or are likely to be delayed, such that the Contractor will not meet its obligations under the Contract which are to be met on or before the Contractual Prison Expansion Opening Date or on or before any date in the Increased Capacity Phase-in Period Timetable or the Contractual Increased Capacity Date, the Contractor shall forthwith give written notice to the Authority (the "**Increased Capacity Delay Notice**") of the relevant circumstances.

24A.2 The Increased Capacity Delay Notice shall:

- (a) identify the cause or causes of the delay;
- (b) state whether and to what extent the delay is caused by a Prison Expansion Relevant Event;
- (c) provide details (where relevant) of the nature of the Prison Expansion Relevant Event and its duration (or the Contractor's reasonable estimate of its likely continued duration);
- (d) identify clearly which of the Contractual Prison Expansion Opening Date, the Contractual Increased Capacity Date and the dates in the Increased Capacity Phase-in Period Timetable are to be affected (and in the reasonable opinion of the Contractor the extent to which they are to be affected) by the Prison Expansion Relevant Event; and
- (e) in the case of a Prison Expansion Relevant Event being claimed under Paragraphs (a) or (b) of the definition of Prison Expansion Relevant Event, the Contractor's estimate of the costs it is likely to incur directly as a result of such Prison Expansion Relevant Event.

24A.3 If the Contractor serves an Increased Capacity Delay Notice while a Prison Expansion Relevant Event is continuing, the Contractor shall provide the Authority periodically (and at least on a weekly basis) with details of the Prison Expansion Relevant Event and the Contractor's reasonable estimate of its impact on the Project or without prejudice to the generality of the foregoing the provision of the Prison Expansion. The Contractor shall afford the Authority such access to the Site and papers of the Contractor as the Authority may reasonably consider necessary and appropriate for the purposes of establishing the accuracy of any Increased Capacity Delay Notice.

24A.4 If a Prison Expansion Relevant Event is the cause of any delay to the Contractual Prison Expansion Opening Date, the Contractual Increased Capacity Date or any date in the Increased Capacity Phase-in Period Timetable, the Authority shall consult with the Contractor and give a written extension of time by fixing such later date as the Contractual Prison Expansion Opening Date or the relevant date in the Increased Capacity Phase-in Period Timetable and/or the Contractual Increased Capacity Date as is reasonable taking into account the effect of the Prison Expansion Relevant Event (whereupon such dates so specified shall become the Contractual Prison Expansion Opening Date, the Contractual Increased Capacity Date or the relevant date in the Increased Capacity Phase-in Period Timetable for the purposes of this Contract). In the case of an event within paragraph (h) of the definition of Prison Expansion Relevant Event, the extension shall be consistent with the relevant arbitral award and/or as determined by the Arbitrator (as appropriate) or the relevant adjudication award and/or as determined by the Adjudicator (as appropriate) but in either case only where such award or determination is not referred to arbitration).

24A.5 Without prejudice to the Contractor's rights to bring claims for damages in respect of any breach of this Contract by the Authority, where a Prison Expansion Relevant Event

has caused or will cause a delay and such Prison Expansion Relevant Event is one of the events referred to in paragraphs (a) or (b) of the definition of Prison Expansion Relevant Event, the Authority shall, on written demand supported by particulars of the loss or expenses claimed (within thirty (30) Days of such written demand), reimburse to the Contractor any reasonable loss or expenses incurred by the Contractor as a result of such Prison Expansion Relevant Event.

24A.6 Where a Prison Expansion Relevant Event occurs, the Long Stop Date will be adjusted by the duration of the Prison Expansion Relevant Event.

25. Liquidated Damages

25.1 To the extent that on or before the Actual Full Operation Date the Contractor fails on any Day to provide the number of Available Prisoner Places specified in the Phase-in Timetable (including, for the avoidance of doubt, such Available Prisoner Places as required under Clause 23.1), the Contractor shall be liable to pay liquidated damages to the Authority.

25.2 Liquidated damages shall be calculated in respect of Available Prisoner Places, at the daily rate set out in paragraph 1 of Schedule E for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms hereof and set out in Clause 25.1 respectively has not been provided, and shall, subject to Clause 25.4, be payable monthly in arrears. The parties agree that such rate represents a genuine pre-estimate of the Authority's loss arising from delay.

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

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

25A. Liquidated Damages – Increased Capacity

25A.1 To the extent that on or before the Actual Increased Capacity Date the Contractor fails on any Day to provide the number of Available Prisoner Places specified in the Increased Capacity Phase in Period Timetable (including, for the avoidance of doubt, thirty (30) Male Prisoner Places from the Contractual Prison Expansion Opening Date and two hundred and ninety two (292) Available Male Prisoner Places from the Actual Increased Capacity Date) the Contractor shall be liable to pay liquidated damages to the Authority.

25A.2 Liquidated damages shall be calculated at the daily rate specified in Schedule E (Payment Mechanism) (such rates representing a reasonable pre estimate of costs to the Authority), for the period(s) during which the number of Available Prisoner Places which the Contractor is bound to provide under the terms of this Contract and set out in Clause 25A.1 (Liquidated Damages) has not been provided and shall, subject to Clause 25A.4 (Liquidated Damages), be payable monthly in arrears.

25A.3 The maximum aggregate amount of liquidated damages which may be claimed by the Authority under this Clause shall be limited to [REDACTED].

25A.4 The Authority may deduct the said sums from any monies due to the Contractor under this Contract (provided that to the extent payments of the Prison Expansion Works Fee are outstanding at the time the Contractor's liability under Clause 25A.1 (Liquidated Damages) arises, the Authority's right to deduct such sums shall be limited to

deductions to the outstanding part of the Prison Expansion Works Fee) or the Authority may recover the same from the Contractor as a debt, except to the extent that such sums have been recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor, the Prison Expansion Construction Sub-contractor or any other Person on the Contractor's behalf. To the extent such sums have finally and conclusively been paid to the Authority or recovered by the Authority from the Construction Sub-contractor, the Operating Sub-contractor, the Prison Expansion Construction Sub-contractor or any other Person on the Contractor's behalf, the Contractor's obligation hereunder to pay such sums shall be discharged.

26. Engineer's Declaration

26.1 The Independent Engineer shall monitor the progress of the Works upon the Site, and be entitled to exercise rights, in accordance with the provisions of Schedule M. The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in this Clause 26.

26.2 When the Contractor considers that the whole of the Works will be, or has been, completed in accordance with Part 1 of Schedule A and will be, or has been, satisfactorily commissioned by passing all the tests referred to in Part 1 of Schedule A, the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer. In the event that at the time such notice is given, the Contractor considers that the Works will be completed at a later date, the Contractor must specify such date, which shall be not less than fourteen (14) Days and not more than thirty (30) Days from the date of the notice.

26.3 The Authority shall procure that the Independent Engineer shall within twenty one (21) Days of the date of the delivery of the notice referred to in Clause 26.2 (or, if the Works will be completed at a later date, within seven (7) Days of the date of completion specified in the notice) either issue a certificate to the Authority (signed by a director in the firm appointed as Independent Engineer) declaring that the Works have been completed in accordance with Part 1 of Schedule A (the **Engineer's Declaration**) or give notice to the Contractor in writing specifying all the matters which must be satisfied before the Engineer's Declaration can be issued. If such notice is given by the Independent Engineer, the Contractor shall carry out such works as may be required to obtain the Engineer's Declaration and the requirements of Clauses 26.2 and 26.3 shall apply except that the Independent Engineer will respond as soon as reasonably practicable following completion of the required works.

26.4 The Authority shall use its best endeavours to procure that the Monitoring Contract contains obligations on the Independent Engineer to carry out the acts attributed to him in this Clause 26. The Authority agrees that it will not amend or waive any of its rights under the Monitoring Contract in a manner that could reasonably be expected to be adverse to the interests of the Contractor or the Construction Sub-contractor. The Authority agrees that at the request of the Contractor from time to time, it will use reasonable endeavours to enforce the terms of the Monitoring Contract at all times up to and including the date of issue of the Engineer's Declaration.

26.5 Nothing in this Contract shall be deemed to imply that the Authority makes any representation or warranty of whatsoever nature as to the value, design, construction, maintenance, operation or fitness for use of the Prison or any of the equipment referred to in Schedule B except in the case of the equipment referred to in Part 2 of Schedule B, in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract that unavoidably require use of such equipment for such period as such lack of fitness continues.

26.6 If (in accordance with his obligations under the Monitoring Contract) the Independent Engineer gives written notice to the Authority that a matter has come to his attention in the course of any inspection by him of the Works which may adversely affect

his decision to issue the Engineer's Declaration, the Authority shall, without unreasonable delay, notify the Contractor in writing of such matter.

26.7 For the avoidance of doubt, nothing done by the Authority or the Independent Engineer in accordance with this Clause 26 (Engineer's Declaration), Clause 13 (Provision of the Prison) or Schedule M shall in any respect relieve or absolve the Contractor from its responsibility for the design or construction of the Works under or in connection with the Contract.

26.8 Notwithstanding the issue by the Independent Engineer of a notice pursuant to Clause 26.3 and/or the exercise by the Authority of its reasonable endeavours under Clause 26.4, where the Contractor considers that the whole of the Works have been completed in accordance with Part 1 of Schedule A and have been satisfactorily commissioned by passing all the tests referred to in Part 1 of Schedule A and no Engineer's Declaration has been issued, the Contractor may refer such matter for resolution pursuant to Clause 72 (Dispute Resolution) and the Adjudicator or Arbitrator, as the case may be, shall be entitled to award the Engineer's Declaration where the whole of the Works have been completed in accordance with Schedule A and have been satisfactorily commissioned by passing all the tests referred to in Part 1 of Schedule A.

26A. Engineer's Prison Expansion Declaration

26A.1 The Independent Engineer shall monitor the progress of the Prison Expansion Works upon the Site, and be entitled to exercise rights, in accordance with the provisions of Schedule M (Compliance Monitoring). The Independent Engineer shall have no authority to approve or accept the Contractor's performance of its obligations under the Contract as being discharged except as provided in this Clause 26A (Engineer's Prison Expansion Declaration).

26A.2 When the Contractor considers that the whole of the Prison Expansion Works (or any relevant section of the Prison Expansion Works as set out in Schedule X) will be, or has been, completed in accordance with Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works) and will be, or has been, satisfactorily commissioned by passing all the tests referred to in Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works), the Contractor may give notice in writing to that effect to the Authority, with a copy to the Independent Engineer. In the event that at the time such notice is given, the Contractor considers that the Prison Expansion Works (or relevant section) will be completed at a later date, the Contractor must specify such date, which shall be not less than fourteen (14) Days and not more than thirty (30) Days from the date of the notice.

26A.3 The Authority shall procure that the Independent Engineer shall within twenty one (21) Days of the date of the delivery of the notice referred to in Clause 26.2A (Engineer's Prison Expansion Declaration) (or, if the Prison Expansion Works (or relevant section) will be completed at a later date, within seven (7) Days of the date of completion specified in the notice) either issue a certificate to the Authority (signed by a director in the firm appointed as Independent Engineer) declaring that the Prison Expansion Works (or relevant section) have been completed in accordance with Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works) (the "Engineer's Prison Expansion Declaration") or give notice to the Contractor in writing specifying all the matters which must be satisfied before the Engineer's Prison Expansion Declaration can be issued. If such notice is given by the Independent Engineer, the Contractor shall carry out such works as may be required to obtain the Engineer's Prison Expansion Declaration and the requirements of Clause 26.2A (Engineer's Prison Expansion Declaration) and 26A.3 (Engineer's Prison Expansion Declaration) shall apply except that the Independent Engineer will respond as soon as reasonably practicable following completion of the required works.

26A.4 The Authority shall use its best endeavours to procure that the Prison Expansion Works Monitoring Contract contains obligations on the Independent Engineer to carry out the acts attributed to him in this Clause 26A (Engineer's Prison Expansion Declaration).

The Authority agrees that it will not amend or waive any of its rights under the Prison Expansion Works Monitoring Contract in a manner that could reasonably be expected to be adverse to the interests of the Contractor or the Prison Expansion Construction Sub-contractor. The Authority agrees that at the request of the Contractor from time to time, it will use reasonable endeavours to enforce the terms of the Prison Expansion Works Monitoring Contract at all times up to and including the date of issue of the Engineer's Prison Expansion Declaration.

26A.5 Nothing in this Contract shall be deemed to imply that the Authority makes any representation or warranty of whatsoever nature as to the value, design, construction, maintenance, operation or fitness for use of the Prison or any of the equipment referred to in Schedule B (Equipment) except in the case of the equipment referred to in Part 2 of Schedule B (The Inmate Related System(s)), in which case any lack of fitness for use shall excuse the Contractor from performing such obligations under this Contract that unavoidably require use of such equipment for such period as such lack of fitness continues.

26A.6 If (in accordance with his obligations under the Prison Expansion Works Monitoring Contract) the Independent Engineer gives written notice to the Authority or the Contractor that a matter has come to his attention in the course of any inspection by him of the Prison Expansion Works which may adversely affect his decision to issue the Engineer's Prison Expansion Declaration, the Authority or the Contractor shall, without unreasonable delay, notify the other party of such matter.

26A.7 For the avoidance of doubt, nothing done by the Independent Engineer in accordance with this Clause 26A (Engineer's Prison Expansion Declaration), Clause 13A (Provision of the Increased Capacity) or Schedule M (Compliance Monitoring) shall in any respect relieve or absolve the Contractor from its responsibility for the design or construction of the Prison Expansion Works under or in connection with the Contract.

26A.8 Notwithstanding the issue by the Independent Engineer of a notice pursuant to Clause 26A.3 (Engineer's Prison Expansion Declaration (or any relevant section)), where the Contractor considers that the Prison Expansion Works have been completed in accordance with Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works) and have been satisfactorily commissioned by passing all the tests referred to in Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works) and no Engineer's Prison Expansion Declaration has been issued, the Contractor may refer such matter for resolution pursuant to Clause 72 (Dispute Resolution) and the Adjudicator or Arbitrator, as the case may be, shall be entitled to award the Engineer's Prison Expansion Declaration where the whole of the Prison Expansion Works have been completed in accordance with Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works) and have been satisfactorily commissioned by passing all the tests referred to in Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works).

26B. Snagging Matters

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

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

26B.3 If, within the period referred to in Clause 26B.2 (Snagging Matters) the Contractor has failed to rectify the Snagging Matters specified in such notice, the Authority may by itself or by the engagement of others carry out the works necessary to rectify the Snagging Matters and recover the cost of doing so from the Contractor as a debt.

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

27. Cell Certification

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

27.2 Prior to its first ever occupation by a Prisoner and immediately following any subsequent refurbishment or rebuilding, each and every Prison Cell shall be inspected by the Authority (which expression shall for the purposes of this Clause 27 mean an officer of the Authority) to determine whether the Prison Cell complies with such parts of Schedules A, B and C as relate to Prison Cells. When an inspected Prison Cell complies with such parts of Schedules A, B and C as relate to Prison Cells, the Authority shall issue the Contractor with a Cell Certificate for the inspected Prison Cell, in accordance with Clause 28 (Timetable for Cell Certification). For the avoidance of doubt, prior to a Prison Cell's first ever occupation by a Prisoner, in determining compliance of such Prison Cell with the relevant parts of Schedules A, B and C, the Authority shall rely on the Engineer's Declaration to the extent it addresses compliance with such relevant parts of Schedules A, B and C (except where deterioration to such Prison Cell has occurred since the issue of the Engineer's Declaration which renders the Prison Cell non-compliant with the relevant parts of Schedules A, B and/or C). The Contractor will promptly inform the Authority in the event of such deterioration of the condition of any Prison Cell during the period from the issue of the Engineers Declaration to COD.

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

28. Timetable for Cell Certification

28.1 A minimum of thirty (30) Days prior to any date when the Contractor considers it can provide the Authority with Available Prisoner Places as required by Clauses 22 (Phase-in Period), 22A (Increased Capacity Phase-In Period), 23A (Actual Increased Capacity Date) and 23 (Full Operation Date), it shall give written notice to the Authority

of such opinion, and the said thirty (30) Days shall be the notice period. The Contractor shall specify the number of Prison Cells and Available Prisoner Places that it considers it can provide to the Authority at the expiry of the notice period.

28.2 The Authority, and such other Persons as the Authority may specify, whenever so notified, shall carry out inspections of: -

28.2.1 the Prison Cells and the Prison for the purpose of granting Cell Certificates in accordance with Clause 27 (Cell Certification); and

28.2.2 up to and including the Actual Prison Extension Opening Date, the Prison Expansion for the purpose of granting Cell Certificates in accordance with Clause 27 (Cell Certification).

28.3 The Authority shall issue each Prison Cell with a Cell Certificate within the notice period referred to in Clause 28.1, unless the Prison Cell does not comply with Clause 27 (Cell Certification), in which case the Authority shall provide the Contractor with a written record of those parts of Schedule A, B or C that are not complied with.

28.4 In the event that:

- (a) the Authority fails to certify a Prison Cell before the expiry of the notice period set out in Clause 28.1; and
- (b) the Authority fails to provide the Contractor with a written record under Clause 28.3 before the expiry of the notice period set out in Clause 28.1,

then if, but for the Authority's failure as set out in (a) or (b) above, upon expiry of the notice period referred to in Clause 28.1 a Prisoner Place would have been treated as being an Available Prisoner Place, then for the sole purpose of Clauses 25 (Liquidated Damages) and 38 (Price), the Prisoner Place shall be treated as an Available Prisoner Place until such time as the Authority certifies the Prison Cell so as to make it an Available Prisoner Place within the meaning of Clause 29.1 (Available Prisoner Places) or the Authority provides the Contractor with a written record in accordance with Clause 28.3 so that the Prisoner Place ceases to be treated as an Available Prisoner Place.

28.5 Where a Prison Cell is refused Cell Certification by the Authority, and a written record of the reasons has been provided to the Contractor in accordance with Clause 28.3, the Contractor shall comply with the requirements of this Clause 28 and Clause 27 (Cell Certification) when seeking any new approval or certification for the Prison Cell, save that the notice period referred to in Clause 28.1 shall be fourteen (14) Days instead of thirty (30) Days but the Authority shall respond as soon as reasonably practicable within the notice period taking into account the reasons for any such refusal.

29. Available Prisoner Places

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

- (a) the Engineer's Declaration has been obtained;
- (b) the Authority's final approval of the Operational Proposals referred to in Clauses 20.1(a), (b) and (c) has been obtained in accordance with Clause 20.6 (Preparation for Operation of the Prison);
- (c) the Contractor has demonstrated to the reasonable satisfaction of the Authority that it is capable of providing properly trained and certified Staff for the Prison; and
- (d) all the conditions required to be satisfied prior to the holding of Prisoners (for any period, whether overnight or otherwise) at the Prison in accordance with the Permission (as the same may be amended from time to time) are complied with in full.

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

- (x) the Prison Cell in which that Prisoner Place is contained has been issued with a Cell Certificate pursuant to Clause 27.2 (Cell Certification) (or such Cell Certificate has been reinstated pursuant to Clause 27.3) and any such Cell Certificate has not subsequently been withdrawn pursuant to Clause 27.3; and
- (y)
 - (i) that Prisoner Place has complied in all respects with the Standard Requirements throughout that Day; or
 - (ii) the Contractor has notified any failure (in respect of that Prisoner Place on that Day) to comply in all respects with the Standard Requirements to the Authority immediately and:
 - (A) that Prisoner Place is occupied by a Prisoner on that Day and the Authority has failed to require that Prisoner to be removed from that Prisoner Place on that Day;
 - (B) that Prisoner Place is not occupied by a Prisoner on that Day, in which case that Prisoner Place shall (until the requirements of (y)(i) above are satisfied) only constitute an Available Prisoner Place for a period of twenty four (24) hours following the first notification in respect of that failure and provided the Standard Requirements are complied with before the expiry of that twenty four (24) hour period, they shall be deemed to have been complied with throughout that period for the purpose of determining whether or not that Prisoner Place is an Available Prisoner Place; or
 - (C) the twenty four (24) hour period referred to in (B) above has expired before that Prisoner Place complies with the requirements of (y)(i) above and the Authority has directed that such Prisoner Place be occupied by a Prisoner and provided that Prisoner occupies that Prisoner Place for any part of that Day that Prisoner Place shall be deemed to be an Available Prisoner Place for the whole of that Day,

provided always that if a Prisoner Place is not (or is not deemed to be) an Available Prisoner Place for the whole of a Day it shall (for all purposes) be deemed not to have been an Available Prisoner Place on that Day.

