

#### 13.4 **Authority to Provide Information**

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

13.4A To meet the requirements of the CDM Regulations the Parties acknowledge that the Operating Sub Contractor has appointed Frankham Consultancy Group Limited to act as the CDM Co-ordinator for the Houseblock Works and the Houseblock Construction Sub-Contractor will act as the Principal Contractor.

### 14. **MONITORING AND INSPECTION OF THE WORKS**

#### 14.1 **Right of Inspection**

The Contractor shall procure that the Authority or any representative or adviser of the Authority shall have, at all reasonable times and upon giving reasonable notice, the right (but not so as to delay or impede the progress of the Works) to enter the Original Site in order to inspect the state and progress of the Works (and to ascertain whether they are being properly executed), and to monitor compliance by the Contractor with its obligations under this Contract.

#### 14.2 **Right to Open Up**

14.2.1 Subject to **clause 14.2.2 (Right to Open Up)**, the Authority's Representative shall have the right at any time prior to:

14.2.1.1 the issue of the Independent Engineer's Declaration in respect of the Works; and

14.2.1.2 the Post Completion Works Acceptance Date in respect of the Post Completion Works,

to request the Contractor to open up and inspect any part or parts of such Works or Post Completion Works where the Authority's Representative reasonably believes that such part or parts of the Works or Post Completion Works is or are defective and the Contractor shall comply with such request.

14.2.2 Prior to exercising his right pursuant to **clause 14.2.1 (Right to Open Up)**, the Authority's Representative shall notify the Contractor of his intention to exercise such right, setting out detailed reasons.

- 14.2.3 If, following the exercise by the Authority's Representative of his right pursuant to **clause 14.2.1 (Right to Open Up)**, the inspection shows that the relevant part or parts of the Works are not defective, the exercise of such rights shall, subject to (and in accordance with) the provisions of **clause 15 (Compensation Events)**, be treated as a Compensation Event.
- 14.2.4 If, following the exercise by the Authority's Representative of his right pursuant to **clause 14.2.1 (Right to Open Up)**, the inspection shows that the relevant part or parts of the Works or Post Completion Works is or are defective, the Contractor shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by the Contractor at no cost to the Authority and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Works.
- 14.2.5 If, following the exercise by the Authority's Representative of his right pursuant to **clause 14.2.1 (Right to Open Up)**, the Authority's Representative is of the opinion that the inspection shows that the relevant part or parts of the Works or Post Completion Works is or are defective and the Contractor does not agree with such opinion, the matter shall be determined in accordance with the Dispute Resolution Procedure.
- 14.2.6 Without prejudice to the rights of the Authority's Representative pursuant to this **clause 14.2 (Right to Open Up)**, the Parties acknowledge that the exercise of such rights shall not in any way affect the obligations of the Contractor under this Contract, save as expressly set out in this **clause 14 (Monitoring and Inspection of the Works)**.

#### 14.3 **Inspection of Facilities**

The Authority or a representative or adviser of the Authority may, at all reasonable times and on reasonable notice and subject to obtaining the consent of the relevant manufacturer or supplier (which the Contractor shall use all reasonable endeavours to obtain), enter upon any property used by the Contractor as training or workshop facilities and places where work is being prepared or materials are being obtained for the Project for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Works.

#### 14.4 **Contractor's Reasonable Assistance**

The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance

is given for the purposes of **clauses 14.1 (Right of Inspection) to 14.3 (Inspection of Facilities)** (inclusive), subject to the Contractor's and the Sub-Contractors' construction obligations not being adversely affected and to the Authority reimbursing the Contractor for any reasonable costs or expenses incurred as a result of the action taken by the Authority under **clauses 14.1 (Right of Inspection) to 14.3 (Inspection of Facilities)** (inclusive).

#### **14.5 Health and Safety Requirements**

The Authority and its representatives shall, at all times, comply with all relevant health and safety procedures which shall include any relevant health and safety plans for the construction of the Prison, the Construction Sub-Contractor's Site Rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Construction Sub-Contractor's Site Manager from time to time when exercising its rights under this **clause 14 (Monitoring and Inspection of the Works)**.

#### **14.6 Supply of Information**

The Contractor shall supply to the Authority and any representative or adviser of the Authority visiting the Original Site pursuant to **clauses 14.1 (Right of Inspection) and 14.3 (Inspection of Facilities)** such information in respect of the Works as may reasonably be required.

#### **14.7 Site Meetings, Monitoring and Inspection**

14.7.1 The Authority and the Authority's Representative shall have such rights of access to the Site in an emergency as either of them (acting reasonably) considers suitable in the circumstances.