29.1A There shall be no Available Prisoner Places in respect of the Increased Capacity until:

- (a) the Engineer's Prison Expansion Declaration has been obtained;
- (b) the Authority's final approval of the Operational Proposals referred to in Clauses 20A.1(a) and (b) (Preparation for Operation of the Increased Capacity) has been obtained in accordance with Clause 20A.6 (Preparation for Operation of the Increased Capacity);
- (c) the Contractor has demonstrated to the reasonable satisfaction of the Authority that it is capable of providing properly trained and certified Staff for the Prison Expansion; and
- (d) all the conditions required to be satisfied prior to the holding of Prisoners (for any period, whether overnight or otherwise) at the Prison Expansion in accordance with the Increased Capacity Permission (as the same may be amended from time to time) are complied with in full.

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

(x) the Prison Cell in which that Prisoner Place is contained has been issued with a Cell Certificate pursuant to Clause 27.2 (Cell Certification) (or such Cell Certificate has been reinstated pursuant to Clause 27.3 (Cell Certification)) and any such Cell Certificate has not subsequently been withdrawn pursuant to Clause 27.3 (Cell Certification); and

(y) (i) that Prisoner Place has complied in all respects with the Standard Requirements throughout that Day; or

(ii) the Contractor has notified any failure (in respect of that Prisoner Place on that Day) to comply in all respects with the Standard Requirements to the Authority immediately and:

(A) that Prisoner Place is occupied by a Prisoner on that Day and the Authority has failed to require that Prisoner to be removed from that Prisoner Place on that Day;

(B) that Prisoner Place is not occupied by a Prisoner on that Day, in which case that Prisoner Place shall (until the requirements of (y)(i) above are satisfied) only constitute an Available Prisoner Place for a period of twenty four (24) hours following the first notification in respect of that failure and provided the Standard Requirements are complied with before the expiry of that twenty four (24) hour period, they shall be deemed to have been complied with throughout that period for the purpose of determining whether or not that Prisoner Place is an Available Prisoner Place; or

(C) the twenty four (24) hour period referred to in (B) above has expired before that Prisoner Place complies with the requirements of (a)(i) above and the Authority has directed that such Prisoner Place be occupied by a Prisoner and provided that Prisoner occupies that Prisoner Place for any part of that Day that Prisoner Place shall be deemed to be an Available Prisoner Place for the whole of that Day,

provided always that if a Prisoner Place is not (or is not deemed to be) an Available Prisoner Place for the whole of a Day it shall (for all purposes) be deemed not to have been an Available Prisoner Place on that Day.

29.2 Subject to Clause 39.4, the Contractor shall on each Day following the Actual Full Opening Date produce the Daily Report and deliver a copy thereof to the Controller or his/her nominated representative.

29.3 No Single Prison Cell shall be used to accommodate more than one Prisoner at any one time (other than, in each case, Prison Cells designated for multiple occupancy in the healthcare centre of the Prison), except to the extent that the number of Prisoners sharing a Single Prison Cell with another Prisoner does not exceed the Permitted Level (and where the Permitted Level is so exceeded, Clause 29.4 shall apply).

29.4 Where two (2) Prisoners share a Single Prison Cell otherwise than as expressly permitted in Clause 29.3, or permitted pursuant to Clause 4.8 (Indemnities), the amount payable by the Authority for the Services shall, without prejudice to the Authority's rights under Clauses 44 (Default by Contractor) and 45 (Rectification and Termination for Default), be reduced in the following manner:

Where:

(a) the number of Prisoners sharing a Single Prison Cell with another Prisoner (other than in the healthcare centre of the Prison) is greater than the Permitted Level; and

(b) the sharing of Prison Cells by Prisoners above the Permitted Level has been reported in one or more Daily Reports,

then the Fixed Fee, the Indexed Fee and the Indexed Costs Fee in respect of the Prisoner Places occupied by all such Prisoners shall each be reduced by thirty five per cent. (35%) for each Day the sharing referred to above is, and for so long as it continues to be, so reported in Daily Reports, with effect from and including the first such Daily Report, the calculation being made monthly and in accordance with paragraphs 9 and 17, as applicable, of Schedule E.

29.5 No Prison Cell (whether it be a Single Prison Cell or a Double Prison Cell) shall be used to accommodate more than two (2) Prisoners under any circumstances other than Prison Cells designated for multiple occupancy in the healthcare centre of the Prison.

29.6 The Contractor agrees that it will not refuse to accept a Prisoner for an Available Prisoner Place where such Prisoner has been sent to the Prison by any Court; and that it will not refuse to accept a Prisoner for an Available Prisoner Place where it receives a request to do so from the Authority unless the Contractor has reasonable cause to believe that complying with the Authority's request would prejudice the Contractor's ability to maintain security and control within the Prison. The Authority agrees not to introduce any Category A Prisoners to the Prison if to do so can reasonably be avoided and, if it cannot reasonably be avoided, the Authority undertakes:

- (a) to remove any such Category A Prisoners from the Prison at the earliest possible opportunity; and
- (b) to negotiate with the Contractor to agree the level of extra resources (if any) which the Authority will provide to the Contractor in order to ensure that the Contractor can maintain security and control within the Prison (provided that no such extra resources shall be required to be provided by the Authority if the Category A Prisoners in question are not held in custody at the prison for more than three (3) Prisoner Days in any six (6) month period). To the extent that provision of any such extra resources is by way of payment, the level of the payment shall be ascertained by reference to the principles set out in Clause 39.4.

29.7 An Available Prisoner Place shall be deemed not to be an Available Prisoner Place if the Contractor refuses to accept a Prisoner to occupy such Available Prisoner Place, unless in requesting that the Prisoner occupy such Available Prisoner Place, the Authority is not acting in accordance with its own guidelines for placing prisoners in its own prisons. If the Contractor refuses to comply with the Authority's request and the Authority is not acting in accordance with such guidelines, the Available Prisoner Place shall continue to be an Available Prisoner Place (subject to the requirements of Clause 29.1); if the Authority is acting in accordance with such guidelines the Available Prisoner Place shall not be an Available Prisoner Place until the earlier to occur of the following:

- (a) save in respect of the Phase-In Period, four hundred and eighty (480) male Prisoners and three hundred and sixty (360) female Prisoners or more Prisoners have occupied the Prison at any one time after the date of the Contractor's refusal; and
- (b) three (3) months have passed since the date of the Contractor's refusal.

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

PART V – OPERATION

30. Conduct of Operation

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

30.2 The Contractor shall at all times operate the Prison in accordance with all relevant provisions of Legislation including but not limited to the Prison Act 1952, the Criminal Justice Act 1991, the Prison Rules 1999 and the Young Offender Institution Rules 1988.

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

30.4 The Contractor shall at all times:

- (i) not act, and shall use reasonable endeavours to ensure that its Staff do not act, in a way which is likely to cause or provoke and does cause or provoke a Riot at the Prison or the Site; and
- (ii) if a Riot does occur at the Prison or the Site, take reasonable steps having regard to all relevant circumstances, to limit as far as possible the duration and consequences of the Riot, including, without limitation, minimising the risk of personal injury or death and limiting the damage to the Prison, Site or Assets resulting from the Riot or any related incident.

30.5 Without prejudice to the generality of Clause 30.4:

- (a) The Contractor shall once a month, provide a written report to the Authority which shall be headed "Riot Risk Report" detailing any incidents which might reasonably be regarded as evidence of an increased risk of a Riot occurring and details of such measures as the Contractor has taken in response thereto and the Contractor and the Authority shall meet to discuss such report each month; and
- (b) The Contractor shall enter into such arrangements with the police and other emergency services as may be reasonably appropriate in order to establish the basis upon which the police and such other emergency services will or may respond in the event of a Riot occurring and shall provide to the Authority copies of any documentation relating to any such arrangements.

30.6 The Contractor shall not object to the Authority consulting or conferring with the police or any other emergency service with respect to any matter, including without limitation any matter related to the risk of a Riot occurring or other serious disturbance which has occurred. The Authority shall not be obliged to inform the Contractor of any such consultation or conferring or of the context thereof. Nothing herein shall oblige the Authority to enter into any consultation or conferring with any third party.

30.7 Notwithstanding Clause 58 (Information and Confidentiality) the Authority shall have the right to disclose to the police and/or any other emergency service ('**Recipient**') Confidential Matters if the Authority reasonably believes such information is material to the matters in respect of which the Authority consults or confers with the police or any other emergency service and subject, in each case, to the Recipient undertaking to keep the information confidential and to use it only for the purpose for which it was provided.

30A. SIP Services

30A.1 The Contractor shall comply with the obligations specified in the Operating Model to be undertaken by the Contractor and shall co-operate with the SIP Service Provider to enable the SIP Service Provider to comply with the SIP Service Provider's obligations as specified in the Operating Model. Subject to the terms of this Contract, the Contractor shall provide such other reasonable assistance to the SIP Service Provider and the

Authority as may be reasonably requested by the Authority or the SIP Service Provider from time to time provided any such reasonable assistance is in accordance with the principles specified in the Operating Model.

30A.2 The Parties acknowledge that the Operating Model shall not be revised unless and until such revised Operating Model is approved in writing by the Authority and the Contractor.

30A.3 The Contractor acknowledges that a detailed implementation plan shall be developed by the SIP Service Provider, in consultation with the Contractor, to regulate the precise manner in which the SIP Service Provider will carry out the SIP Services. The Contractor shall co-operate with the SIP Service Provider to agree the aforementioned implementation plan within a reasonable period from the date of the SIP Services Agreement.

30A.4 The Parties acknowledge and agree that:

30A.4.1 compliance by the Contractor with its obligations in the Operating Model shall not adversely affect the performance by the Contractor of its other obligations under this Contract;

30A.4.2 compliance by the Contractor with its obligations in the Operating Model shall not entitle the Contractor to:

- (1) be relieved of performing any of its other obligations under this Contract (including (but not limited to) any obligations under Schedules B,C,D and E of this Contract); or
- (2) claim any relief under the Contract;

save where the relief referred to in paragraphs (1) and (2) is otherwise expressly permitted by the terms of the Contract;

30A.4.3 compliance by the Contractor with its obligations in the Operating Model shall not affect any payment or sum due from the Contractor to the Authority or from the Authority to the Contractor pursuant to the terms of this Contract. The parties accept that the Contractor shall not be entitled to any payment from the Authority in connection with the discharge of the Contractor's obligations in the Operating Model;

30A.4.4 the SIP Service Provider shall be treated and construed as the servant, agent or representative of the Contractor for the purposes of this Contract, and any act, omission and/or instruction (whether written or otherwise) of the SIP Service Provider or any Person engaged by the SIP Service Provider given in connection with the Operating Model shall be construed as an act, omission and/or instruction of the Contractor for the purposes of this Contract;

30A.4.5 the obligations imposed by the terms of the Operating Model on the Contractor shall not in any circumstance require the Contractor to breach any other term of this Contract or fail to provide any aspect of the Custodial Service and to the extent that any obligation in the Operating Model is inconsistent with the obligations in Schedule D (Operating Requirements) of this Contract, the obligations in Schedule D (Operational Requirements) of this Contract shall prevail;

30A.4.6 if the SIP Service Agreement expires or terminates the Authority shall give written notification to the Contractor of any such expiry or termination as soon as reasonably practicable for the Authority to do so and upon any such termination or expiry the obligations of the Contractor to comply with the terms of the Operating Model shall automatically cease;

30A.4.7 the Authority shall use reasonable endeavours to procure that, save as referred to in the Operating Model, the SIP Service Provider does not impede, disrupt, or otherwise adversely affect the Contractor in the performance of its obligations under or in connection with the Contract;

30A.4.8 the Contractor confirms that it shall not request a change to the Custodial Services pursuant to Clause 9.5 of the Contract by virtue of any obligation imposed on the Contractor by the Operating Model (as the Operating Model is stated as at the SIP Effective Date);

30A.4.8 save as otherwise expressly specified in this Contract (including in Schedule U), in complying with its obligations pursuant to the Operating Model, the Contractor is under no greater obligation to incur expenditure than that to which the Contractor was subject prior to the SIP Effective Date; and

30A.4.10 the Authority shall not require a variation to the terms of the Operating Model which is likely in the reasonable opinion of the Contractor to require the Contractor to incur substantive additional expenditure.

31. The Director

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

31.2 The Contractor shall submit a nomination for the position of the Director to the Authority in accordance with Clause 20 (Preparation for Operation of the Prison), which nomination the Authority may accept or reject as it thinks fit. The Contractor will submit to the Authority such further particulars of the proposed Director and the terms of his employment contract as the Authority may require in order to decide upon the appointment. The Authority will consult with the Contractor with respect to any such nominee and if a Contractor's nominee is rejected by the Authority, the Authority shall provide reasons for the rejection, and the Contractor shall nominate a new candidate for the Authority's approval or rejection in the same manner as the earlier nomination.

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

31.4 The Contractor shall ensure that any Person required to exercise the powers of the Director, by reason of the Director's absence, or to replace the existing Director or for whatsoever reason, will be subject to the same terms of approval and appointment as specified in this Clause 31.

32. Prisoner Custody Officers

32.1 All Persons carrying on Custodial Duties in the Prison shall be subject to certification as Prisoner Custody Officers by the Authority as required by Sections 85 and 89 (and where appropriate Section 80) of, and Schedule 10 to, the Criminal Justice Act 1991. Whenever the Contractor requests a Person be certified as a Prisoner Custody Officer, the Contractor shall submit to the Authority the name of any proposed Prisoner Custody Officer and such other particulars as the Authority may require, to assist in the Authority's decision as to his certification.

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

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

33. The Operational Staff

33.1 The Contractor shall be responsible for the recruitment and provision of suitable Staff and in particular the Contractor shall appoint one or more suitably qualified

individuals to the position of prison medical officer. All Staff shall receive proper training in their functions and duties and such training is subject to approval by the Authority (such approval or refusal not to be unreasonably delayed).

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

33.3 All Staff who are not required to be certified as Prisoner Custody Officers (including, for the purposes of this Clause 33.3, the medical officer or officers) shall be subject to approval by the Authority. The Contractor shall provide to the Authority such details of the said members of Staff as may be required by the Authority for the purposes of approval. Notwithstanding the foregoing, the Authority may exempt certain categories of Staff from the requirements of this Clause 33.3.

33.4 The Contractor shall provide all Staff with the operating and procedural instructions prepared in accordance with Clause 20 (Preparation for Operation of the Prison) which are relevant to them, and all Staff shall be provided with any revised or amended operating and procedural instructions which are relevant to them which may be issued during the term of the Contract.

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

33.6 Without prejudice to Clauses 31 (The Director) and 32 (Prisoner Custody Officers), if, in the opinion of the Authority, any Staff (including without limitation, the Director) is guilty of misconduct, incapable of efficiently performing his duties or it is not in the public interest for such a Person to work in the Prison, then the Authority shall notify this to the Contractor and the Contractor shall immediately suspend such Person from his work and refuse the admission of such Person to the Prison (except, if the Authority consents, in connection with disciplinary matters) and shall, immediately on being required to do so, remove such Person from the Prison and will cause such Person's work to be performed by such other Person as may be deemed necessary. The Authority shall, in respect of any such Person, take such action as it considers appropriate.

33.7 The Contractor and the Authority shall, following the suspension, refusal of admission and/or removal of such Staff pursuant to Clause 33.6, consult in good faith to ascertain whether the relevant Staff should be allowed to recommence his or her duties in the Prison. If the Contractor considers in good faith that suspension is no longer appropriate and that the relevant Staff should be allowed to resume duties at the Prison, it shall notify the Authority in writing (an **Original Notice**). Following receipt of any Original Notice by the Authority, the Authority shall be entitled, by giving notice (a **Second Notice**) in writing to the Contractor within fourteen (14) Days of receipt of the Original Notice, to require continued suspension and refusal of admission to the Prison of such Person for a specified period or permanently. If the Authority does not give such notice within such period (but not otherwise) the relevant Staff may be allowed to continue his or her duties and to be admitted to the Prison. If the Staff brings any claim in respect of any suspension or refusal of admission to the Prison pursuant to this Clause (following termination of employment by the Contractor or otherwise) then the Contractor shall take all appropriate actions to procure that such claim is defended with all reasonable diligence. If the Staff nevertheless makes a successful claim in respect of any relevant dismissal and the Authority has been served an Original Notice in accordance with this Clause 33.7, the Authority shall (provided that the Contractor has

complied with its obligations under this Contract) reimburse the Contractor for any reasonable losses it suffers as a result of such successful claim. If the Contractor fails to comply with any such requirement of the Authority under this Clause 33.7 to suspend, dismiss, refuse admission and/or remove such Person, or delays in doing so, the Authority may employ such other Person as it may deem necessary for the purpose of carrying out the relevant work, and any additional costs thereby incurred shall be a debt due from the relevant Contractor to the Authority.

33.8 The Contractor will note and comply with the provisions of Section 88 of the Criminal Justice Act 1991. The Contractor shall ensure the inclusion in the contract of employment of all Staff a condition requiring the Staff to co-operate with any Governor who may be appointed to the Prison under the terms of Section 88(2) of the Criminal Justice Act 1991.

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

33.10 The Contractor shall provide written job descriptions, staff record systems, and a performance evaluation plan which shall be available for inspection by the Authority. All Staff shall be provided with written job descriptions before beginning work in the Prison. Job descriptions shall be amended as necessary and reissued to the members of staff concerned after each amendment.

33.11 If the Contractor or a Sub-contractor seeks to engage a new member of staff, and such Person has not been the subject of prior approval or certification in accordance with this Clause 33, Clause 32 (Prisoner Custody Officers) and Clause 31 (The Director) (where such approval or certification is required under the Contract), or such approval or certification has lapsed, the Contractor shall not permit such Person to commence work at the Prison until the Authority has been provided with the information required by this Clause 33 (The Operational Staff) and has given the requisite approval or certification.

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

33.13 The Contractor shall ensure that a member of the senior management of the Contractor's and the Operating Sub-contractor's organisation, as distinguished from the senior management of the Prison, is contactable by the Authority twenty four (24) hours a Day on every Day throughout the Contract Term. The Contractor shall ensure that the Authority is informed well in advance of the procedures by which this obligation will be performed (and any changes thereto) and such procedures (and any changes thereto) shall be subject to the approval of the Authority.

33.14 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.

33.15 As between the Contractor and the Authority, subject as expressly provided herein, the Contractor shall be liable for any costs and payment of redundancy awards to its employees, agents or representatives including any costs and payment of redundancy awards to the Staff of an outgoing Operating Sub-contractor if a replacement Operating Sub-contractor is appointed pursuant to the provisions of this Contract and/or the Direct Agreement.

33A. The Construction Staff

33A. The terms of sub-Clauses 33.3, 33.5, 33.6, 33.7, 33.11, 33.14 and 33.15 shall, mutatis mutandis, apply to Construction Staff as if references to "Staff" were to Construction Staff.

33B. TUPE Transfers

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

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

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

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

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

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

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

- (a) materially amend the rates of remuneration, hours to be worked, or holiday entitlement of any employee performing any part of the Services;
- (b) replace any of the individuals providing any part of the Services (and the Operating Sub-Contract) or deploy any Person other than those already providing Services) to perform the Services;

- (c) make or propose any changes to the terms or conditions of employment in respect of any employee performing any part of the Services;
- (d) give notice to terminate the employment of any employee performing any part of the Services (save in respect of gross misconduct or following a disciplinary investigation, in which event the Contractor shall inform the Authority forthwith).

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

33B.5 All salaries and other emoluments (but excluding leave entitlement) including tax and national insurance payments, contributions to retirement benefit schemes, allowances, expenses and bonus and commission payments relating to employees providing services under the Contract and appertaining to the period up to the expiry or termination of the Contract (or the Operating Sub-contract, as the case may be) shall be borne by the Contractor and all necessary apportionments shall be made.

33B.6 Within fourteen (14) Days prior to the TUPE Transfer Date the Contractor shall provide to the Authority and the New Contractor a complete and accurate list of all Transferring Employees.

33B.7 Within fourteen (14) Days following the TUPE Transfer Date, the Contractor shall provide to the Authority and the New Contractor in writing Final Pay Details of the Transferring Employees.

33B.8 From the date of being given notice of the Authority's intention to re-tender the Services being performed under the Contract (and the Operating Sub-contract) or where notice terminating the Contract and Operating Sub-contract has been given, the Contractor shall (and shall ensure that the Operating Sub-contractor shall) promptly notify the Authority:

- (a) of the period of notice given by the Contractor or received from any employee performing any part of the Services regardless of when such notice is to take effect;
- (b) of the termination, for whatever reason of the employment of any employee performing any part of the Services; and
- (c) of any other change to any employee performing part of the Services and their terms and conditions of employment, the information set forth in Part 2 of Schedule R and the Relevant Personnel Documentation.

33B.9 The Contractor warrants that it shall satisfy all of its obligations up to the TUPE Transfer Date in respect of all salaries and other emoluments, tax and national insurance payments, contributions to retirement benefit schemes and bonus arrangements in respect of each Transferring Employee provided that (i) where the same are due to be paid before the TUPE Transfer Date in respect of the period after the TUPE Transfer Date, the same shall be paid by the Contractor who shall forthwith on demand be indemnified in respect thereof by the Authority; and (ii) where the Transferring Employees are to be paid after the TUPE Transfer Date in respect of the period up to and including the TUPE Transfer Date the Authority forthwith on demand shall be indemnified by the Contractor in respect of this payment.

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

- (a) any claim against the Authority, or the New Contractor nominated by the Authority, by any Transferring Employee included on the list provided in

accordance with Clause 33B.6 so far as it relates to any act or omission of the Contractor prior to the TUPE Transfer Date;

- (b) any claim against the Authority or the New Contractor by any Transferring Employee engaged in providing the Custodial Services under this Contract whose name is not included on the list provided by the Contractor pursuant to Clause 33B.6;
- (c) any claim against the Authority or the New Contractor by any Person engaged in providing the Custodial Services under this Contract who is not a Transferring Employee that they were employed immediately prior to the TUPE Transfer Date in the provision of the Services and that accordingly their employment has been transferred to the New Contractor provided that the New Contractor terminates their employment within ten (10) Days of becoming aware of that Person's claim.

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

33B.12 For the purposes of this Clause 33B (TUPE Transfers); Final Pay Details means in respect of each of the Transferring Employees the following: copy pay slip data for the final month, cumulative pay for tax and pension purposes, cumulative tax paid, tax code, voluntary deductions from pay, bank/building society account details for payroll purposes; TUPE Transfer Date means the date of termination or expiry of this Contract; Transferring Employees means those employees of the Contractor or any Sub-contractor who are at the TUPE Transfer Date employed under a contract of service or apprenticeship or otherwise in the relevant part of the undertaking which transfers on the termination or expiry of this Contract pursuant to TUPE or the Acquired Rights Directive EEC 187/77 or otherwise to the New Contractor; Relevant Personnel Documentation means all documents, manuals, codes, handbooks, procedure guides, publications and agreements (including collective agreements) that relate to the Transferring Employees' terms and conditions of employment and benefits; New Contractor means the Person nominated by the Authority to undertake the services substantially the same as the Services after the expiry or termination of this Contract.

34. The Controller

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

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

35. Monitoring and Inspection

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

Ombudsman, the Independent Monitoring Board, and any other statutory, regulatory or other properly interested body, including relevant international bodies.

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

35.3 The Authority may require periodic reviews of the Contractor's operating procedures (including, for the avoidance of doubt, the Operational Proposals), emergency and contingency procedures, public relations procedures and staff handbook. In order to carry out such reviews, the Authority may require the aforesaid procedures to be put into operation by the Contractor in order to test their effectiveness. Such a requirement will not be invoked so as to compromise the security and control of the Prison. The Authority may require the Contractor to make such alterations or amendments to the said procedures and staff handbook as it thinks fit, save that where the alterations give rise to a change of service under Clause 9 (Change to Services Required), the provisions of Clause 39 (Variation of Price) shall apply.

35.4 Copies of each Daily Report shall be provided by the Contractor to the Controller by nine (9) am on the Day following the Day to which such Daily Report refers. Full details of the Daily Report shall be input into the Prison's computer network within one (1) hour of the Prisoners' lock-up and the details accessed after that time shall constitute the Daily Report in respect of the Day preceding that lock-up. The Controller shall be entitled at any time to inspect the Prison and its operation to ensure that the information contained in any Daily Report is correct. If any of the matters contained in any Daily Report are found to be incorrect, the provisions of paragraph 18 of Schedule E shall apply.

36. Escort Arrangements

36.1 Unless the Authority otherwise notifies the Contractor in writing, the Contractor will provide a Prisoner Escort Service in accordance with Part 3 of Schedule D, for which the Contractor will be entitled to a fee as set out in paragraph 19 of Schedule E and payable in accordance therewith.

36.2 The Contractor shall co-operate with all reasonable requirements of any other Person providing a Prisoner Escort Service to the Prison, but subject at all times to the maintenance of the security and control at the Prison.

37. Visitors

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

PART VI – FINANCE

38. Price

38.1 The Authority shall pay to the Contractor the Contract Price which shall be the aggregate of, and calculated by reference to, the relevant formulae at paragraphs 9 and 17 of Schedule E, expressed in pounds sterling per Day, subject to any variations of the Contract Price as provided for in Clause 9 (Change to Services Required) and Clause 39 (Variation of Price) (which for the avoidance of doubt shall not include any direct reimbursement by the Authority of specific costs or expenses).

38.2 Without prejudice to the Authority's obligations pursuant to Clauses 9.3 and 39.2, no payment of the Contract Price shall become due to the Contractor until the earlier of:

- (a) the date upon which the Authority first makes use of Available Prisoner Places provided by the Contractor under Clause 22.1 (Phase-in Period); and
- (b) the date falling on or after COD+7 upon which the Contractor first provides twenty five (25) Available Male Prisoner Places in accordance with the Phase-in Timetable.

38.3 Payment of the Contract Price shall be claimed monthly and in arrears, by means of an invoice, together with such other documentation supporting the invoice as the Authority may reasonably require, submitted to the Contracts and Procurement Unit of HM Prison Service or its successor, and shall be subject to any reduction pursuant to the terms hereof. The first such invoice and documentation shall be due on the last Day of the month in which the Contractor provides twenty five (25) Available Male Prisoner Places to the Authority.

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

38.5 Interest shall accrue on any amounts due under this Contract which are not paid on the due date at the rate of LIBOR from time to time plus one per cent. (1%) on the unpaid amount from the due date until the date of payment thereof.

38.6 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to this Clause 38 (Price):

38.6.1 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; and

38.6.2 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.

38.7 Within ten (10) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to Clause 38.6.1, 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:

38.7.1 to retain on a permanent basis any amounts withheld pursuant to Clause 38.6.2; and

38.7.2 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 rate of interest provided for in Clause 38.5 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.

38.8 If the Contractor responds (pursuant to Clause 38.7) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to Clause 38.6.1, the matter or matters in question shall be determined pursuant to Clause 72 (Dispute Resolution).

38.9 If the determination of any dispute conducted pursuant to Clause 38.8 shows that:

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

38.9.2 the Contractor has claimed under Clause 38 (Price) 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 rate of interest provided for in Clause 38.5 calculated 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 over-payment 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.

38.10 The Authority shall pay to the Contractor in accordance with Schedule U (Prison Expansion Works Fee) the Prison Expansion Works Fee. For the avoidance of doubt, the Parties agree that the provisions of Clauses 38.6 to 38.9 (inclusive) shall not apply to the Prison Expansion Works Fee.

39. Variation of Price

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

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

- (i) where such Prison Legislation does not result in an obligation on the Contractor to incur any Capital Expenditure, the Contractor may notify the Authority of such alteration in its costs and request that an adjustment be made to the Contract Price. Following such notification, the parties shall endeavour to agree such adjustment as soon as practicable in accordance with the following provisions:
 - (a) the Contractor shall provide the Authority with a quotation to decrease or increase the Contract Price;
 - (b) the Contractor shall submit all such information referred to in Clause 60 (Contractor's Records) as the Authority may reasonably require together with break-downs of price and supporting material as the Authority may reasonably require including wage rates, suppliers' costs, overhead and profit calculations, for the purpose of satisfying the Authority that the proposed revised price is fair and reasonable; or
- (ii) where such Prison Legislation results in an obligation on the Contractor to incur any Capital Expenditure, the provisions in Clauses 9.2 and 9.3 shall apply, save that any reference to a Notice of Change shall be deemed to include Prison Legislation for the sole purpose of this Clause 39.2(ii).

39.3 When any Security Technology Change arises or comes to the attention of the Contractor, the Contractor shall as soon as reasonably practicable notify the Authority of such matter and shall provide to the Authority all information in its knowledge or possession necessary to enable the Authority to evaluate the position. Upon such notification, or if the Authority reasonably believes that a Security Technology Change has occurred or should occur, the Authority shall be entitled to a reduction of the Contract Price equal to seventy five per cent. (75%) of the aggregate of the reduction in

the Contractor's costs which has resulted or would result from such Security Technology Change, and may if it wishes serve notice upon the Contractor, whereupon:

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

In the event that any Security Technology Change which is yet to be put in place at the time of the notification referred to in this Sub-Clause requires any Capital Expenditure on the part of the Contractor before it can be put in place in the Prison, Clause 9.2 (but for the avoidance of doubt not Clause 9.7) shall apply in respect of such notification as though it were a Notice of Change under Clause 9.1. To the extent that the Security Technology Change has been developed by the Contractor or the Operating Sub-contractor, the amount of the reduction in the Contract Price shall only come into effect after a sufficient period following the date the Contractor effects, or is obliged to effect, the Security Technology Change within the Prison to allow the Contractor to recover the Development Cost so that the amounts of the Contract Price will only alter pursuant to this Clause once the difference between the amount the Contractor receives from the Authority and the amount it would have received if the reduction in Contract Price had come into immediate effect equals the amount of the Development Cost. For the purpose of this Clause, the **Development Cost** shall be the costs reasonably incurred by the Contractor or the Operating Sub-contractor in developing the Security Technology Change, such costs to be divided by the number of prisons operated in the United Kingdom by the Contractor and the Operating Sub-contractor or their respective Affiliates in which the Security Technology Change is to be, or is reasonably capable of being, installed to produce a similar costs reduction and to be evidenced in reasonable detail in writing to the Authority.

To the extent the Contractor has or is reasonably expected to suffer redundancy costs in connection with any Security Technology Change giving rise to a reduction in the Contract Price under this Clause, the reduction in the Contract Price shall only come into effect after a sufficient period following the date the Contractor effects, or is obliged to effect, the Security Technology Change within the Prison to allow the Contractor to recover the redundancy costs, so that the Contract Price will only reduce pursuant to this Clause once the difference between the amount the Contractor receives from the Authority and the amount it would have received if the reduction of the Contract Price had come into immediate effect equals the amount of those redundancy costs.

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

- (a) any changes in Wage Costs shall be reflected by an appropriate change in the amount of the Indexed Costs Fee and by the appropriate change in the amount of the APP Fee to reflect the proportion of such amounts which are attributable to Wage Costs;
- (b) any changes in any financing costs resultant upon the financing of any Capital Expenditure pursuant to Clause 9.2 shall be reflected by an appropriate change in the amount of the Fixed Fee (taking into account the repayment schedule of such financing);
- (c) any changes in the costs of the Contractor or the Sub-contractors other than in respect of the matters referred to in (a) and (b) above shall be reflected by an appropriate change in the amount of the Indexed Fee and by appropriate changes in the amount of the APP Fee to reflect the proportion of such amounts which are not attributable to Wage Costs;
- (d) without prejudice to Clause 23 (Full Operation Date) and except to the extent that Clause 40 (Available Prisoner Places) applies, if the Authority requires a reduction in the number of Available Prisoner Places to be provided by the Contractor pursuant to Clause 9 (Change to Services Required), appropriate changes will be made to the Contract Price such that:
 - (i) the Contractor's existing and ongoing payment and scheduled repayment obligations under the Financing Agreements are fully reflected (provided that if prior to the relevant variation of price a payment breach has occurred and is continuing or is reasonably forecast, then this subparagraph (i) should be applied so as to result in the Forecast Debt Service Cover Ratio reasonably forecast immediately prior to the date of the variation being maintained);
 - (ii) the Contractor's obligation to comply with the financial covenants contemplated by the Credit Agreement at 14 February 2003 shall be reflected so as to provide the Banks with at least the same Loan Life Cover Ratio and Forecast Debt Service Cover Ratio as are reasonably forecast immediately prior to the date of the variation for the remaining term of their facilities;
 - (iii) the Shareholders' actual real post-tax percentage equity return is preserved;
 - (iv) the Operating Sub-contractor's actual percentage operating margin is preserved; and
- (e) any benefit or saving accruing to the Contractor, the Operating Sub-contractor or any of their Affiliates at the time of variation of the Contract Price at any other prison(s) or other type of custodial facility operated by them in the United Kingdom as a direct result of the matter giving rise to the change in the Contract Price shall be taken into account.

39.5 In respect of any dispute relating to a price review or amount payable under this Clause, Clause 72 (Dispute Resolution) shall apply.

39A. Not Used.

40. Available Prisoner Places

40.1 For the period commencing with the Actual Opening Date and ending with the Relevant Date, the Authority shall pay for all Available Prisoner Places on an Availability

Basis in accordance with the formula set forth in paragraphs 9 and/or 17 of Schedule E as applicable.

40.2 At any time on or after the Relevant Date up to the Actual Increased Capacity Date, the Authority shall pay for four hundred and fifty five (455) Available Male Prisoner Places on an Availability Basis and the remaining twenty five (25) Available Male Prisoner Places on a Utilised Basis in accordance with the formula set forth in paragraph 9 of Schedule E for the remainder of the Contract Term. From and including the Actual Increased Capacity Date, the Authority shall pay for seven hundred and forty seven (747) Available Male Prisoner Places on an Availability Basis and the remaining twenty five (25) Available Male Prisoner Places on a Utilised Basis in accordance with the formula set forth in paragraph 9 of Schedule E for the remainder of the Contract Term.

40.3 At any time on or after the Relevant Date, the Authority shall pay for three hundred and forty five (345) Available Female Prisoner Places on an Availability Basis and the remaining fifteen (15) Available Female Prisoner Places on a Utilised Basis in accordance with the formula set forth in paragraph 17 of Schedule E for the remainder of the Contract Term.

40A. Additional Prisoner Places

40A.1(a) On and from the Full Operation Date up to the Actual Increased Capacity Date and without prejudice to its obligation under Clause 23 (Full Operation Date) to provide Available Prisoner Places, the Contractor shall make available to the Authority up to one hundred and forty four (144) Male Additional Prisoner Places and thirty six (36) Female Additional Prisoner Places in accordance with this Clause 40A.

(b) The Additional Prisoner Places shall be divided into three (3) bands (**APP Bands**) as set out in tables 1 and 2 below, where APP Band A is the lowest APP Band (i.e. it represents the first forty-eight (48) of the one hundred and forty four (144) Male Additional Prisoner Places and the first twelve (12) of the thirty six (36) Female Additional Prisoner Places) and APP Band C is the highest APP Band:

Table 1 – (Male)

APP Band	Maximum Number of Additional Prisoner Places in APP Band	Start of APP Band (Prisoner Places)	End of APP Band (Prisoner Places)	Minimum Contracted Capacity (Prisoner Places)	Aggregate Number of Additional Prisoner Places
A	48	481	528	480	48
B	48	529	576	528	96
C	48	577	624	576	144

Table 2 – (Female)

APP Band	Maximum Number of Female Additional Prisoner Places in APP Band	Start of APP Band (Prisoner Places)	End of APP Band (Prisoner Places)	Minimum Contracted Capacity (Prisoner Places)	Aggregate Number of Additional Prisoner Places

A	12	361	372	360	12
B	12	373	384	372	24
C	12	385	396	384	36

40A.1(c) On and from the Actual Increased Capacity Date and without prejudice to its obligations under **Clause 23A (Actual Increased Capacity Date)** to provide Available Prisoner Places, the Contractor shall continue to make available to the Authority up to one hundred and seventy two (172) Male Additional Prisoner Places and thirty six (36) Female Additional Prisoner Places in accordance with this **Clause 40A (Additional Prisoner Places)**. The Female Additional Prisoner Places shall be divided into three (3) bands (APP Bands) as set out in table 2 above, where APP Band A is the lowest APP Band (i.e. it represents the first twelve (12) of the thirty six (36) Female Additional Prisoner Places) and APP Band C is the highest APP Band. The Male Additional Prisoner Places shall be divided into four (4) bands (APP Bands) as set out in table 3 below, where APP Band A is the lowest APP Band (i.e. it represents the first forty eight (48) of the one hundred and seventy two (172) Male Additional Prisoner Places) and APP Band D is the highest APP Band:

Table 3 (Male)

APP Band	Maximum Number of Additional Prisoner Places in APP Band	Start of APP Band (Prisoner Places)	End of APP Band (Prisoner Places)	Minimum Contracted Capacity (Prisoner Places)	Aggregate Number of Additional Prisoner Places
A	48	773	820	772	48
B	48	821	868	820	96
C	48	869	916	868	144
D	28	917	944	916	172

40A.2 Subject to Clause 40A.4, if the Authority requires Additional Prisoner Places, it shall give the Contractor thirty (30) Days written notice of the APP Band or Bands it requires and the date from which such APP Band or Bands is or are required. The Contractor shall make available to the Authority the Aggregate Number of Additional Prisoner Places applicable to the highest APP Band so notified from the date specified in the notice (or in any notice amending such notice (an **Amendment Notice**)) until the date it is no longer obliged to make them available in accordance with Clause 40A.3 (the **Relevant Available Period**). For the avoidance of doubt, any Amendment Notice must be given in writing thirty (30) Days before the date the APP Band or Bands is or are required.

40A.3 Subject to Clause 40A.4, if the Authority no longer requires any APP Band it has requested under Clause 40A.2, it may give the Contractor written notice thereof and the Contractor's obligation to provide such APP Band shall cease thirty (30) Days after the date of such notice.

40A.4 If the Authority requires any APP Band under Clause 40A.2, APP Band A shall be deemed required for a minimum period of twelve (12) months from the date specified in the notice (**Minimum Period**); in any event the Authority will give the Contractor three (3) months prior written notice of the date on which APP Band A is no longer required (such date to fall no earlier than the end of the Minimum Period) and the Contractor's obligation to make APP Band A available shall cease on such date.

40A.5 The Contractor shall not be obliged to make available an Additional Prisoner Place under any of APP Bands if (a) accepting a Prisoner for that Additional Prisoner Place would prejudice the Contractor's ability to maintain security and control within the Prison or (b) in requesting that a Prisoner occupy such Additional Prisoner Place, the Authority is not acting in accordance with its own guidelines for placing Prisoners in its own prisons.

40A.6 Subject to Clause 23.1, the notice periods required under Clauses 40A.2 and 40A.4 shall not apply in the case of emergencies; in such cases, the Authority may require Additional Prisoner Places within any of APP Bands to be provided by the Contractor with immediate effect, but will afford the Contractor such assistance as is reasonably required in the circumstances (including, if appropriate, a temporary waiver of any relevant obligations of the Contractor pursuant to Schedule D).

40A.7 The APP Bands shall be used in the order A, B, C and cease to be used in the order C, B, A and notices pursuant to Clauses 40A.2 and 40A.3 shall be required to follow such order (although consecutive APP Bands may be selected or cease to be required simultaneously).

40A.8 The Authority shall pay the Contractor in accordance with paragraphs 7 and 15 of Schedule E, as applicable, for each Additional Prisoner Place required.

41. Plans and Performance Measures

41.1 At least six (6) months prior to the Estimated Opening Date, the Contractor shall provide a project implementation plan to operate the Prison which shall cover the period from the Contractual Opening Date up to six (6) months after the Contractual Opening Date. On or before six (6) months after the Contractual Opening Date, the Contractor shall provide a strategic development plan to operate the Prison in respect of the Custodial Service to cover the Year commencing on the Full Operation Date. The Contractor shall be under a duty to meet the requirements and targets contained in the project implementation plan in respect of the operation of the Prison and the strategic development plan for achieving continuing improvements to the Custodial Service.

41.1A The Contractor shall provide an update to the current strategic development plan to operate the Prison, including the Prison Expansion, at least six (6) months prior to the Contractual Increased Capacity Date.

41.2 At the end of the first strategic development plan and every five (5) Years thereafter, the Contractor shall consult with the Authority and submit such further strategic development plans to the Authority for its approval as the Authority may reasonably require.

41.3 The strategic development plan will propose changes to the Services to meet the Authority's current key operational and regime requirements. The strategic development plan will be supported by a resource plan indicating how the Contractor intends to achieve changes outlined. It will be at the Authority's discretion to approve implementation of all (or some) parts of the strategic development plan and Clause 9 (Change to Services Required) may apply.

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

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

41.6 The Contractor shall have no recourse to Clause 39 (Variation of Price) as a result of any obligation imposed by this Clause 41.