14.7.2 Without prejudice to the generality of **clause 14.7.1 (Site Meetings, Monitoring and Inspection)**, the Contractor shall procure that:

14.7.2.1 monthly progress meetings and site meetings are held and the Authority's Representative is afforded a reasonable opportunity to attend such monthly progress meetings and site meetings and to attend as observer such other meetings as the Authority's Representative may reasonably request;

14.7.2.2 that the Independent Engineer, the Construction Sub-Contractor and the Operating Sub-Contractor attend such monthly progress meetings and site meetings as is reasonably required by the Authority; and

14.7.2.3 (whether or not the Authority's Representative has attended such meetings) that a copy of the minutes of such meetings is supplied to the Authority's Representative promptly after such meetings.

#### **14.8 Increased Monitoring**

If, following any viewing, visit or inspection made by the Authority, it is discovered that there are defects in the Works or that the Contractor has materially failed to comply with the Design and Construction Requirements or the Construction Proposals, the Authority may (without prejudice to any other right or remedy available to it) by notice to the Contractor increase the level of its monitoring of the Contractor until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it is capable of performing and will perform all its obligations under this Contract.

#### **14.9 Damage**

Subject to **clause 78.12 (Claims)**, if the Authority or any representative or adviser of the Authority causes material damage to the Site in exercising any right under this **clause 14 (Monitoring and Inspection of the Works)**, then such damage shall be deemed to be a Compensation Event.

### **14A MONITORING AND INSPECTION OF THE HOUSEBLOCK WORKS**

#### **14A.1 Right of Inspection**

The Contractor shall procure that the Authority or any representative or adviser of the Authority shall have, at all reasonable times and upon giving reasonable notice, the right (but not so as to delay or impede the progress of the Houseblock Works) to enter the Houseblock Works Site in order to inspect the state and progress of the Houseblock Works (and to ascertain whether they are being properly executed), and to monitor compliance by the Contractor with its obligations under this Contract.

#### **14A.2 Right to Open Up**

14A.2.1 Subject to **clause 14A.2.2 (Right to Open Up)**, the Authority's Representative shall have the right at any time prior to:

14A.2.1.1 the issue of the Independent Engineer's Houseblock Declaration in respect of the Houseblock Works; and

14A.2.1.2 the Post Completion Houseblock Works Acceptance Date in respect of the Post Completion Houseblock Works,

to request the Contractor to open up and inspect any part or parts of such Houseblock Works or Post Completion Houseblock Works where the Authority's Representative reasonably believes that such part or parts of the Houseblock Works or Post Completion Houseblock Works is or are defective and the Contractor shall comply with such request.

- 14A.2.2 Prior to exercising his right pursuant to **clause 14A.2.1 (Right to Open Up)**, the Authority's Representative shall notify the Contractor of his intention to exercise such right, setting out detailed reasons.
- 14A.2.3 If, following the exercise by the Authority's Representative of his right pursuant to **clause 14A.2.1 (Right to Open Up)**, the inspection shows that the relevant part or parts of the Houseblock Works are not defective, the exercise of such rights shall, subject to (and in accordance with) the provisions of **clause 15A (Compensation Events (Houseblock Works))**, be treated as a Compensation Event.
- 14A.2.4 If, following the exercise by the Authority's Representative of his right pursuant to **clause 14A.2.1 (Right to Open Up)**, the inspection shows that the relevant part or parts of the Houseblock Works or Post Completion Houseblock Works is or are defective, the Contractor shall rectify and make good such defect(s) and any consequence of such rectification and/or making good defect(s) shall be carried out by the Contractor at no cost to the Authority and the Contractor shall not be entitled to any extension of time in relation to such rectification and making good of the Houseblock Works.
- 14A.2.5 If, following the exercise by the Authority's Representative of his right pursuant to **clause 14A.2.1 (Right to Open Up)**, the Authority's Representative is of the opinion that the inspection shows that the relevant part or parts of the Houseblock Works or Post Completion Houseblock Works is or are defective and the Contractor does not agree with such opinion, the matter shall be determined in accordance with the Dispute Resolution Procedure.
- 14A.2.6 Without prejudice to the rights of the Authority's Representative pursuant to this **clause 14A.2 (Right to Open Up)**, the Parties acknowledge that the exercise of such rights shall not in any way affect the obligations of the Contractor under this Contract, save as expressly set out in this **clause 14A (Monitoring and Inspection of the Houseblock Works)**.

### **14A.3 Inspection of Facilities**

The Authority or a representative or adviser of the Authority may, at all reasonable times and on reasonable notice and subject to obtaining the consent

of the relevant manufacturer or supplier (which the Contractor shall use all reasonable endeavours to obtain), enter upon any property used by the Contractor as training or workshop facilities and places where work is being prepared or materials are being obtained for the Project for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Houseblock Works.