41.7 Without prejudice to the Authority's rights under Clause 46 (Voluntary Termination) and Clause 45 (Rectification and Termination for Default), the amount payable by the Authority for the Services shall be reduced in the event that Performance Measures arise such that the number of Performance Points accrued exceeds the Baseline Total during the relevant Performance Quarter or Performance Year. The amount of the reduction shall be calculated for each Performance Quarter or Performance Year in accordance with the relevant formula at paragraphs 9 and 17, as applicable, of Schedule E (**Formula for Daily Payment**), and shall be deducted from the amount otherwise payable in respect of that Performance Quarter or Performance Year.

41.8 In the event of:

- (a) the escape of any Prisoner which for the purposes of this Clause 41.8(a) shall mean when such Prisoner overcomes a substantial barrier such as the perimeter wall of the Prison (a **Prison Escape**), the Contractor shall be liable to make a payment to the Authority of [REDACTED] per Prisoner; or
- (b) a Prisoner being escorted outside the Prison, which Prisoner is no longer within the custody of the Contractor for any period exceeding fifteen (15) minutes (an **Escort Escape**), the Contractor shall be liable to make a payment to the Authority of [REDACTED] per prisoner; or
- (c) a Prisoner being escorted outside the Prison, which Prisoner is no longer within the custody of the Contractor for any period up to and including fifteen (15) minutes (a **Transitory Escape**), the Contractor shall be liable to make a payment to the Authority of [REDACTED] per Prisoner.

For the purposes of this Clause 41.8, the maximum amount deductible for one incident will be [REDACTED]. The amounts specified in Clauses 41.8 and 41.9 shall be indexed using the formula in paragraph 6(a) of Schedule E (**Price and Payment**), using the Retail Price Index (excluding mortgages) (RPIX). Any payments due to the Authority in accordance with Clauses 41.8 and 41.9 shall be made as soon as reasonably practicable, but in any event within ten (10) Days.

41.9 In the event of:

- (a) one or more male Prisoners and one or more female Prisoners being present in the same enclosed space, or in adjacent enclosed spaces which are not separated by a locked solid barrier, whether or not any one or more are supervised, then the Contractor shall be liable to make a payment to the Authority of [REDACTED] per incident. For the purposes of this Clause 41.9:
 - (i) an enclosed space shall mean any indoor or outdoor area which can be secure in relation to any other enclosed area including, but not limited to, rooms, corridors, yards and Prisoner Cells; and
 - (ii) all occurrences of one or more male Prisoners and one or more female Prisoners being present in the same enclosed space or adjacent enclosed spaces, arising out of the same event or circumstance shall constitute one incident.
- (b) any physical contact between one or more male Prisoners and one or more female Prisoners, whether or not any one or more are supervised, the Contractor shall be liable to make a payment to the Authority of [REDACTED] per incident.

41.10 The Contractor shall be under a duty to inform the Authority of any Performance Measure as soon as practicable and, in any event, within twenty four (24) hours of its occurrence.

41.11 The provisions of Schedule Z shall have effect in respect of any Excusing Cause.

42. Value Added Tax

42.1 The Contract Price together with any other payments due from the Authority to the Contractor hereunder (including without limitation under Part VII hereof) shall be exclusive of Value Added Tax, and all reference to fees and prices in this Contract shall be regarded as exclusive of Value Added Tax. The Authority shall pay to the Contractor a sum equal to the Value Added Tax chargeable on the value of the provision of the obligations of the Contract, in addition to the Contract Price.

42.2 Any invoice or other request for payment of monies due to the Contractor under the Contract shall be in the same form and contain the same information as if the same were a tax invoice for the purpose of the regulations made under the Value Added Tax Act 1994.

42.3 The Contractor shall, if so requested by the Authority, furnish such information as may be reasonably required by the Authority as to the amount of Value Added Tax chargeable in accordance with the Contract, and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of Clause 43 (Recovery of Sums Due).

42.4 If the Contract Price is increased or decreased, or if a sum of money shall become due for payment by or to the Authority, any monies thereby payable shall have added to them a sum equal to any appropriate adjustment in respect of Value Added Tax due on the adjusted value of the Contract or the sum of money due.

42.5 Any payment to the Contractor by the Authority pursuant to the provisions of Clause 49 (Payment for Termination) or 52.3 shall be regarded as exclusive of Value Added Tax and the Authority shall pay to the Contractor in addition to the payment a sum equal to any Value Added Tax thereon.

43. Recovery of Sums Due

43. Whenever, under the Contract, any sum or sums of money shall be due and payable by the Contractor to the Authority, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract, or under any other contract which the Contractor has with the Authority or with the Crown, provided that the Authority agrees not to set-off any amounts due from the Contractor against the obligations to pay a termination sum under Clause 46 (Voluntary Termination), Clause 47 (Unilateral Termination), Clause 48 (Force Majeure), Clause 51.4 (Corrupt Gifts), Clause 56.3 (Facilities for Authority) and Clause 5.19 (Insurance), except to the extent that the amount by which such termination sum is greater than the Lender Liabilities.

PART VII – TERMINATION

44. Default by Contractor

44.1 Each and any of the following events shall constitute an Event of Default on the part of the Contractor entitling the Authority, if it so elects, to terminate the Contract in accordance with the terms hereinafter set out:

- (a) any failure (except of a type falling within (b), (c), (d) or (f) below or in connection with the execution of the Works) by the Contractor to perform, keep, observe, meet or comply with any of the terms of the Contract where such failure occurs after the Engineer's Declaration and:
 - (i) has a material effect on the performance of the Custodial Service as a whole; or

- (ii) does not give rise to Performance Measures or otherwise constitute an Event of Default but is a failure which has continued or recurred within six (6) months after the date of a Final Notice (as defined below) served on the Contractor; or
- (iii) by itself (whether or not remedied), casts serious doubt on the competence or suitability of the Contractor to provide the Services; or
- (iv) in addition to any other failure or failures (whether or not remedied), which have occurred over a rolling five (5) Year period casts serious doubt on the competence or suitability of the Contractor to provide the Services (including any failure or failures by the Contractor to comply with its obligations under the Operating Model);

For the purposes of (ii) above:

- (w) If a failure which does not give rise to Performance Measures or does not otherwise constitute an Event of Default has continued or occurred persistently, the Authority may serve a notice (a **First Notice**) on the Contractor duly signed by a Named Representative of the Authority, specifying that it is a First Notice as defined in this Clause 44.1(a) of this Contract, giving reasonable details of that failure and stating that such failure is a failure which (if it continues, or recurs persistently) may result in a termination of this Contract.
 - (x) If, following the service of a First Notice, the failure specified therein has continued, or recurred persistently following the date falling thirty (30) Days after the date of service of the First Notice and the Operating Sub-contractor has not been replaced by an unrelated, independent and experienced Operator, then the Authority may serve another Notice (a **Final Notice**) on the Contractor duly signed by a Named Representative of the Authority and specifying that it is a Final Notice, that the failure specified has been the subject of a First Notice served within the twelve (12) month period prior to the date of service of the Final Notice and that if such failure continues or recurs within the six (6) month period following the date of service of the Final Notice, the Contract may be terminated.
 - (y) No Final Notice may be served pursuant to this Clause unless a First Notice has been served in respect of the same failure within the twelve (12) month period preceding the date of service of the Final Notice.
 - (z) A First Notice may not be served in respect of any failure in respect of which a separate First Notice has already been served until a period of twelve (12) months has elapsed since the date of service of the previous First Notice.
- (b) failure by the Contractor to pay any amount due from it hereunder (except for liquidated damages payable under Clause 25 (Liquidated Damages) to which Clause 44.1(f) applies) within fifteen (15) Business Days of a written demand which refers to either a previous invoice or other written demand for the same sum which is unpaid (unless the Relevant Amount is disputed in good faith);
 - (c) failure by the Contractor to obtain the Engineer's Declaration on or before the date falling nine (9) months after the Contractual Opening Date;
 - (d) failure to provide twenty five (25) Available Male Prisoner Places on or before the date falling four (4) months after the date upon which the Engineer's Declaration is obtained unless resulting from a breach by the Authority of its obligations

hereunder or resulting from a Relevant Event where the Contractor is using all reasonable endeavours to provide such Available Prisoner Places;

- (e) failure to provide all four hundred and eighty (480) Available Male Prisoner Places and three hundred and sixty (360) Available Female Prisoner Places and any Additional Prisoner Places in accordance with Clause 40A (Available Prisoner Places) during the period up to but not including the Actual Increased Capacity Date for a continuous period exceeding thirty (30) Days except (i) in circumstances where Clause 48 (Force Majeure) applies, or (ii) where:
 - (x) such failure results from matters entirely outside the Contractor's control (including a breach by the Authority of its obligations hereunder); and
 - (y) the Contractor is using best endeavours to restore all such Prisoner Places as soon as practicable;
- (f) failure to pay any liquidated damages in accordance with Clause 25 (Liquidated Damages) on or before the date falling thirty (30) Days after the due date (except where such failure results from a technical failure in the banking system);
- (g) if:
 - (i) a court makes an order that the Contractor be wound up; or
 - (ii) any receiver or manager is appointed in respect of the Contractor (other than for the purpose of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the receiver is appointed by the Banks under the Financing Agreements); or
 - (iii) a meeting of creditors of the Contractor passes or a meeting of any class of shareholders of the Contractor is convened for the purposes of considering a resolution for the winding-up of the Contractor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority or where the meeting is convened by the Banks under the Financing Agreements); or
 - (iv) a petition for an administration order is presented and such petition is not withdrawn within thirty (30) Days (except when it is presented by the Banks in the manner contemplated in the Direct Agreement); or
 - (v) a petition is presented or other steps are taken for the purposes of the winding up of the Contractor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority or as a result of action being taken by the Banks in exercise of their rights under the Financing Agreements as contemplated in the Direct Agreement) and any such petition is not, or such other steps are not discharged or withdrawn within thirty (30) Days of receiving notice of such petition; or
- (h) if distress or execution is levied against all or a substantial part of the Contractor's assets and is not paid or discharged within twenty eight (28) Days, or a judgment against the Contractor in excess of [REDACTED] remains unsatisfied for more than twenty eight (28) Days, except in either case where the Contractor has lodged a bona fide appeal against such levy or judgment;
- (i) if a change of control of the Contractor (as defined in Clause 50 (Change of Control)) occurs (without the consent of the Authority and except as otherwise permitted in Clause 50); or

- (j) an Event of Default as defined in the Credit Agreement occurs (unless resulting from a breach by the Authority of its obligations hereunder) and the Banks (or a requisite majority of the Banks or the Agent) have accelerated all or part of the indebtedness outstanding pursuant to the Financing Agreements (except where the Contractor has demonstrated within ten (10) Days of such acceleration to the satisfaction of the Authority that it is able to continue to comply with its obligations under the Contract); or
- (k) subject to Clauses 5.14, 5.16, 5.17, 5.18, 5.19, 5.20 and 5.21 (Unavailability), any failure by the Contractor to effect and maintain insurance in accordance with its obligations under Clause 5 (Insurance);
- (l) failure to provide all seven hundred and seventy two (772) Available Male Prisoner Places and three hundred and sixty (360) Available Female Prisoner Places and any Additional Prisoner Places in accordance with Clause 40A (Available Prisoner Places) on and from the Actual Increased Capacity Date for a continuous period exceeding thirty (30) Days except (i) in circumstances where Clause 48 (Force Majeure) applies or (ii) where:
 - (x) such failure results from a matter entirely outside the Contractor's control (including a breach by the Authority of its obligations hereunder); and
 - (y) the Contractor is using its best endeavours to restore all such Prisoner Places as soon as practicable.

44A. Prison Expansion Default

- 44A.1 Without prejudice to any other rights of the Authority to claim damages in respect of any breach of the Contract by the Contractor, each and any of the following events shall constitute a Prison Expansion Event of Default on the part of the Contractor entitling the Authority, if it so elects, to terminate the Prison Expansion Works in accordance with the terms hereinafter set out:
- (a) in respect of the Prison Expansion Works, the Contractor does not perform the Prison Expansion Works for a continuous period of forty five (45) Business Days or for a period of one hundred and thirty five (135) Days (whether continuous or not) at any time after the date of the Amending Agreement, unless such failure arises as a result of a breach by the Authority of its obligations under this Contract or a Prison Expansion Relevant Event;
 - (b) failure to obtain the Engineer's Prison Expansion Declaration on or before the Long Stop Date; and
 - (c) failure to provide thirty (30) Available Prisoner Places in the Prison Expansion on or before the date falling six (6) months after the date upon which the Engineer's Prison Expansion Declaration is obtained unless resulting from a breach by the Authority of its obligations hereunder or resulting from a Prison Expansion Relevant Event where the Contractor is using all reasonable endeavours to provide such Available Prisoner Places.

45. Rectification and Termination for Default

45.1 Where an Event of Default has occurred by reason of any matter occurring which is referred to in Clauses 44.1(a)(i), (iii), 44.1(e) or 44.1(l), the Authority shall (if the breach or matter giving rise to the breach is capable of remedy) give notice to the Contractor in writing (a **Rectification Notice**), and the Contractor shall either propose a programme of rectification or remedy such Event of Default on or before the date falling

fifteen (15) Days (or seven (7) Days in the case of a matter occurring which is referred to in Clause 44.1(a)(iii)) after the date of such Rectification Notice (the **Rectification Period**).

45.2 Where no proposal for rectification is received by the Authority within the Rectification Period, but the Event of Default has been remedied within the Rectification Period, no further action will be taken and the Contract will continue.

45.3 Where a proposal for rectification is received by the Authority within the Rectification Period and is approved by the Authority (such approval not to be unreasonably withheld or delayed save that in the case of a matter occurring which is referred to in Clause 44.1(a)(iii), the Authority shall have absolute discretion in approving a proposal for rectification), the Contractor shall carry out such approved rectification and remedy the default within such period comprised in the proposal (not to exceed forty five (45) Days from the date of the Rectification Notice unless the Authority otherwise agrees, having regard to any consequential increase in the amount of Lender Liabilities), save that the Authority may subsequently extend the said period if it thinks fit. At the expiry of such period, if the Contractor has remedied the Event of Default, no further action will be taken and the Contract will continue. If at the expiry of such period the Contractor has failed to carry out such approved rectification to the satisfaction of the Authority, the Authority shall notify the Contractor in writing of such failure and (subject to the provisions of the Direct Agreement) may terminate the Contract in accordance with Clause 45.6.

45.4 If an Event of Default occurs under Clauses 44.1(a)(i), (iii), 44.1(e) or 44.1(l) which has not been rectified or in respect of which the Authority does not approve the proposal for rectification, or if no proposal for rectification is received by the Authority within the Rectification Period and that Event of Default has not been remedied, or if the breach in question is incapable of remedy, then the Authority shall so notify the Contractor and may proceed to terminate the Contract in accordance with Clause 45.5.

45.5 Where an Event of Default (other than under Clauses 44.1(a)(i), (iii), 44.1(e) or 44.1(l)) has occurred or in the circumstances set out in Clause 45.4, the Authority may proceed to terminate the Contract by giving notice in writing of its intention to terminate the Contract (a **Termination Notice**) to the Contractor, receiver, liquidator, or any Person in whom the Contract may be vested, specifying the Termination Date which is at least ninety (90) Days after the date of the Termination Notice or, in the circumstances set out in Clause 45.4, at least one hundred and twenty (120) Days after the Rectification Notice served in accordance with Clause 45.1, save that in the case of a matter occurring which is referred to in Clause 44.1(a)(iii) the Termination Date shall be at least ninety (90) Days after the Rectification Notice. Subject to Clause 45.7, the Contract shall terminate on the Termination Date and the termination shall take effect in accordance with the provisions of Clause 49 (Payment for Termination), Clause 54 (Consequential Arrangements on Termination) and the Direct Agreement.

45.6 If, following approval of a proposal for rectification under Clause 45.3, the Contractor fails to carry out such approved rectification to the satisfaction of the Authority, the Authority may proceed to terminate the Contract as set out in Clause 45.5, save that the Termination Notice must specify a Termination Date which is at least seventy five (75) Days after the date of the Termination Notice.

45.7 Where:

- (a) an Event of Default has occurred other than by reason of any matter occurring which is referred to in Clauses 44.1(a)(i), (iii); 44.1(e) or 44.1(l);
- (b) a Termination Notice has been served but the Termination Date has not occurred; and

- (c) the Authority is satisfied that such Event of Default has been remedied or in the case of the occurrence of an Event of Default under Clause 44.1(f), the Authority receives payment within seven (7) Days of the service of the Termination Notice, and the Authority is satisfied that the default or defaults that gave rise to such Event of Default are unlikely to recur,

then the Termination Notice shall be revoked in writing by the Authority without undue delay; provided that the Authority shall only be obliged to revoke two (2) Termination Notices pursuant to this Clause 45.7 and pursuant to Clause 4.5(b) of the Direct Agreement in any rolling five (5) Year period.

45.8 The Contractor acknowledges and agrees that unless the Authority decides otherwise each of the failures set out in Clauses 44.1(c) and (g)(i) shall (without limitation) be a breach that is incapable of remedy for the purposes of Clause 45.7.

45.9 Where a replacement Operating Sub-contractor is appointed in accordance with Clause 7 (Sub-contracting) of this Contract or the Direct Agreement, any revocation of a Termination Notice served in respect of a failure as set out in Clause 44.1(a)(ii) that has occurred during the five (5) Years preceding such appointment shall for the purposes of Clause 45.7 be disregarded.

45.10 For the avoidance of doubt, service by the Authority of any Rectification Notice, Termination Notice, First Notice or Final Notice, and/or any notice of revocation thereof pursuant to Clause 44 (Default by Contractor) or this Clause 45 shall be served by a Named Representative of the Authority.

45A. Prison Expansion Works Termination

45A.1 Where a Prison Expansion Event of Default has occurred by reason of any matter occurring which is referred to in Clauses 44A.1(a) (Prison Expansion Default), the Authority shall (if the breach or matter giving rise to the breach is capable of remedy) give notice to the Contractor in writing (a "Prison Expansion Works Rectification Notice"), and the Contractor shall either propose a programme of rectification or remedy such Prison Expansion Event of Default on or before the date falling fifteen (15) Days after the date of such Prison Expansion Works Rectification Notice (the "Prison Expansion Works Rectification Period").

45A.2 Where no proposal for rectification is received by the Authority within the Prison Expansion Works Rectification Period, but the Prison Expansion Event of Default has been remedied within the Prison Expansion Works Rectification Period, no further action will be taken and the Contract will continue.

45A.3 Where a proposal for rectification is received by the Authority within the Prison Expansion Works Rectification Period and is approved by the Authority (such approval not to be unreasonably withheld or delayed in the case of a breach which is capable of remedy), the Contractor shall carry out such approved rectification and remedy the default within such period comprised in the proposal (not to exceed forty five (45) Days from the date of the Prison Expansion Works Rectification Notice unless the Authority otherwise agrees, having regard to any consequential increase in the amount of Lender Liabilities), save that the Authority may subsequently extend the said period if it thinks fit. At the expiry of such period, if the Contractor has remedied the Prison Expansion Event of Default, no further action will be taken and the Contract will continue. If at the expiry of such period the Contractor has failed to carry out such approved rectification to the satisfaction of the Authority, the Authority shall notify the Contractor in writing of such failure and may terminate the Prison Expansion Works in accordance with Clause 45A.6 (Prison Expansion Works Termination).

45A.4 If a Prison Expansion Event of Default occurs under Clauses 44A.1(a) (Prison Expansion Default) which has not been rectified or in respect of which the Authority does not approve the proposal for rectification, or if no proposal for rectification is received by the Authority within the Prison Expansion Works Rectification Period and that Prison

Expansion Event of Default has not been remedied, or if the breach in question is incapable of remedy, then the Authority shall so notify the Contractor and may proceed to terminate the Prison Expansion Works in accordance with Clause 45A.5 (Prison Expansion Works Termination).

45A.5 Where a Prison Expansion Event of Default (other than under Clause 44A.1(a) (Prison Expansion Default)) has occurred or in the circumstances set out in Clause 45A.4 (Prison Expansion Works Termination), the Authority may proceed to terminate the Prison Expansion Works by giving notice in writing of its intention to terminate the Prison Expansion Works (a "Prison Expansion Works Termination Notice") to the Contractor, receiver, liquidator, or any Person in whom the Prison Expansion Works may be vested, specifying the Prison Expansion Works termination date (the "Prison Expansion Works Termination Date") which is at least ninety (90) Days after the date of the Prison Expansion Works Termination Notice or, in the circumstances set out in Clause 45A.4 (Prison Expansion Works Termination), at least one hundred and twenty (120) Days after the Prison Expansion Works Rectification Notice served in accordance with Clause 45A.1 (Prison Expansion Works Termination). Subject to Clause 45A.7 (Prison Expansion Works Termination), the Prison Expansion Works shall terminate on the Prison Expansion Works Termination Date and the termination shall take effect in accordance with the provisions of Clause 49 (Payment for Termination), Clause 54 (Consequential Arrangements on Termination).