#### **14A.4 Contractor's Reasonable Assistance**

The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of **clauses 14A.1 (Right of Inspection) to 14A.3 (Inspection of Facilities)** (inclusive), subject to the Contractor's and the Sub-Contractors' construction obligations in relation to the Houseblock not being adversely affected and to the Authority reimbursing the Contractor for any reasonable costs or expenses incurred as a result of the action taken by the Authority under **clauses 14A.1 (Right of Inspection) to 14A.3 (Inspection of Facilities)** (inclusive).

#### **14A.5 Health and Safety Requirements**

The Authority and its representatives shall, at all times, comply with all relevant health and safety procedures which shall include any relevant health and safety plans for the construction of the Houseblock, the Houseblock Construction Sub-Contractor's Site Rules from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Houseblock Construction Sub-Contractor's Site Manager from time to time when exercising its rights under this **clause 14A (Monitoring and Inspection of the Houseblock Works)**.

#### **14A.6 Supply of Information**

The Contractor shall supply to the Authority and any representative or adviser of the Authority visiting the Houseblock Works Site pursuant to **clauses 14A.1 (Right of Inspection) and 14A.3 (Inspection of Facilities)** such information in respect of the Houseblock Works as may reasonably be required.

#### **14A.7 Site Meetings, Monitoring and Inspection**

14A.7.1 Not used.

14A.7.2 The Contractor shall procure that in relation to the Houseblock Works:

14A.7.2.1 monthly progress meetings and site meetings are held and the Authority's Representative is afforded a reasonable opportunity to attend such monthly progress meetings and

site meetings and to attend as observer such other meetings as the Authority's Representative may reasonably request;

14A.7.2.2 that the Independent Engineer, the Houseblock Construction Sub-Contractor and the Operating Sub-Contractor attend such monthly progress meetings and site meetings as is reasonably required by the Authority; and

14A.7.2.3 (whether or not the Authority's Representative has attended such meetings) that a copy of the minutes of such meetings is supplied to the Authority's Representative promptly after such meetings.

#### **14A.8 Increased Monitoring**

If, following any viewing, visit or inspection made by the Authority, it is discovered that there are defects in the Houseblock Works or that the Contractor has materially failed to comply with the Houseblock Design and Construction Requirements or the Houseblock Construction Proposals, the Authority may (without prejudice to any other right or remedy available to it) by notice to the Contractor increase the level of its monitoring of the Contractor until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that it is capable of performing and will perform all its obligations under this Contract.

#### **14A.9 Damage**

Subject to **clause 78.12 (Claims)**, if the Authority or any representative or adviser of the Authority causes material damage to the Site in exercising any right under this **clause 14A (Monitoring and Inspection of the Houseblock Works)**, then such damage shall be deemed to be a Compensation Event.

## **PART IV - PREPARATION FOR OPERATION**

### **15. COMPENSATION EVENTS**

#### **15.1 Notice**

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

- 15.1.1 the Actual Opening Date may not be achieved on or before the Contractual Opening Date or (following the Contractual Opening Date) the Actual Opening Date may be delayed;
- 15.1.2 the provision of an Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the Phase-In Timetable may not be achieved or (following the relevant date in the Phase-In Timetable) may be further delayed, in either case for any period;
- 15.1.3 the Actual Full Operation Date may not be achieved on or before the Contractual Full Operation Date or (following the Contractual Full Operation Date but before the Longstop Date) the Actual Full Operation Date may be further delayed;
- 15.1.4 the Contractual Post Completion Works Acceptance Date may not be achieved, or (following the Contractual Post Completion Works Acceptance Date but before the Post Completion Works Longstop Date) the Post Completion Works Acceptance Date may be further delayed; and/or
- 15.1.5 the provision of an Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the JEAPP Provision Timetable may not be achieved or (following the relevant date in the JEAPP Provision Timetable) may be further delayed, in either case for any period,

the Contractor shall as soon as reasonably practicable and in any event within twenty (20) Business Days of becoming aware of the likely delay give notice to the Authority to that effect specifying the reason for the delay or likely delay and an estimate of the likely effect of the delay on the Works including the achievement of the Contractual Opening Date, the provision of any Available Prisoner Place on or before the date specified for the provision of that Available Prisoner Place in the Phase-In Timetable, the Contractual Full Operation Date, the Post Completion Works Acceptance Date and/or any date specified for the provision of any Available Prisoner Place in the JEAPP Provision Timetable (taking into account any measures that the Contractor proposes to adopt to mitigate the



consequences of the delay in accordance with **clause 15.3 (Duty to Mitigate)**).