45A.6 If, following approval of a proposal for rectification under Clause 45A.3 (Prison Expansion Works Termination), the Contractor fails to carry out such approved rectification to the satisfaction of the Authority, the Authority may proceed to terminate the Prison Expansion Works as set out in Clause 45A.5 (Prison Expansion Works Termination), save that the Prison Expansion Works Termination Notice must specify a Prison Expansion Works Termination Date which is at least seventy five (75) Days after the date of the Prison Expansion Works Termination Notice.

45A.7 Where:

- (a) a Prison Expansion Event of Default has occurred;
- (b) a Prison Expansion Works Termination Notice has been served but the Prison Expansion Works Termination Date has not occurred; and
- (c) the Authority is satisfied that such Prison Expansion Event of Default has been remedied and the Authority is satisfied that the default or defaults that gave rise to such Prison Expansion Event of Default are unlikely to recur,

then the Prison Expansion Works Termination Notice shall be revoked in writing by the Authority without undue delay; provided that the Authority shall only be obliged to revoke two (2) Prison Expansion Works Termination Notices pursuant to this Clause 45A.7 (Prison Expansion Works Termination) in any rolling five (5) Year period.

45A.8 The Contractor acknowledges and agrees that unless the Authority decides otherwise each of the failures set out in Clauses 44A.1(b) (Prison Expansion Default) and (c) (Prison Expansion Default) shall (without limitation) be a breach that is incapable of remedy for the purposes of Clause 45A.7 (Prison Expansion Works Termination).

45A.9 Not Used.

45A.10 For the avoidance of doubt, service by the Authority of any Prison Expansion Works Rectification Notice, Prison Expansion Works Termination Notice, First Notice or Final Notice, and/or any notice of revocation thereof pursuant to Clause 44A (Prison Expansion Default) or this Clause 45A (Prison Expansion Works Termination) shall be served by a Named Representative of the Authority.

45B. Prison Expansion Works Consequential Arrangements on Termination

45B.1 On termination of the Prison Expansion Works pursuant to Clause 45A (Prison Expansion Works Termination), the Contractor's obligations in respect of the Prison

Expansion Works and the provision of the Increased Capacity shall automatically cease (and any provisions relating to performance of the Prison Expansion Works and provision of the Increased Capacity shall be removed from this Contract) save where the Authority elects to undertake to the Contractor by way of written notice that it will step into and assume responsibility for the Contractor's obligations hereunder in respect of the carrying out and completion of the Prison Expansion Works and meeting the requirements for providing the Increased Capacity.

45B.2 Where the Authority does so elect to complete the Prison Expansion Works:

45B.2.1 the Contractor shall be relieved of its obligations under the Contract in respect of the carrying out of the Prison Expansion Works and meeting the requirements for providing the Increased Capacity;

45B.2.2 the Contractor shall comply with:

(a) all reasonable instructions of the Authority to ensure an orderly and efficient transfer of the Prison Expansion Works Areas to the Authority; and

(b) the process reasonably specified by and reasonable requirements of the Authority for the introduction of a third party to complete the Prison Expansion Works and provide the Increased Capacity, including any reasonable amendments to the terms of this Contract to ensure that the safe, secure and efficient running of the Prison in accordance with the terms of this Contract is not materially adversely affected;

45B.2.3 the provisions relating to the dates for delivery of the Increased Capacity shall be amended such that the Contractual Prison Expansion Opening Date, the Increased Capacity Phase-in Period Timetable and the Contractual Increased Capacity Date shall be such dates as the Authority shall determine from time to time, but shall otherwise remain in full force and effect; and

45B.2.4 the Authority shall give to the Contractor not less than sixty (60) Days written notice of the anticipated Actual Prison Expansion Opening Date.

45B.3 If the Authority makes an election pursuant to Clause 45B.2 (Prison Expansion Works consequential arrangements on Termination) and in each case:

(a) the performance by the Authority of the Contractor's obligations in respect of the Prison Expansion Works and the provision of the Increased Capacity; or

(b) notwithstanding the issue by the Independent Engineer of a certificate under Clause 26A (Engineer's Prison Expansion Declaration), any part of the Prison Expansion Works has not been completed in accordance with Part 2 of Schedule A (Design and Construction Specification - Prison Expansion Works), such non compliance,

interferes adversely with, or causes a failure of the performance of the Custodial Service and/or causes the occurrence of a Performance Measure and provided that the effect of such adverse interference is claimed within ten (10) Business Days of the date on which the Contractor became aware of such adverse interference, then (subject to Clauses 45B.4 (Prison Expansion Works consequential arrangements on Termination) and 45B.5 (Prison Expansion Works consequential arrangements on Termination)) to the extent such failure or occurrence of a Performance Measure arises as a result of such adverse interference:

45B.3.1 such failure by the Contractor to perform, and any poor performance of, any affected Custodial Service shall not constitute a breach of the provisions of this Contract by the Contractor;

45B.3.2 such interference shall be taken account of in measuring the performance of any affected Custodial Service in accordance with this Contract; and

45B.3.3 any such Performance Measure shall be deemed not to have occurred,

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

45B.4 Without prejudice to Clause 5 (Insurance), the Contractor shall not be entitled to any payment which would not have been due under this Contract but for Clause 45B.3 (Prison Expansion Works consequential arrangements on Termination) to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained by the Contractor in accordance with this Contract (whether or not such insurance has in fact been effected, or if effected has been vitiated as a result of any act or omission of the Contractor, including but not limited to non-disclosure or under insurance) or any other policy of insurance which the Contractor has taken out and maintained.

45B.5 The Contractor shall take all reasonable steps to mitigate the consequences of any adverse interference (as described in Clause 45B.3 (Prison Expansion Works consequential arrangements on Termination)) on the Contractors' ability to perform its obligations under this Contract in respect of the Custodial Service. To the extent that the Contractor does not take such steps, the Contractor shall not be entitled to and shall not receive, the relief specified in Clause 45B.3 (Prison Expansion Works consequential arrangements on Termination).

45B.6 Where the Authority elects not to complete the Prison Expansion Works, the Contractor shall comply with all reasonable instructions of the Authority to ensure that those parts of the Site upon which any part or parts of the Prison Expansion Works have been commenced and/or completed are left in a safe and secure condition, including the removal of any temporary buildings, tools, goods, plant, equipment and/or materials remaining on the Site in relation to which the Authority has not made payments and/or is not liable to make payment to the Contractor pursuant to this Contract (the "Prison Expansion Removal Works"). The Contractor shall itself and shall procure that any Sub-contractor engaged to perform any of the Contractor's obligations under this Contract complies with this Clause 45B (Prison Expansion Works Consequential Arrangements on Termination) and the Contractor shall be responsible for its own and any Sub-contractor's costs in complying with this Clause 45B (Prison Expansion Works Consequential Arrangements on Termination).

45B.7 The provisions of Schedule Z (Excusing Causes) shall apply mutatis mutandis to the carrying out by the Contractor of the Prison Expansion Removal Works, save that references in Schedule Z (Excusing Causes) to "Prison Expansion Works" shall be amended to "Prison Expansion Removal Works".

45C. Authority's Rights On Termination

45C. Any exercise by the Authority of any right to terminate the Contract hereunder shall be without prejudice to any other rights and remedies the parties may have against each other (including, without limitation, the right to claim damages in respect of any breach of the Contract and any other rights under or in respect of the Contract) that may have arisen or be related to anything that may have arisen prior to any such exercise (whether or not any formal claim may have been made at the time of such exercise in respect of any such rights). Subject to the foregoing, the exercise of a right of termination of the Contract shall discharge both parties from their obligations thereunder.

45D. Preservation of Custodial Service

45D. For the avoidance of doubt the exercise by the Authority of its rights pursuant to Clause 45A (Prison Expansion Works Termination), Clause 45B shall be without prejudice to the rights and the obligations of the Contractor to provide the Custodial Service at the Prison and the Contractor shall following such exercise by the Authority of such right continue to perform the Custodial Service. Furthermore any exercise by the Authority of its right to elect to complete the Prison Expansion Works pursuant to Clause 45B.2

(Prison Expansion Works Consequential Arrangements on Termination) shall be without prejudice to the Contractor's continued right and obligation to perform the Custodial Service at the Prison (which shall for the avoidance of doubt include the Prison Expansion in the event that the Engineer's Prison Expansion Declaration has been issued in respect thereof) in accordance with the provisions of this Contract.

46. Voluntary Termination

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

47. Unilateral Termination

47. After the Engineer's Declaration has been issued, the Authority may, after service of a Termination Notice in respect of an Event of Default under Clause 44 (Default by Contractor) which has not been revoked, terminate the Contract at will, in which case compensation will be payable in accordance with Clause 49.3.

48. Force Majeure

48. In the event of a Force Majeure event arising during the term of the Contract which directly causes the Contractor or the Authority to be materially unable to comply with its obligations hereunder, the Contractor and the Authority may, if they so choose, agree such terms as are appropriate for the continued performance of the Contract (including, if such terms are agreed, any appropriate variation to the Contract Price, the Contractual Opening Date, the Full Operation Date and the Phase-in Timetable), and such terms shall be agreed in accordance with Clause 62 (Authority to Commit and Variation). If no such terms are agreed within sixty (60) Days of the commencement of the said event, and such event is continuing or its consequence remains that the Contractor or the Authority is materially unable to comply with its obligations, the parties hereby agree that both parties shall be excused performance of any and all obligations imposed upon them by the Contract, and the Contract shall thereupon terminate, subject to the terms of Clause 49 (Payment for Termination).

The Force Majeure events are:

- (a) war, civil war (whether declared or undeclared) or armed conflict arising within and affecting England and Wales; or
- (b) radioactive, chemical or biological contamination of the Site arising from any of the events at (a) above or arising from an act of terrorism; or
- (c) substantial damage arising from the effect of sonic booms; or
- (d) damage arising as a result of any act of terrorism, other than as set out in paragraph (b) above, which is not the subject of insurance cover detailed in Schedule O.

For the avoidance of doubt, the Contractor shall incur no liability to the Authority pursuant to Clause 41.7 hereof by reason of Performance Measures occurring by reason of the continuance of an event of Force Majeure.

49. Payment for Termination

49.1 Where the Contract terminates as contemplated in Clause 45 (Rectification and Termination for Default), the Authority shall, provided that the Banks have complied with their undertakings under Clause 10 of the Direct Agreement and it has been established that no replacement Operating Sub-contractor or Substitute Entity has been found and appointed or could reasonably have been expected to be found and appointed by the Termination Date, pay to the Contractor the amounts due under Part 1 of Schedule G in accordance with the provisions of Schedule G (Payments on Termination for Default) and if the Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Prison Expansion Opening Date and the date of termination of the Prison Expansion Works, the amounts as set out in Part 2 of Schedule G (Payments on Termination for Default).

49.1A Where the Prison Expansion Works terminate as contemplated in Clause 45A (Prison Expansion Works Termination) the Authority shall promptly pay to the Contractor the amounts as set out in Part 2 of Schedule G (Payments on Termination for Default).

49.2 In the event of termination under Clause 46 (Voluntary Termination) the Authority shall pay to the Contractor the amounts as set out in Part 1 of Schedule H.

49.3 In the event of termination under Clause 47 (Unilateral Termination) or Clause 48 (Force Majeure) the Authority shall pay to the Contractor the amount of the Lender Liabilities plus, if the Contract terminates during the period from the date of the Amending Agreement up to and including the earlier to occur of the Actual Prison Expansion Opening Date and the date of termination of the Prison Expansion Works, the amounts as set out in Part 2 of Schedule H (Payments on Voluntary Termination).

49.4 Without prejudice to the express provisions of the Direct Agreement, this Clause 49 and Clauses 5.19, 51.4 and 56.3 contain the Contractor's sole contractual entitlement to payment and sole remedy against the Authority in the event of proper termination of the Contract. Any payment of compensation under such Clauses shall be in full satisfaction of any claim of the Contractor in relation to termination of this Contract or any project Document. Further, without prejudice to any rights (including any right to a claim for damages) accrued up to and including the date of termination and except for compensation payable as a result of termination under Clause 48 (Force Majeure) as provided in Clause 49.3 or as expressly provided in the Direct Agreement no compensation shall be payable if the Contract is properly terminated prior to the date of the Engineer's Declaration. Nothing in this Clause shall prejudice either party's rights against the other in respect of any matters arising prior to termination of the Contract.

49.4A

(a) For the purposes of this Clause 49.4A "**Contractor Benchmarking Payment**" and "**Sodexo Benchmarking Payment**" shall have the meanings given to such terms in the deed of variation to this Contract entered into between the Authority, the Contractor and the Operating Sub-contractor on the date on which Notice of Change PET-NOC-01-11 is signed;

(b) Without prejudice to the other provisions of this Clause 49 (Payment for Termination) and any payments to be made thereunder, in the event of:

(i) termination of this Contract under Clause 46 (Voluntary Termination) or termination arising from an Authority default or breach (including repudiatory breach), the Authority shall repay the amount of the Contractor Benchmarking Payment to the Contractor and the amount of the Sodexo Benchmarking Payment to the Operating Sub-contractor, in each case such amount to be subject to indexation (on the basis of the weighted average of the indexation formulae used to adjust the Indexed Fee (I and IF) and Indexed Costs Fee (I^2 and IF^2) on each Review Date) from the date of payment of such sum in the manner set out in paragraph 6(a) of Schedule E (Payment Mechanism) calculated as at the Termination Date;

(ii) termination of this Contract under Clause 47 (Unilateral Termination) or Clause 48 (Force Majeure) or in the circumstances described in Clause 5.19.3 (Unavailability of Insurance) or Clause 56.3 (Facilities for Authority), the Authority shall repay the amount of the Contractor Benchmarking Payment to the Contractor and the amount of the Sodexo Benchmarking Payment to the Operating Sub-contractor; and

(iii) termination of this Contract for Contractor Default under Clause 45 (Rectification and Termination for Default) or Clause 51.4 (Corrupt Gifts and Payments) the Authority shall be entitled to retain Contractor Benchmarking Payment and the Sodexo Benchmarking Payment.

49.5(a) All sums payable by the Authority under Clause 49 (the **Termination Payment**) shall be increased in the event that the Contractor shall incur any liability for Taxation in respect of any Termination Payment, so as to ensure that the net amount received by the Contractor (after account is taken of the Taxation consequences of the increased payment) is equal based on the following provisions of this Clause 49.5 to the full amount which would have been received by it had no such liability to Taxation been incurred.

(b) In this Clause 49.5 the expression **Taxation** means:

(i) any liability to corporation tax of the United Kingdom;

(ii) the loss or use of any loss, relief, allowance, exemption, set-off or deduction in computing, or against, profits, income or gains of any description or from any source for the purposes of corporation tax of the United Kingdom save where such loss, relief, allowance, exception, deduction or set off or compensation payment is derived from the Project or the Contractor's interest under the Lease;

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

(c) The Contractor shall keep the Authority fully informed of all negotiations with the Inland Revenue relating to any liability for Taxation in respect of any Termination Payment. The Contractor shall not agree, accept or compromise any claim or issue or dispute relating to such liability without the prior written consent of the Authority which shall not be unreasonably withheld or delayed. The Authority may, if it considers in good faith that such action is justified having regard to the likely costs and benefits, direct the Contractor to resist, appeal, defend or otherwise dispute any assessment relating to its liability for Taxation in respect of the Termination Payment and the costs of any such dispute shall be at the Contractor's expense. However, if the Contractor obtains at its own expense professional advice from a Person with relevant expertise that any resistance, appeal, defence or other mode of disputation is not likely to result in any diminution of the liability to Taxation, the Contractor need not continue such resistance, appeal, defence or other mode of disputation unless the costs thereof are thereafter borne by the Authority. Where a dispute is prosecuted and results in a diminution in the Contractor's liability for taxation, an adjustment shall be made between the parties to reflect the outcome of the dispute.

(d) The increased amount which is payable under Clause 49.5(a) shall be determined upon the following assumptions and bases:

- (i) the Project and the Contractor's interest under the Lease comprise the sole trade and business of the Contractor;
 - (ii) the assets and equipment held, owned, hired, leased or otherwise used by the Contractor for the purposes of the Project comprise the sole assets and equipment of the Contractor;
 - (iii) that full account shall be taken of any unrelieved trading losses or other reliefs derived from the Project (including any relief attributable to any distribution in respect of profits or other matters properly related to the Project) and the Contractor's interest under the Lease which can be set off against, or against Taxation in respect of, the Termination Payment;
 - (iv) losses or other amounts eligible for relief from corporation tax derived from the Project or the Contractor's interest under the Lease which have been surrendered by the Contractor by way of group relief or consortium relief shall be assumed for these purposes not to have been surrendered and to remain available as carried forward trading losses or other reliefs;
 - (v) that, where Clause 49.2 applies, the Contractor is deemed to redeem any subordinated debt of the Contractor at an amount equal to the present value of the Extracted Cash Flows forecast to arise from the Termination Date to the Expiry Date as computed for the purposes of (and as defined in) Schedule H to the extent the same are attributable to interest and repayments in respect of such subordinated debt; and
 - (vi) that account is taken so far as relevant (having regard to Clause 49.5(e)) of timing of differences.
- (e) The additional payment under Clause 49.5(a) shall be five (5) Business Days before the Contractor's liability for Taxation in respect of the Termination Payment is/becomes due and payable, subject to the provision, at least four (4) weeks in advance, of evidence in sufficient detail for the Authority to satisfy itself of the basis on which such liability has been calculated. However, if and to the extent that the liability is reduced by a claim, loss or relief which is not derived from the Project or the Contractor's interest under the Lease then payment will be made when and to the extent that the surrendering company or the Contractor as the case may be first makes a payment of Taxation which would not otherwise have been made.
- (f) Any payments due under Clause 49.5(a) shall only be made when the Authority is satisfied that arrangements are in place to ensure that the amount paid by the Authority pursuant to Clause 49.5(a) representing the Liability for Taxation in respect of any Termination Payment (the **Additional Payment**), along with any amount paid by the Authority representing the liability for taxation in respect of any Additional Payment will be paid to and retained by the Inland Revenue.

49.6 In the event of voluntary termination pursuant to Clause 46 (Voluntary Termination), the Contractor shall provide and/or procure that the Operating Sub-contractor shall provide to the Authority such information concerning its respective financial position as shall be necessary to enable the relevant termination payment calculation to be carried out in accordance with Clause 49.2 and Schedule H (together with such supporting evidence as the Authority may reasonably require). Such information shall include, without limitation, Project Cash Flows and Extracted Cash Flows (both as defined in Schedule H). The Project Cash Flows and Extracted Cash Flows shall be prepared in respect of six-monthly periods (i) from the date of signature of the Contract up to the Termination Date (or in respect of such shorter period where the final

period prior to the Termination Date is less than six (6) months) and (ii) from the Termination Date until the Expiry Date (or in respect of such shorter period where the final period prior to the Expiry Date is less than six (6) months).

- 49.7(a) The Contractor agrees that it will not take or refrain from taking any action in relation to its contractual arrangements (including, without limitation, pursuant to any Sub-contract or Financing Agreement) or otherwise that is motivated primarily by a desire to increase the payment that would be due from the Authority on a termination of the Contract rather than by other considerations.
- (b) The Authority agrees that it will not take or refrain from taking any action that is motivated primarily by a desire to decrease the payment that would be due from it on termination of the Contract if such termination payment is calculated in accordance with Schedule G.
- (c) In relation to any action or inaction prior to the date falling twelve (12) months before the relevant Termination Date, the certificate of the Contractor or the Authority as to whether a breach of Clause 49.7(a) or (b) respectively has occurred will be conclusive in the absence of manifest error.

49.8 Amounts due under this Clause 49 shall be determined and paid in accordance with Clause 16 and Schedule 3, both of the Direct Agreement.

49A. Limitation on Authority Payments

49A. In no circumstances shall the Authority be liable to pay any amount to the Contractor, any Bank(s) or any other party which it would not have been liable to pay if each Bank had been:

- (a) a bank within the meaning of Section 840A of the Income and Corporation Taxes Act 1988;
- (b) beneficially entitled to all amounts to be paid to it by the Contractor; and
- (c) within the charge to United Kingdom corporation tax as respects such amounts.

50. Change of Control

50.1 The Contractor shall inform the Authority immediately of any change in the ownership of the Contractor. Change of ownership for this purpose means any material change to the direct or indirect legal or beneficial ownership of the Contractor, and a change in the ownership is material if it relates directly or indirectly to three per cent. (3%) or more of the Contractor's issued share capital.

50.2 Subject to Clause 50.2A the Contractor shall obtain the Authority's prior written consent (which may be given subject to conditions) prior to any change of control of the Contractor or Shareholders (other than where the Banks exercise their rights in respect of shares of the Contractor granted in any Document conferring security over any of the shares of the Contractor). The Authority has the right to terminate the Contract at its election, if such consent is not so obtained and a change of control occurs, as set out in Clause 44.1(i). Change of control means for these purposes an event where any single Person or group of Persons acting in concert (within the meaning of The City Code on Take-Overs and Mergers) acquires any direct or indirect interest in the relevant share capital (as defined in Section 198(2) of the Companies Act 1985) of the Contractor or Shareholders as a result of which that Person or group of Persons has:

- (i) a direct or indirect interest in more than twenty five per cent.(25%) of the relevant share capital of the Contractor, the Direct Shareholders or the Indirect Shareholders; or

- (ii) (in relation to a Person or group of Persons who at the relevant time already has a direct or indirect interest in more than twenty five per cent. (25%) of the relevant share capital of the Contractor, the Direct Shareholders or the Indirect Shareholders) a direct or indirect interest in seventy five per cent. (75%) or more of the relevant share capital of the Contractor, the Direct Shareholders or the Indirect Shareholders.
- 50.2A The Authority must not withhold its consent to a change of control under Clause 50.2 unless the proposed change of control is to an Unsuitable Third Party. If the Authority fails to accept or reject the Contractor's request for a change of control by formal written notice within 30 Days of the date of such request by formal written notice, the Authority's consent shall be deemed to have been granted.
- 50.3 For the purposes of Clause 50.1 and Clause 50.2 above:
- (a) any change in beneficial or legal ownership of any shares that are listed on a stock exchange shall be disregarded; and
 - (b) any transfer of shares or of any interest in shares by a Person to its affiliate shall be disregarded. For these purposes, and notwithstanding the definition set out in Clause 1.1, an **affiliate** is, in relation to any Person, any Holding Company of that Person and any Subsidiary of that Person or of any such Holding Company (Subsidiary and Holding Company having for this purpose the meanings ascribed to those terms in the Companies Act 1985).

51. Corrupt gifts and payments

51.1 Neither the Contractor, nor any Sub-contractor, nor anyone employed by any of them or acting on behalf of any of them, shall:

- (a) offer to give or agree to give any Person in Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other agreement for Her Majesty's Service or for showing or forbearing to show favour or disfavour to any Person in relation to this or any other contract for Her Majesty's Service;
- (b) enter into this or any other agreement with Her Majesty or any Government Department in connection with which commission has been paid or agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and clauses of any contract for the payment thereof have been disclosed in writing to the Authority; or
- (c) defraud or attempt to defraud or conspire to defraud the Crown.

51.2 Any breach of Clause 51.1 by the Contractor, any Sub-contractor or by anyone employed by them or acting on their behalf with or without their knowledge or consent, or the commission of any offence by the Contractor, any Sub-contractor or anyone employed by them or acting on their behalf (i) under the Prevention of Corruption Acts 1889 to 1916, (ii) under the Bribery Act, (iii) under Legislation creating offences in respect of fraudulent acts, (iv) at common law, in connection with this or any other agreement with Her Majesty or any Government Department shall entitle the Authority to act as follows:

- (a) where the breach or commission of any offence is occasioned by the Contractor or an employee of the Contractor, and such Person intended thereby to benefit the Contractor, the Authority shall be entitled to determine the Contract immediately and at the Authority's option either to recover from the Contractor the amount of

any loss resulting from the breach and/or to recover from the Contractor the amount or value of any such gift, consideration or commission;

- (b) where the breach or commission of any offence is occasioned by the Operating Sub-contractor, the Construction Sub-contractor, the Prison Expansion Construction Sub-contractor, or any of their employees and such Person intended thereby to benefit that Sub-contractor, the Authority shall be entitled to act as set out in (a) above unless the Contractor terminates the relevant Sub-contract, and procures that all those parts of the Services which were performed by that Person are performed by the Contractor itself or another Sub-contractor in accordance with **Clause 7 (Sub-contracting)** within thirty (30) Days of notification to the Contractor of the breach or commission of an offence or such longer period as the Authority permits in writing;
- (c) where the breach or commission of any offence is occasioned by any Person other than the Contractor, the Operating Sub-contractor or the Construction Sub-contractor or the Prison Expansion Construction Sub-contractor and whether or not any benefit to that Person's employer was intended, the Authority shall be entitled as set out in (a) above unless within thirty (30) Days of notification to the Contractor of the breach or commission of an offence the Contractor has procured that the employment of such Person (and, in the case of an individual other than an individual employed by the Contractor, the Operating Sub-contractor or the Construction Sub-contractor, of that Person's employer) in performing parts of the Services has been terminated and the Contractor has procured that all those parts of the Services as were performed by such Person or Persons are performed by another Person in accordance with **Clause 7 (Sub-contracting)**.

51.3 Any dispute relating to this Clause 51 (other than in respect of Clause 51.2(c)) may be referred by either party to dispute resolution in accordance with Clause 72 (Dispute Resolution), except that the arbitrator shall be a Queen's Counsel nominated by the Chairman of the Bar Council, who shall determine the issue on the balance of probabilities.

51.4 In the event of termination of the Contract by the Authority pursuant to this Clause 51, the Authority shall pay to the Contractor the amount of the Lender Liabilities.

52. Termination Survey

52.1 Twelve (12) months prior to the Expiry Date or within seven (7) Days of service of a Termination Notice after the Full Operation Date, whichever is the earlier, the Authority shall carry out a final dilapidation survey of the Prison. The provisions of Clauses 19.2 and 19.3 (and Clause 17 (Maintenance of Prison) to the extent that such Clause is referred to in Clause 19.2) shall apply to this survey.

52.2 If upon the Termination Date or the Expiry Date, as applicable, the Contractor has failed to carry out any repairs to or maintenance of the Prison required as a result of the final dilapidation survey, the value of the repairs shall be off-set against any payment due to the Contractor hereunder, or to the extent no such sums are due shall become a debt due to the Authority from the Contractor.

52.3 Twelve (12) months prior to the Expiry Date or upon service of a Termination Notice, if earlier, the Authority shall establish an interest bearing account into which it shall pay five per cent (5%) of the Contract Price for each month thereafter on a monthly basis until the end of the Contract Term or the revocation of the Termination Notice in accordance with the terms of this Contract and the Direct Agreement, such amounts being a reduction of the amount payable to the Contractor hereunder. Such amounts shall be released to the Contractor if a Termination Notice is revoked or

withdrawn under the Direct Agreement more than twelve (12) months prior to the Expiry Date and the relevant repairs and maintenance required as a result of the final dilapidation survey have been carried out. If the relevant repairs and maintenance have not been carried out, the Authority may carry them out itself and apply any amounts standing to the credit of such account in so doing; where such amounts are insufficient to cover the Authority's whole cost of carrying out the repairs and maintenance, the uncovered cost shall be off-set against any payment due to the Contractor hereunder, or to the extent no such payment is due, shall become a debt due to the Authority from the Contractor.

52.4 Upon or after the Expiry Date or Termination Date, the Authority shall be entitled to apply any amounts standing to the credit of the account referred to in Clause 52.3 towards payment of any debt due under Clause 52.2. To the extent that, following completion of any repairs or other Works as are referred to in this Clause 52, the amount standing to the credit of such account exceeds the amount of such debt due, such excess shall forthwith be paid by the Authority to the Contractor together with any interest accrued on amounts standing to the credit of such account from time to time.

53. Notice of Default Events

53.1 The Contractor shall notify the Authority immediately it has knowledge of any event which constitutes: -

- (a) an Event of Default or an event which with the giving of notice and/or lapse of time and/or making of any determination would constitute an Event of Default; or
- (b) a Prison Expansion Event of Default or an event which with the giving of notice and/or lapse of time and/or making of any determination would constitute a Prison Expansion Event of Default;

54. Consequential Arrangements on Termination

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

54.2 The Authority shall reimburse to the Contractor and the Sub-contractors all reasonable costs and expenses incurred in satisfying the provisions of Clause 54.1, such amount of reimbursement being subject to reduction in respect of any amounts outstanding from the Contractor or any Sub-contractor to the Authority.

PART VIII – MISCELLANEOUS

55. Intervention by the Secretary of State under Section 88 of the Criminal Justice Act 1991

55.1 The Contractor will note and comply with the provisions of the Criminal Justice Act 1991, Section 88 (**Section 88**).

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

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

55A. Prevention of Bribery

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

55A.2 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent the Contractor and any Person employed by or acting on behalf of the Contractor from committing a Prohibited Act and shall enforce it where appropriate.

55A.3 If the Contractor is aware of any Prohibited Act by the Contractor, any Sub-contractor, or anyone employed by any of them or acting on behalf of any of them, the Contractor shall notify the Authority immediately and the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

56. Facilities for Authority

56.1 From 14 February 2003, the Contractor shall provide suitable accommodation at the Site or (following the date of the Engineer's Declaration) in the Prison as the Authority may require, at no additional cost, for the use of the Controller and his representatives and any other Representative of the Authority who has cause to visit the Site or the Prison. Without prejudice to the foregoing, the accommodation provided for any Representative of the Authority who has cause to visit the Site or the Prison will not be in addition to that provided for in Schedule A. All such accommodation shall be adequately furnished, lighted, heated and ventilated, and shall include cloakroom and telephone facilities providing for communication to parties both within and outside the Prison, including in respect of accommodation for the Controller at least two (2) direct telephone lines (the **Direct Lines**) linked to, and limited to calls within, the UK national telephone network which shall not be routed through any exchange or network gateway within the Prison or operated by the Contractor or any Sub-contractor. Accommodation for the Controller shall be deemed to be capable of being made secure by means of door locks or other such equipment and shall, in addition, comprise of at least two (2) separate rooms, one of which shall be suitable for accommodating the Controller's team of three (3) staff, and the other shall be suitable for accommodating the Controller and be of sufficient size to hold meetings of at least four (4) people. The Contractor shall, as the Authority may require, provide, or procure the provision to Independent Monitoring Board members the opportunity to receive Hepatitis B immunisations at no additional cost to the Authority.

56.2 The Contractor shall be responsible for the cleanliness, proper use and reasonable care of all such facilities provided and the costs, maintenance and rental fees associated

with all telephone facilities provided pursuant to Clause 56.1 and the Contractor shall not, and shall procure that its Sub-contractors and any of their employees, shall not (i) monitor or (ii) record or (iii) collect in any form data or information transmitted over the Direct Lines or otherwise sent or receivable by the Controller via the Direct Lines (except to the extent that the Controller may knowingly pass such data or information to the Contractor, Sub-contractors or any of their employees). If the Contractor commits or attempts to commit any such act referred to in (i), (ii) or (iii) above, the Authority shall be entitled to act as follows:

- (a) where the commission (or attempted commission) of such act is occasioned by the Contractor, the Operating Sub-contractor, the Construction Sub-contractor or any of their employees and such Person intended thereby to benefit that Sub-contractor, the Authority shall be entitled to terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from the commission (or attempted commission) of such act, unless, where the commission (or attempted commission) of the act was occasioned by the Operating Sub-contractor or Construction Sub-contractor, the Contractor terminates the relevant Sub-contract and procures that all those parts of the Services which were performed by that Sub-contractor are performed by the Contractor itself or another Sub-contractor in accordance with Clause 7 (Sub-contracting) within thirty (30) Days of written notification to the Contractor by the Authority of the commission or attempted commission of such act or such longer period as the Authority permits in writing; and
- (b) where the commission (or attempted commission) of such act is occasioned by any Person other than the Contractor, the Operating Sub-contractor or the Construction Sub-contractor and whether or not any benefit to that Person's employer was intended, the Authority shall be entitled to act as set out in (a) above unless within thirty (30) Days of written notification by the Authority to the Contractor of the commission or attempted commission of such act the Contractor has procured that the employment of such Person (and, in the case of an individual other than an individual employed by the Contractor, the Operating Sub-contractor or the Construction Sub-contractor, of that Person's employer) in performing parts of the Services has been terminated and the Contractor has procured that all those parts of the Services as were performed by such Person or Persons are performed by another Person in accordance with Clause 7 (Sub-contracting).

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

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

56.4 Any dispute relating to Clause 56.2 may be referred by either party to dispute resolution in accordance with Clause 72 (Dispute Resolution), except that the arbitrator shall be a Queen's Counsel nominated by the Chairman of the Bar Council, who shall determine the issue on the balance of probabilities.

57. Public Relations and Publicity

57.1 The Authority reserves the right to publish information about the performance of the Contract and/or any other information as it may deem appropriate from time to time, other than in respect of the Confidential Matters, which it may only publish in response to enquiries from Parliament, its members and officers and to enquiries legitimately made by Persons acting in the public interest.

57.2 The Contractor shall not by itself, its servants, agents or Sub-contractors communicate with any part of the media, either written or broadcast on any matter concerning the Contract without reference to the guidelines agreed in the Protocol on Media Handling issued by the Authority.

57.3 No facilities to photograph or film in or upon the Land or the Prison shall be given or permitted by the Contractor unless the Authority has given its prior approval in accordance with the guidelines mentioned in Clause 57.2 above.

58. Information and Confidentiality

58.1 The Contractor will note and comply with the provisions of Section 91 of the Criminal Justice Act 1991 on the wrongful disclosure of information acquired by Persons who are or have been employed at a Prison (whether as a Prisoner Custody Officer or otherwise).

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

58.3 The Contractor shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all Persons including Construction and/or Operational Staff or Sub-contractors employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue to apply to them after the completion or earlier termination of the Contract and after termination of their employment.

58.4 The Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract, except with the written consent of the Authority.

58.5 At the end of the Contract Term, the Contractor shall ensure that all Documents or computer records in its possession, custody or control, which contain information relating to a particular Prisoner who is or has been detained at the Prison, including such Documents in the possession, custody or control of a Sub-contractor, are delivered up to the Authority. Any rights belonging to the Contractor and subsisting in the said Documents are hereby assigned to the Authority upon termination by virtue of this Clause.

58.6 Notwithstanding any of the provisions of this Clause 58 (Information and Confidentiality) or of Clause 57 (Public Relations and Publicity) above nothing herein shall apply to information which is revealed, made available or published by either party:

- (a) to its professional advisers, Shareholders, the Banks, any Person who may become a Shareholder or a Bank (provided that, in the case of any Person who may become a Bank, they have entered into a confidentiality agreement on the same terms as this Clause 58 (Information and Confidentiality) (with appropriate changes)) or in each case their professional advisers;
- (b) as required by law or any regulatory or tax authority including the rules of any Recognised Securities Exchange or where such information is or comes into the public domain other than by reason of a breach of this Clause 58 (Information and Confidentiality); or
- (c) to an Adjudicator or Arbitrator or Expert appointed pursuant to this Contract.

58.7 For the purpose of:

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

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

58.8

- (a) The parties agree that the provisions of this Contract shall, subject to Clause 58.8(b) (Information and Confidentiality), not be treated as Confidential Information and may be disclosed without restriction.
- (b) Clause 58.8(a) (Information and Confidentiality) shall not apply to provisions of this Contract which are designated as Commercially Sensitive Information and listed in Schedule V (Commercially Sensitive Information) which shall, subject to Clause 58 (Information and Confidentiality), be kept confidential for the periods specified of Schedule V (Commercially Sensitive Information).
- (c) The parties shall keep confidential all Confidential Information received by one party from the other party relating to this Contract or the Project and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any Person of any such Confidential Information.

58.9 Clauses 58.8(b) (Information and Confidentiality) and 58.8(c) (Information and Confidentiality), shall not apply to:

- (a) any disclosure of information that is reasonably required by any Person engaged in the performance of their obligations under this Contract for the performance of those obligations;
- (b) any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 58 (Information and Confidentiality);
- (c) any disclosure to enable a determination to be made under Clause 72 (Dispute Resolution) or in connection with a dispute between the Contractor and any of its subcontractors;
- (d) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of Persons subject to the stock exchange or governmental or regulatory authority concerned;
- (e) any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- (f) any provision of information to the parties' own professional advisers or insurance advisers or to the Banks or the Banks' professional advisers or, where it is proposed that a Person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor to enable it to carry out its obligations under this Contract, or may wish to acquire shares in the Contractor in accordance with the provisions of this Contract to that Person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (g) any registration or recording of the Planning Approvals and property registration required;

- (h) any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any Person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract; or
 - (i) any disclosure for the purpose of:
 - (i) the examination and certification of the Authority's or the Contractor's accounts;
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,
 - (iii) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (iv) (without prejudice to the generality of Clause 58.9 (b) (Information and Confidentiality) compliance with the FOIA and/or the Environmental Information Regulations,
provided that neither Clauses 58.9 (i)(iv) (Information and Confidentiality) or 58.9(d) (Information and Confidentiality) shall permit disclosure of Confidential Information otherwise prohibited by Clause 58.8(c) (Information and Confidentiality) where that information is exempt from disclosure under section 41 of the FOIA.
- 58.10 Where disclosure is permitted under Clause 58.9 (Information and Confidentiality), other than Clauses 58.9(b), 58.9(d), 58.9(e) or 58.9(h) (Information and Confidentiality), 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.
- 58.11 For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such Documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-contractor and may require the Contractor and any Sub-contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.
- 58.12 The Contractor shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.
- 58.13 Where the Contractor in carrying out its obligations under the Contract is provided with information relating to Prisoners, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that Prisoner and has obtained the prior written consent of the Authority.
- 58.14 The parties acknowledge that the National Audit Office has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 58.15 The provisions of this Clause 58 (Information and Confidentiality) are without prejudice to the application of the Official Secrets Acts 1911 and 1989.
- 58.16 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to

the same in the manner provided for in Clauses 58.17 to 58.23 (Information and Confidentiality).

- 58.17 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Authority does not hold itself the Authority shall refer to the Contractor such Request for Information that it receives as soon as practicable and in any event within seven (7) Days of receiving a Request for Information and the Contractor shall:
- (i) provide the Authority with a copy of all such information in the form that the Authority requires as soon as practicable and in any event within ten (10) Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
 - (ii) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 58.18 Following notification under Clause 58.17 (Information and Confidentiality), and up until such time as the Contractor has provided the Authority with all the Information specified in Clause 58.17 (Information and Confidentiality), the Contractor may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion:
- (i) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
 - (ii) whether Information is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly or allow its Sub-contractors to respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 58.19 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure at least five (5) Years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.
- 58.20 The Contractor shall transfer to the Authority any Request for Information received by the Contractor as soon as practicable and in any event within two (2) Days of receiving it.
- 58.21 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.
- 58.22 In the event of a request from the Authority pursuant to Clause 58.17 (Information and Confidentiality) the Contractor shall as soon as practicable and in any event within five (5) Days of receipt of such request, inform the Authority of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the **"Appropriate Limit"**) the Authority shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the ten (10) Day period for compliance shall be

extended by such number of Days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Contractor of such additional Days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

- 58.23 The Contractor acknowledges that (notwithstanding the provisions of Clauses 58.8 (Information and Confidentiality) to 58.23 (Information and Confidentiality) the Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:
- (i) in certain circumstances without consulting with the Contractor; or
 - (ii) following consultation with the Contractor and having taken their views into account, provided always that where Clause 58.23 (i) Information and Confidentiality) applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

59. Intellectual Property Rights

Contractor's Work Products

59.1 The Contractor hereby grants to the Authority a perpetual, irrevocable non-exclusive, transferable, royalty free licence to do all acts (including to use, copy, adopt, translate, arrange and otherwise alter and to grant of sub-licences) in relation to the Contractor's Work Products (excluding any Existing Work Products to the extent they are incorporated in or form part of the Contractor's Work Products) which would otherwise be an infringement of the Intellectual Property Rights subsisting in or relating to the Contractor's Work Products for the purpose of, or in connection with the conduct of, the Services or any similar services carried out by or on behalf of the Authority at any time in connection with the Prison.

59.2 Without limiting the scope of the licence in Clause 59.1, the licence shall include the right to grant sub-licences to third parties for the purpose of the design, construction, maintenance, operation, or management of the Prison at any time on or after the occurrence of or in connection with a Relevant IP Event.

59.3 The Contractor shall notify the Authority in writing when the creation of any Contractor's Work Product has begun and on completion of the Contractor's Work Product.

59.4 Where the Contractor's Work Product is computer software which has been wholly and exclusively developed during the Contract Term:

- (a) the Contractor shall provide to the Authority or its nominee (or procure the provision to the Authority or its nominee of) such software corrections, upgrades, updates and other support services as the Authority may reasonably require on reasonable commercial terms, including a reasonable charge, or on other terms as may be agreed between the Authority and the Contractor in writing; and
- (b) without affecting the Authority's rights under the provisions of this Clause 59, the Contractor shall place the source code, preparatory materials and any related documents or information relating to the Contractor's Work Product in escrow with the National Computing Centre (or any successor in title to its source code escrow business) (the **National Computing Centre**) in the United Kingdom pursuant to

a contract which entitles the Authority or its nominee (as the case may be) to have the source code released from escrow and licensed in accordance with this Clause 59 (as the case may be) on the occurrence of any event pursuant to which the Authority assumes control of the Prison, including, but without limitation, a termination or expiry of the Contract, or the exercise by the Authority of its powers pursuant to Section 88, and which is otherwise subject to the appropriate standard terms for a single licensee (UK) including as to allocation of costs of the National Computing Centre. The contract to which this Clause 59.4(b) refers may also entitle the Contractor to receive a copy of the source code, but not as an alternate to, or in substitution for, the Authority or its nominee.

Existing Work Products incorporated into Contractor's Work Products

59.5 Where the Contractor (or any Sub-contractor) proposes to incorporate any Existing Work Product or any part thereof into a Contractor's Work Product, the Contractor shall grant or procure the grant to the Authority or the Relevant Successor of a licence (the **Required Licence**) in relation to the Existing Work Product in accordance with this Clause 59.5. If the Intellectual Property Rights in or to such Existing Work Product are owned by:

- (a) the Contractor, the Operating Sub-contractor or the Construction Sub-contractor or any of their Affiliates, then consideration for the grant of the Required Licence to the Authority shall be [REDACTED] payable by the Authority to the grantor and the terms of the Required Licence shall be the same terms as in Clause 59.1; and
- (b) any party other than those referred to in (a) above, then the following shall apply:
 - (i) the Contractor shall promptly notify the Authority in writing giving reasonable details of the relevant Existing Work Product and the terms (if any) on which the Contractor, a Sub-contractor or their Affiliate is entitled to use the Existing Work Product;
 - (ii) the Authority shall notify the Contractor in writing within a reasonable time whether the Authority requires the Required Licence to authorise acts to be undertaken for the purpose of, or in connection with the conduct of, the whole or part of Her Majesty's Prison Service (**Extended Licence**), and in default of a notice received by the Contractor within a reasonable time, which shall not be more than sixty (60) Days from the date the Contractor's notice is received by the Authority, Clause 59.5(b)(iv) shall apply;
 - (iii) where the Authority requires an Extended Licence, the Extended Licence shall be granted to the Authority and the scope of the Extended Licence shall be as the Authority may reasonably require in writing provided that the Extended Licence shall not apply in relation to the design, construction, maintenance, operation or management of the Prison until a Relevant IP Event occurs. The Contractor shall propose to the Authority reasonable commercial terms for the grant of the Extended Licence. The Authority may enter into a contract with the relevant third party for the grant of the Extended Licence on such terms, but if the Authority does not do so within a reasonable time which shall not be more than sixty (60) Days from the date the offer of the Extended Licence on such terms is received by the Authority, the Contractor (having procured an offer of the Extended Licence on such terms) may proceed to incorporate the Existing Work Product or part thereof into the Contractor's Work Product. The consideration payable under that contract to the relevant third party shall be paid by the Authority;

- (iv) where the Authority does not require an Extended Licence or fails to serve a notice in accordance with Clause 59.5(b)(ii), and in either case where a Relevant IP Event occurs from time to time (but not otherwise), the Required Licence shall entitle the Relevant Successor to use the Existing Work Product for the purpose of the design, construction, maintenance, operation or management of the Prison and shall include the right to grant sub-licences to a Relevant Successor on substantially the same terms, and shall otherwise be on reasonable terms or such other terms as the parties may agree in writing.

Standalone Existing Work Products

59.6 Where the Contractor or any Sub-contractor proposes to use any Existing Work Product, the Intellectual Property Rights in or to which are owned by the Contractor or any Sub-contractor or any of their Affiliates, in connection with the Services other than by incorporating it in or making it part of any Contractor's Work Product, the Contractor shall notify the Authority accordingly.

- (a) Where a Relevant IP Event occurs from time to time, the Contractor shall grant or shall procure that there shall be granted to the Relevant Successor a licence to use, copy, adapt, translate, arrange and otherwise alter, or to do any of those acts as the Relevant Successor may require in relation to, all such Existing Work Products then used or which have been used for the purpose of the Services and which may be required thereafter by the Relevant Successor; any such licence being limited to such acts for the purpose of the design, construction, maintenance, operation or management of the Prison by the Relevant Successor.
- (b) The licence to which Clause 59.6(a) refers shall include the right to grant sub-licences to a nominee of the Authority on substantially the same terms.
- (c) The licence to be granted to the Relevant Successor under Clause 59.6(a) shall be non-exclusive and otherwise on reasonable terms, or such other terms as the parties may agree in writing.

59.7 Where the Contractor or any Sub-contractor proposes to use any Existing Work Product to which Clause 59.7(d) refers in connection with the Services other than by incorporating it in or making it part of any Contractor's Work Product, the Contractor shall notify the Authority accordingly.

- (a) Where a Relevant IP Event occurs from time to time, the Contractor shall use all best endeavours to procure for the Relevant Successor a licence to use all such Existing Work Products then used or which have been used for the purpose of the Services and which may reasonably be required thereafter by the Relevant Successor; any such licence being limited for the purpose of the design, construction, maintenance, operation or management of the Prison.
- (b) The licence to which Clause 59.7(a) refers shall include the right to grant sub-licences to a Relevant Successor on substantially the same terms, and shall otherwise be on reasonable terms or such other terms as the parties may agree in writing.
- (c) Where the Contractor is in breach of Clause 59.7(a) or the Contractor is otherwise unable to procure the licence within a reasonable time (such time to be determined taking into account the effect which the absence of the licence will have, or may reasonably be expected to have, on the design, construction, maintenance, operation or management of the Prison), without affecting the Authority's other rights, the Authority shall be entitled to procure for the Relevant Successor its own such licence.

- (d) This Clause 59.7 applies to all Existing Work Products, the Intellectual Property Rights which are owned by a third party other than a Sub-contractor or any Affiliate of the Contractor or any Sub-contractor, and which are licensed to the Contractor or any Sub-contractor or any Affiliate at 14 February 2003.

Miscellaneous

59.8 The Contractor shall notify any proposed assignee of any Intellectual Property Rights subsisting in or relating to the Contractor's Work Products (other than Existing Work Products, the Intellectual Property Rights in or to which are owned by a Person other than the Contractor, a Sub-contractor or any of their Affiliates) of the existence of the Contract and of the licences granted under or in accordance with the Contract and shall otherwise ensure that any such assignment is subject to such licences.

59.9 Subject to the limits of the Contractor's liability in the Contract, the Contractor warrants and undertakes that no act of the Authority or any sub-licensee within the scope of the licences granted under or in accordance with the previous terms of this Clause 59, or any permitted sub-licence granted by the Authority or a Relevant Successor, shall infringe the Intellectual Property Rights of any third party.

59.10 All Intellectual Property Rights in Work Products produced by the Authority shall vest in and be the property of the Crown (the **Authority's Work Products**).

59.11 The Authority hereby grants to the Contractor from 14 February 2003 until the expiry of the Contract Term a non-exclusive free of charge licence to use such of the Authority's Work Products as are necessary to perform the Services for use in connection with the design, construction, maintenance, operation or management of the Prison in accordance with the Contract together with the right to grant sub-licences to Sub-contractors.

59.12 If the Contractor employs or engages a Prisoner to work in return for financial consideration, no property or Intellectual Property Rights relating to the Product of a Prisoner's Labour shall vest in the Authority, and the **Product of a Prisoner's Labour** shall be those things resulting directly from the paid employment or engagement.

59.13 If a Prisoner creates or produces a work or an invention or a performance, and the said work or invention or performance is not a Product of a Prisoner's Labour within the meaning of Clause 59.12, no Intellectual Property Rights shall vest in the Authority or the Contractor in relation to the said work, invention or performance.

59.14 The Contractor shall hold harmless and indemnify the Authority for any and all liability, loss, damages, costs (including but without limitation, reasonable legal and other professional costs (in the case of legal costs, on a solicitor client basis)) and expenses incurred or suffered by the Authority (including, but without limitation, losses arising out of or connected with the Authority's inability to continue using any part of the Services and any requirement for the Authority to procure a replacement for any part of the Services) arising out of or connected with any claim or proceedings brought against the Authority that the provision of the Services or the manner in which they are provided or the Authority's use of any of the Services or the Contractor's Work Products or the obtaining of the benefit of any IT/IP Contracts infringes the Intellectual Property Rights or any other rights of any third party.

59.15 In circumstances where an infringement as referred to in Clause 59.14 occurs:

- (a) the Authority shall notify the Contractor in writing of any relevant claim or proceedings brought against the Authority promptly after becoming aware of any such claim or proceedings;
- (b) the Contractor shall have sole control over the defence of any such claim or proceedings and over all negotiation in relation thereto and, in particular, the

Authority shall not make or attempt to make any settlement or admit any liability in relation to such claim or proceedings;

- (c) the Authority shall provide all such documents, information and assistance and do all such acts and things as the Contractor may reasonably require to assist it in relation to any such claim proceedings; and
- (d) the Authority shall take all steps which may be reasonably necessary to mitigate its loss in respect of such claim or proceedings which include, without limitation, the exercise of any of its rights under Clause 59.16.

59.16 If the Authority is prohibited by a court order from using any of the Services, or if any such infringement as referred to in Clause 59.14 above occurs, or in the Authority's reasonable opinion may occur, then the Authority may require the Contractor to:

- (a) procure for the Authority the right to continue using the Services in question;
- (b) modify or amend the Services in question so that the same become non-infringing without substantially reducing the functionality or performance thereof; and
- (c) replace all or part of the Services in question with deliverables of similar capability and functionality,

and shall fulfil one of these options as soon as reasonably practicable. The indemnity contained in Clause 59.14 shall apply in respect of any period during which the Authority is prevented from using the relevant Services or the Contractor's Work Products or the obtaining of the benefit of any of the IT/IP Contracts.

59.17 The provisions of Clauses 59.14 to 59.17 shall continue in force after expiry or termination of this Contract, for whatever reason.

59A. Procurement of IP and IT

59A.1 The Contractor shall enter into each IT/IP Contract with the counter-party (the **Supplier**) or shall procure that each IT/IP Contract shall be entered into between the Operating Sub-contractor and the Supplier (and for the avoidance of doubt, except and on such terms as the Authority may specify, no other Sub-contractor shall enter into an IT/IP Contract), and except as provided in Clause 59A.1(d) and (e), the Contractor shall procure that each IT/IP Contract shall include the terms described in (a) to (c) of this Clause 59A.1.

- (a) An acknowledgement by the Supplier that the benefit and/or burden of the IT/IP Contract or any part of it shall be used by the Contractor or the Operating Sub-contractor or its successors to the IP/IT Contract from time to time, in connection with the design, construction, maintenance, operation or management (as the case may be) of the Prison for the purposes of the Authority.
- (b) Upon receipt of written notice from the Contractor or the Operating Sub-contractor (whichever is the party to the IT/IP Contract (being **the Relevant Party**)), the Supplier shall novate the rights and obligations of the Relevant Party under the IT/IP Contract to the Authority or its nominee, as the case may be.
- (c) An obligation on the Supplier to execute such deeds or other documents and do such things as the Authority may reasonably require in order to effect the novation.
- (d) Where the IT/IP Contract (if entered into) would be a contractual licence relating to any off-the-shelf computer program customarily licensed by the licensor on its standard terms of business, the Contractor shall use all reasonable endeavours to

procure that the IT/IP Contract contains the terms set out in (a) to (c) of this Clause 59A.1.

- (e) Where the Contractor is in breach of Clause 59A.1(d) or the Contractor is otherwise unable to procure that the IP/IT Contract contains such terms, the Contractor shall nevertheless be entitled to enter into the IT/IP Contract and to use the subject matter of the IT/IP Contract in connection with the provision of the Services; provided that where a Relevant IP Event occurs, the Authority shall be entitled to procure a contract for the Relevant Successor either (i) with the relevant third party on substantially the same terms as the relevant IT/IP Contract, or (ii) with any other third party for the supply of technology and/or services comparable to the subject matter of the IT/IP Contract on reasonable commercial terms, in either case in connection with the design, construction, maintenance, operation or management of the Prison by the Authority or its nominee.

59A.2 Without affecting Clause 59A.1, the Contractor shall, and, where the Operating Sub-contractor is the Relevant Party, shall procure that the Operating Sub-contractor shall, use all reasonable endeavours to procure that any IT/IP Contract:

- (a) obliges the Supplier to place the source code of any software supplied under the IT/IP Contract in escrow with the National Computing Centre (or any successor in title to its source code escrow business) in the United Kingdom pursuant to a contract which entitles the Authority or its nominee (as the case may be) to have released from escrow, and to use a copy of the source code for the purpose of the design, construction, maintenance, operation or management of the Prison, and which is otherwise subject to the then standard terms of the National Computing Centre (or its successor as the case may be). The contract to which this Clause 59A.2 refers may also entitle the Contractor or Operating Sub-contractor to receive a copy of the source code, but not as an alternate to, or substitute for, the Authority or its nominee;
- (b) gives the Relevant Party (or its successor) the right to assign the benefit of the IT/IP Contract without the consent of the Supplier;
- (c) gives the Relevant Party the right to sub-license its rights without the consent of the Supplier; and
- (d) shall not be affected by any change of control of the Relevant Party (or any successor thereto).

59A.3 Save as provided in Clause 59A.1(e), where any of the following occurs from time to time:

- (i) Not Used;
- (ii) the Contract expires or is terminated early; or
- (iii) there occurs a replacement of the Contractor or any Sub-contractor pursuant to the Direct Agreement or this Contract

(any such event described in (i) to (iii) being a **Relevant IP Event**), then, on receipt of the written request of the Authority, the Contractor shall procure that all Relevant IT/IP Contracts shall be novated in favour of the Relevant Successor.

For these purposes:

Relevant IT/IP Contracts means, where the Relevant IP Event is an event described in:

- (a) Not Used;
- (b) Clause 59A.3(ii), all IT/IP Contracts in existence at the date of the Authority's written request;
- (c) Clause 59A.3(iii), and:
 - (aa) the Contractor is replaced, all IT/IP Contracts to which the replaced Contractor is a party in existence at the date of the Authority's written request; or
 - (bb) a Sub-contractor is replaced, all IT/IP Contracts to which the replaced Sub-contractor is a party in existence at the date of the Authority's written request,

and in any case which IT/IP Contracts are specified by the Authority as being required for the design, construction, maintenance, operation or management of the Prison by the Relevant Successor.

For these purposes, **Relevant Successor** means, in the case of a Relevant IP Event described in Clause 59A.3(ii), the Authority or its nominee, and in any other case, the replacement Contractor and/or Construction Sub-contractor and/or Operating Sub-contractor.

59A.4 Where the Authority requests the novation of any IT/IP Contract under Clause 59A.3:

- (a) the Contractor shall, and, where the Operating Sub-contractor is the Relevant Party, shall procure that the Operating Sub-contractor shall issue the notice to the Supplier to which Clause 59A.1(b) refers and shall:
 - (i) use all reasonable endeavours to procure that the Supplier complies with its obligations under the IT/IP Contract and otherwise consents to the proposed novation; and
 - (ii) shall execute such deeds or other documents and do such other things as the Authority may reasonably require in order to effect the novation;
- (b) until all relevant consents or other formalities (if any) required in order to effect the novation have been obtained or complied with, the Relevant Successor shall be exclusively entitled to the benefit of the IT/IP Contract for the purposes of the design, construction, maintenance, operation or management of the Prison (as the case may be); and
- (c) during the period the Relevant Successor is entitled to the benefit of any IT/IP Contract, the Authority shall, or shall procure that any Relevant Successor shall, perform the obligations of the Relevant Party under the IT/IP Contract.

59A.5 Notwithstanding the terms of any novation to which Clause 59A.4 refers:

- (a) the Authority shall fully and effectively indemnify the Contractor against all Losses suffered or incurred by the Contractor or the Operating Sub-contractor by reason of the failure of the Relevant Successor to observe and perform or procure to have observed and performed all obligations of the Relevant Party under any IT/IP Contract novated in accordance with this Clause 59A to the extent that such Contract should have been performed on or after the date of novation (the **Effective Date**); and

- (b) with effect from the Effective Date, the Contractor shall keep the Authority fully and effectively indemnified against all Losses suffered or incurred by the Authority by reason of the failure before the Effective Date of the Relevant Party to perform its obligations under the novated IT/IP Contract. The Contractor acknowledges that any loss, damage, cost and/or expense to be indemnified under this Clause 59A.5(b) may be incurred by the Authority pursuant to an indemnity in similar terms given by the Authority to a Relevant Successor.

59A.6 The Contractor undertakes that all computer and communications systems used by the Contractor or any Sub-contractor in connection with the Services when they are accepted or (if earlier) first used by the Contractor or Sub-contractor shall be, and thereafter shall be maintained (subject to reasonable wear and tear), free from Operating Defects in design materials and workmanship, and programming errors in the case of software. An Operating Defect for the purpose of this Clause 59A.6 means a defect or error which prevents the system from performing substantially in accordance with its specifications in any respects.

59A.7 The Contractor shall take all reasonable care to ensure the computer and communications used by the Contractor or any Sub-contractor are free of Viruses including using good quality up-to-date, commercially available virus checking software.

59A.8 The Contractor shall create and maintain a register containing the following information:

- (a) details of all licences of Intellectual Property Rights to which the Contractor or any Sub-contractor is a party and contracts for the procurement of computer or communications technology and/or services or other services concerning information or communications technology, the benefit of which is to be used in connection with the Services, including the date of the licence or contract, the parties, a description of the relevant hardware, software or service, the purpose for which the software is used or capable of use, the platform on which the software is licensed to run, the duration, the parties licensed to use the relevant software and the assignability of the licence;
- (b) any other relevant consents relating to any software used by or on behalf of the Contractor or any Sub-contractor in providing the Services;
- (c) details of all existing and planned Contractor's Work Products required to be notified under Clause 59.3, including (where appropriate) a description of any software, the purpose for which such software is used or capable of use; and
- (d) details of all hardware leases.

59A.9 The Contractor shall allow the Authority or its representative access to such register at all reasonable times and permit the Authority or its representative to take, or at the Authority's request, provide, copies of all or part of the register or its contents. The Authority shall reimburse the Contractor its reasonable costs incurred in taking or providing such copies.

59B. IP and IT Costs

59B.1 Except as provided otherwise in the Contract, where a Relevant IP Event occurs, any costs incurred by the Authority from time to time in connection with the grant of a Required Licence under Clause 59.5(b)(iv) or a licence under Clauses 59.7(a) or (c), or under a contract to which the Authority is a party under Clause 59A.1(e), in any case including payment of fees or charges to a third party, shall be recoverable from the Contractor as a liability due to the Authority.

59B.2 The terms for the grant to the Authority of the licences to which Clause 59.6 refers shall be free of charge.

60. Contractor's Records

60.1 The Contractor shall at all times:

- (a) maintain and procure that its Sub-contractors maintain detailed records relating to the performance of this Contract, including those relating to design, build, maintenance and operation (and in the case of each Sub-contractor performance of the relevant Sub-contract); and
- (b) make available (procuring that its Sub-contractors likewise make available) to the Authority access on reasonable notice to and promptly provide copies of such records referred to in this clause 60.1 for all such purposes as the Authority shall require including, without prejudice to the generality of the foregoing, purposes associated with financial audits; and
- (c) provide the Authority with details of any commitments made by the Contractor (and procure that each Sub-contractor also provides) details of its commitments for future expenditure in connection with the performance of this Contract and details of any funds held by the Contractor; and
- (d) when requested by the Authority, furnish the summary of any of the aforementioned costs in such form and detail as the Authority may reasonably require, the Contractor's obligations including an obligation to procure compliance by the Sub-contractor with the provision of equivalent reports by the Sub-contractor to the Authority; and
- (e) afford such facilities as the Authority may reasonably require for its representatives to visit the Site (or any other place where the records of the Contractor and each Sub-contractor are held) and examine the records maintained to which this clause refers procuring due compliance by its Sub-contractors with the obligation to make such records available for inspection.

60.2 For the duration of the Contract, the Contractor:

- (a) shall furnish to the Authority:
 - (i) as soon as they become available (and in any event within ninety (90) Days of the end of each of its financial periods) copies of its audited financial statements for that period which shall contain an income statement and a balance sheet and a cash flow statement and be audited and certified without qualification by a firm of independent accountants;
 - (ii) as soon as they become available (and in any event within thirty (30) Days of the end of each of its financial half-Years and within thirty (30) Days of each Review Date) copies of its unaudited financial statements for that half-Year or Year (as the case may be) which shall contain an income statement, a balance sheet and a cash flow statement; and
- (b) will prepare the financial statements referred to in Clause 60.2(a) on a basis consistently applied in accordance with generally accepted accounting principles in England and Wales and those financial statements shall give a true and fair view of the results of its operations for the period in question and the state of its affairs as at the date to which the financial statements are made up and shall disclose or reserve against all the liabilities (actual or contingent) of the Contractor;

- (c) at the request of the Authority, shall furnish the Authority with any and all information provided by it to the Banks during the term of the Contract.

60.3 The Contractor shall keep books of account and shall procure that each Sub-contractor maintains its books of account in accordance with best accountancy practice with respect to the Contract showing in detail:

- (a) expenditure on wages and salaries;
- (b) administrative overheads;
- (c) expenditure on consumable items;
- (d) payments made to Sub-contractors;
- (e) capital and revenue expenditure; and
- (f) such other items as the Authority may reasonably require,

and, without prejudice to the generality of this clause 60, the Contractor shall have (and procure that the Operating Sub-contractor shall have) items (a) to (f) available for inspection by the Authority upon reasonable notice, and shall present a report of the same to the Authority as and when requested.

60.4 The Authority's right of access to records of account shall include cost audits for verification of cost expenditure, for the purpose of Clause 39 (Variation of Price).

60.5 The Contractor shall maintain or procure that the following are maintained:

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

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

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

60.7 The Contractor shall permit records referred to in this Clause 60 to be examined and copied by the Controller and other representatives of the Authority, and by the Comptroller and Auditor General and his representatives.

60.8 The records referred to in this Clause shall be retained by the Contractor (or where appropriate shall procure that the Operating Sub-contractor or Construction Contractor shall retain) for a period of at least five (5) Years after the Contractor's obligations under the Contract have come to an end. Records relating to the construction of the Prison will be retained and provided to the Authority as set out in Schedule N.

60.9 Upon termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation and management of the Prison, and without prejudice to the identity of any new Contractor or replacement Operating Sub-contractor, the Contractor shall (and shall ensure that the Operating Sub-contractor will) comply with all reasonable requests of the Authority to provide information relating to the

Contractor's costs of operating and maintaining the Prison. Such information shall include information relating to the anticipated cost of a transfer of the Prison to a new Contractor.

60.10 The Contractor will control the documents referred to in Schedule N in the manner set out in that Schedule N.

60A. Internal and External Audits

The Contractor shall:

60A.1 facilitate and procure the co-operation of the Sub-contractors in relation to both Authority internal and external audits which shall include audits by HM Inspectors of Prisons, the Independent Monitoring Board and the Prison and Probation Ombudsman, together with the Authority's own audit and assurance requirements; and

60A.2 discharge the obligations that the Contractor has whether under this agreement or otherwise to comply with the recommendations of internal and external audits, including those of HM Inspector of Prisons and the Independent Monitoring Board and the Prison and Probation Ombudsman and to the extent that the Sub-contractor has equivalent obligations whether under the relevant Sub-contract or otherwise to also procure due compliance by its Sub-contractors with such recommendations always within a timescale agreed with the Authority, the obligation of the Contractor also being in each case to provide regular progress reports.

60A.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 and the Prison to provide administrative support.

61. Independent Contractor

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

62. Authority to Commit and Variation

62.1 There shall be Named Representatives of the Authority, whose names shall appear at Part 1 of Schedule J, and in the event of any change to the Named Representatives of the Authority, the Authority shall give written notice of the change to the Contractor. A change in the Named Representatives of the Authority does not constitute a variation of the Contract.

62.2 Only the Named Representatives of the Authority, or their formally nominated officers, have the power to vary the terms and conditions of the Contract, or to commit the Authority to additional expenditure (including pursuant to Clause 9 (Change to Services Required)).


62.3 Any variation of any provision of the Contract must be effected in writing issued by the Authority or a Named Representative of the Authority and no purported variation by any other means shall bind the Authority.

62.4 For the avoidance of doubt, any agreement between the Authority and the Contractor to change the Estimated Opening Date is without prejudice to any of the Contractor's or the Authority's obligations hereunder in respect of Actual Opening Date, Contractual Opening Date, Full Operation Date and Actual Full Operation Date

63. Service of Notices

63.1 Any notice or consent which the Authority is required to give to the Contractor under the terms of the Contract shall be sufficiently given if it is sent by recorded or registered post addressed to the Contractor at its registered office. Such notice or consent shall be deemed to have been given at the time at which that letter would in the ordinary course of post be delivered, save where there is express contractual provision to the contrary.

63.2 Any notice or consent which the Contractor is required to give to the Authority under the terms of the Contract shall be sufficiently given if it is sent by recorded or registered post addressed to:

The Authority:	The Secretary of State for Justice
Address:	Ministry of Justice Procurement Directorate 10.33, 10th Floor, 102 Petty France, London, SW1H 9AJ
Attention:	 Head of Procurement - Prisons

Such notice or consent shall be deemed to have been given at the time at which that letter would in the ordinary course of post be delivered, save where there is express contractual provision to the contrary.

64. Race and Sex Discrimination

64.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000, or the Sex Discrimination Acts 1975 and 1986.

64.2 The Contractor shall take all reasonable steps to secure that all servants, agents and Sub-contractors do not unlawfully discriminate within the meaning and scope of the above-mentioned Legislation.

64A. Equality and Non-Discrimination

64A.1 On and from the date of the Amending Agreement, The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any other relevant legislation relating to discrimination in the employment of employees.

64A.2 In the management of its affairs and the development of its equality and diversity policies, the Contractor shall co-operate with the Authority in light of the Authority's obligations to comply with statutory equality duties.

64A.3 The Contractor shall take all reasonable steps to secure that all servants, agents and Sub-contractors comply with this **Clause 64 (Equality and Non-discrimination)**.

65. Data Protection

65.1 In this Clause 65 **Data Subject** and **personal data** shall have the meaning given in the Data Protection Act 1998.

65.2 The Contractor shall only act on instructions from the Authority regarding the processing of personal data pursuant to this Contract and the Contractor shall ensure that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data. The Contractor shall, from time to time, comply with any reasonable request made by the Authority to ensure compliance with the measures mentioned above in this Clause. The Authority hereby instructs the Contractor to carry out any processing of personal data reasonably necessary for the performance of the Services.

65.3 The Contractor shall take the measures mentioned above in this Clause, having regard to the state of technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to (a) the harm that may result from breach of such measures and (b) the nature of personal data to be protected. The Contractor shall take reasonable steps to ensure the reliability of any of its employees who have access to the personal data.

65.4 The Contractor shall indemnify and keep indemnified the Authority and any officer or employee of the Authority from time to time, against all costs, claims, damages and expenses (including legal costs) arising out of, or in connection with any breach of the Data Protection Act 1998, including the data protection principles contained in that Act, (in each case, whether made by the Contractor or the Authority) caused by an act or omission of the Contractor, save that this indemnity shall not apply to any acts or criminal offences committed by the Authority or its officers and employees.

65.5 The Contractor shall provide full co-operation and assistance to the Authority in allowing Data Subjects to exercise their rights under the Data Protection Act 1998 at no charge to the Authority.

65.6 The Contractor shall ensure that all Operational Staff of the Contractor or any Sub-contractor having access to Personal Data shall be reliable and responsible Persons who appreciate the confidentiality of the Personal Data and the need to guard against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

66. Health and Safety

66.1 All plant, fixtures, fittings, furniture chattels and other equipment supplied by the Contractor in performance of the Contract shall comply with all provisions of any Legislation relating to health and/or safety from time to time in force. Crown immunity will not apply to the Contractor, who shall be liable for any failure to meet statutory requirements in respect of these items.

66.2 The Contractor shall be responsible for the observance by itself, its Construction and/or Operational Staff and Sub-contractors of all current and relevant health and safety precautions necessary for the protection of itself, its Construction and/or Operational Staff, Sub-contractors and any other Persons invited onto or visiting the Site, including all precautions required to be taken by or under any Legislation.

66.3 The Contractor shall be responsible for the observance by itself, its Staff and Sub-contractors of all current and relevant rules, regulations and requirements of statutory or regulatory authorities concerning building works and fire prevention.

67. Duty of Care

67. The Contractor shall carry out its obligations under the Contract in accordance with Good Industry Practice.

68. Waiver

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

69. Severability

69. In the event that any term, condition, Clause or provision contained herein 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 Clauses.

70. Counterparts

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

71. Governing Law and Jurisdiction

71. The Contract shall be governed by and construed in accordance with the laws of England, and subject to Clause 72 (Dispute Resolution) the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

72. Dispute Resolution

72.1 Unless the Authority and the Contractor agree to a Dispute being referred to arbitration in accordance with Clause 72.3, either party shall have the right at any time to refer any Dispute to adjudication in accordance with this Clause by giving a notice of adjudication to the other party (a **Notice of Adjudication**). The Notice of Adjudication shall set out in general terms the nature of the Dispute and the redress sought. Should either party give a Notice of Adjudication, immediately thereafter the parties shall endeavour to agree, from the list of Adjudicators in Schedule S, a shortlist of Persons whom they would consider suitable to act as the Adjudicator and invite them (in turn) to accept the reference of the Dispute referred to in the Notice of Adjudication. In the event of the parties failing to jointly appoint a Person willing and suitable to act as Adjudicator within three (3) Days of the Notice of Adjudication, either party may apply to the Chartered Institute of Arbitrators to appoint an Adjudicator. The Chartered Institute of Arbitrators shall endeavour to appoint the Adjudicator within four (4) Days of receiving the application. The Adjudicator shall be appointed on the terms of appointment (the **Appointment**) appended at Schedule T. The fees of the Adjudicator shall be agreed by the parties and the Adjudicator as soon as is reasonably practicable after the Notice of Adjudication is given pursuant to this Clause 72.1 and with the object of securing the appointment of the Adjudicator within seven (7) Days of the Notice of Adjudication. In the event that either party (but not both) rejects the fees proposed such issue shall be referred to the President for the time being of the Chartered Institute of Arbitrators and his decision shall be binding on the parties (provided that the level of fees does not exceed the level originally proposed to the parties by the Adjudicator). If both parties reject the fees proposed by the Adjudicator or if no resolution is achieved by the President for the time being of the Chartered Institute of Arbitrators within fourteen (14) Days of the matter being referred to him another Person shall be appointed Adjudicator in accordance with the provisions of this Clause. In the event that the Adjudicator's appointment is terminated in accordance with the provisions of the Appointment a Person

shall be appointed to replace the Adjudicator in accordance with the provisions of this Clause.

72.2 The Dispute shall be deemed to be referred to the Adjudicator on his acceptance of the appointment by written notice to the parties (**Notice of Acceptance**). The referring party shall provide to the responding party within seven (7) Days of the Notice of Referral a full statement of its case (Notice of Referral) and the referring party shall serve the Notice of Referral upon the Adjudicator at the same time as it is served on the responding party or (if later) promptly upon the appointment of the Adjudicator. Within seven (7) Days of the submission of the Notice of Referral the responding party shall provide the Adjudicator and the referring party with a full response to the referring party's statement of case. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute, and shall, in any event within twenty eight (28) Days of referral of the Dispute to him (or such other period as the parties may agree after the referral of the Dispute to adjudication, or forty two (42) Days from the referral of the Dispute if the Adjudicator requests such an extension and the party referring the Dispute to adjudication agrees), provide to both parties his written decision on the Dispute. The Adjudicator shall state the reasons for his decision, and unless and until revised, cancelled or varied by the Arbitral Tribunal pursuant to Clause 72.3, it shall be binding on both parties who shall forthwith give effect to the decision. The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses. The Adjudicator shall be deemed not to be an arbitrator and the provisions of the Arbitration Act 1996 (as amended from time to time) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination. The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made pursuant hereto. All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator hereunder shall be treated as confidential and the Adjudicator shall not, save as permitted by this Clause 72, or as required by law, disclose to any Person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies thereof shall be returned to such party on completion of the Adjudicator's work. The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability. The Adjudicator shall have the power to correct his decision so as to remove a clerical or typographical error arising by accident or omission.

72.3 In the case of:

- (a) either party being dissatisfied with or otherwise wishing to challenge the Adjudicator's decision made in accordance with Clause 72.2; or
- (b) both parties agreeing so to do,

either party may (within twenty eight (28) Days of receipt of the Adjudicator's decision, where appropriate), notify the other party of its intention to refer a Dispute to arbitration and to invite the other party to concur in the appointment of an arbitral panel (the **Arbitral Tribunal**). The Arbitral Tribunal shall comprise three (3) individuals who shall be solicitors, barristers or arbitrators recognised by the Chartered Institute of Arbitrators of not less than ten (10) Years' standing, or by agreement between the parties, one such individual. If the parties are unable within fourteen (14) Days to agree the identity of the Arbitral Tribunal either party may request the President of the Law Society to make the appointment. The Arbitral Tribunal shall have the power to open up, review and

revise any opinion, certificate, instruction, determination or decision of whatever nature given or made pursuant hereto, to vary or cancel the decision of the Adjudicator and, where appropriate, to order financial compensation to be paid by one party to the other. The arbitration shall take place in London.

72.4 The Arbitral Tribunal shall in its absolute discretion, make such procedural directions as it considers necessary such as ordering the parties to provide written submissions within such time period as it considers appropriate and/or to attend such hearings as it deems necessary. The Arbitral Tribunal's decision shall be in writing and shall state its reasons for its decision. The decision of the Arbitral Tribunal shall be final and binding on both parties. The costs of the arbitration will be in the discretion of the Arbitral Tribunal.

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

72.6 If any Dispute arising under this Contract raises issues which relate to any dispute between (a) the Contractor and the Construction Sub-contractor arising under the Construction Sub-contract or otherwise affects the relationship or rights of the Contractor and/or the Construction Sub-contractor under the Construction Sub-contract, (the **"Construction Sub-contract Dispute"**), (b) the Contractor and the Operating Sub-contractor arising under the Operating Sub-contract or otherwise affects the relationship or rights of the Contractor and/or the Operating Sub-contractor under the Operating Sub-contract (the **Operating Sub-contract Dispute**), (c) the Contractor and the Prison Expansion Construction Sub-contractor arising under the Prison Expansion Construction Sub-contract or otherwise affects the relationship or rights of the Contractor and/or the Prison Expansion Construction Sub-contractor under the Prison Expansion Construction Sub-contract (the **Prison Expansion Construction Sub-contract Dispute**), or the Contractor may include as part of its submissions made to the Adjudicator pursuant to Clause 72.2 or to the Arbitral Tribunal, where the Dispute is referred to arbitration pursuant to Clause 72.3, submissions made by the Construction Sub-contractor, the Prison Expansion Construction Sub-contractor or by the Operating Sub-contractor as appropriate.

72.7 The Adjudicator or the Arbitral Tribunal, as appropriate, shall not have jurisdiction to determine the Construction Sub-contract Dispute, Operating Sub-contract Dispute or the Prison Expansion Construction Sub-contract Dispute but where submissions made by the Construction Sub-contractor or by the Operating Sub-contractor or by the Prison Expansion Construction Sub-contractor as appropriate have been submitted to the Adjudicator or the Arbitral Tribunal as provided for in Clause 72.6 (Dispute Resolution) the decision of the Adjudicator or the Arbitral Tribunal shall be binding on the Contractor and the Construction Sub-contractor insofar as it determines the issues relating to the Construction Sub-contract Dispute and on the Contractor and the Operating Sub-contractor insofar as it determines the issues relating to the Operating Sub-contract Dispute and on the Contractor and the Prison Expansion Construction Sub-contractor insofar as it determines the issues relating to the Prison Expansion Construction Sub-contract Dispute.

72.8 Any submissions made by the Construction Sub-contractor or the Operating Sub-contractor or the Prison Expansion Construction Sub-contractor as part of the Contractor's case shall:

- (a) be made within the time limits applicable to the delivery of submissions by the Contractor; and
- (b) concern only those matters which relate to the Dispute between the Authority and the Contractor under this Contract.

72.9 Where the Construction Sub-contractor or the Operating Sub-contractor or the Prison Expansion Construction Sub-contractor makes submissions in any reference (i) before the Adjudicator, the Adjudicator's fees for such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds by the Contractor; (ii) before the Arbitral Tribunal, the costs of the arbitration shall be in the discretion of the Arbitral Tribunal. For the avoidance of doubt, the Authority shall have no liability to the Construction Sub-contractor or the Prison Expansion Construction Sub-contractor or the Operating Sub-contractor arising out of or in connection with any decision of the Adjudicator or Arbitral Tribunal or in respect of the costs of the Construction Sub-contractor or the Operating Sub-contractor or the Prison Expansion Construction Sub-contractor in participating in the resolution of any Dispute under this Contract.

72.10 The Contractor shall not allow the Construction Sub-contractor or the Operating Sub-contractor or the Prison Expansion Construction Sub-contractor access to any Document relevant to the issues in Dispute between the Authority and the Contractor save where:

- (a) the Document is relevant also to the issues relating to the Construction Sub-contract Dispute or the Operating Sub-contract Dispute or the Prison Expansion Construction Sub-contract Dispute as the case may be; and
- (b) the Contractor has first delivered to the Authority a written undertaking from the Construction Sub-contractor or the Operating Sub-contractor or the Prison Expansion Construction Sub-contractor as appropriate addressed to the Authority that it shall not use any such Document otherwise than for the purpose of the Dispute resolution proceedings under this Contract and that it shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or Arbitral Tribunal or any professional adviser engaged by the Construction Sub-contractor or the Operating Sub-contractor or the Prison Expansion Construction Sub-contractor as appropriate to advise in connection with the Dispute.

73. Precedence of Terms

73. In the event of any discrepancy arising between the provisions of Parts I to VIII of the Contract and the Schedules, Appendices and any other Document forming part of the Contract, the provisions of Parts I to VIII shall prevail, unless the inconsistent provision is expressed to be, or if the Contract indicates it to be, an amendment of the Parts I to VIII, in accordance with Clause 62 (Authority to Commit and Variation).

74. Third Parties

74. A Person who is not a party to this Contract shall have no rights to enforce any of its terms.

75. Entire Agreement

75.1 This Contract and the Direct Agreement and all other agreements, sets out the entire agreement and understanding between the parties in respect of the design, construction, management and financing of a Custodial Service at Peterborough. It is agreed that:

- (a) no party has entered into this Contract in reliance upon any representation, warranty or undertaking of any other party which is not expressly set out or referred to in this Contract or the Direct Agreement;

- (b) no party shall have any claim or remedy in respect of misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Contract) or untrue statement made by any other party;
- (c) this Clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation;
- (d) save as expressly set out in this Contract, no party shall owe any duty of care to any Person;
- (e) the Notices of Change made prior to the date of the Amending Agreement and listed in Schedule ZZ (Notices of Change) have been incorporated into this Contract to the extent relevant as at the date of the Amending Agreement; and
- (f) from the date of the Amending Agreement, any Notice of Change made prior to the date of the Amending Agreement that is not listed in Schedule ZZ (Notices of Change) shall cease to have effect.

75.2 To the extent that the terms of any Notice of Change listed in Schedule ZZ (Notices of Change) are inconsistent with any terms of this Contract, the terms of this Contract shall prevail.

Executed as a **Deed** by

**THE SECRETARY OF STATE
FOR JUSTICE** by:

Authorised Signatory

Signature of witness:

Name of witness:

Address of witness:

.....

Executed as a deed by)
PETERBOROUGH PRISON)
MANAGEMENT LIMITED)
acting by a director and its secretary/)
two directors)

..... Signature of director

..... Name of director

..... Signature of director/secretary

..... Name of director/secretary