## **15.2 Supply of Information**

Following service of a notice by the Contractor pursuant to **clause 15.1 (Notice)**, the Contractor shall promptly supply to the Authority any further information relating to the delay which:

15.2.1 is received by the Contractor; or

15.2.2 is reasonably requested by the Authority.

## **15.3 Duty to Mitigate**

The Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to **clause 15.1 (Notice)**.

## **15.4 Delays Due to a Compensation Event**

If, on or before the Actual Opening Date, any date specified for the provision of an Available Prisoner Place, the Actual Full Operation Date or Post Completion Works Acceptance Date (as the case may be), as a direct result of the occurrence of a Compensation Event the Contractor will:

15.4.1 be unable to achieve the Actual Opening Date on or before the Contractual Opening Date or (following the Contractual Opening Date but before the Longstop Date) is delayed in achieving the Actual Opening Date;

15.4.2 be unable to provide any Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the Phase-In Timetable or (following the relevant date in the Phase-In Timetable but before the Longstop Date) is delayed in providing any Available Prisoner Place, in either case for any period;

15.4.3 be unable to achieve the Actual Full Operation Date on or before the Contractual Full Operation Date or (following the Contractual Full Operation Date but before the Longstop Date) is delayed in achieving the Actual Full Operation Date;

15.4.4 be unable to complete the Post Completion Works on or before the Contractual Post Completion Works Acceptance Date or (following the Contractual Post Completion Works Acceptance Date but before the Post Completion Works Longstop Date) is delayed in achieving the Post Completion Works Acceptance Date;

15.4.5 be unable to provide any Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the JEAPP Provision Timetable or (following the relevant date in the JEAPP Provision Timetable) is delayed in providing such Available Prisoner Place, in either case for any period;

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

15.4.7 incur costs or lose revenue,

then the Contractor is entitled to apply for an extension of time to the Contractual Opening Date or (following the Contractual Opening Date) the Longstop Date and/or any date specified in the Phase-In Timetable for the provision of an Available Prisoner Place or (following the date specified for the provision of any Available Prisoner Place) the Longstop Date and/or the Contractual Full Operation Date or (after the Contractual Full Operation Date) the Longstop Date and/or the Contractual Post Completion Works Acceptance Date or (after the Contractual Post Completion Works Acceptance Date) the Post Completion Works Longstop Date and/or the date specified for the provision of any Available Prisoner Place in the JEAPP Provision Timetable and/or relief from its obligations and/or to claim compensation under this Contract.

## 15.5 **Procedure for Relief and Compensation**

Subject to **clause 15.7 (Late Provision of Notice or Information)**, to obtain relief, extension and/or claim compensation, the Contractor must:

15.5.1 as soon as practicable, and in any event within twenty (20) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs or lose revenue, give to the Authority a notice of its claim for:

15.5.1.1 an extension of time to (as appropriate):

- (a) the Contractual Opening Date or (following the Contractual Opening Date) the Longstop Date;
- (b) any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place or (following any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place) the Longstop Date;
- (c) the Contractual Full Operation Date or (following the Contractual Full Operation Date) the Longstop Date;

- (d) the Contractual Post Completion Works Acceptance Date or (following the Contractual Post Completion Works Acceptance Date) the Post Completion Works Longstop Date;
- (e) any date specified in the JEAPP Provision Timetable for the provision of any Available Prisoner Place; and/or
- (f) the period specified in paragraph (j) of the definition of Contractor Default;

15.5.1.2 payment of compensation; and/or

15.5.1.3 relief from its obligations under this Contract;

15.5.2 within ten (10) Business Days after receipt by the Authority of the notice referred to in **clause 15.5.1 (Procedure for Relief and Compensation)** give full details of the Compensation Event and the extension of time and/or relief from its obligations under this Contract and/or any Estimated Change in Project Costs claimed; and

15.5.3 demonstrate to the reasonable satisfaction of the Authority that:

15.5.3.1 the Compensation Event was the direct cause of:

- (a) the Estimated Change in Project Costs;
- (b) any delay in the achievement of the Actual Opening Date on or before the Contractual Opening Date (or following the Contractual Opening Date but before the Longstop Date) the delay in achieving the Actual Opening Date;
- (c) any failure to provide any Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the Phase-In Timetable or (following the relevant date in the Phase-In Timetable but before the Longstop Date) the delay in providing any Available Prisoner Place, in either case for any period;
- (d) any delay in the achievement of the Actual Full Operation Date on or before the Contractual Full Operation Date (or following the Contractual Full Operation Date but before the Longstop Date) any delay in the achievement of the Actual Full Operation Date;
- (e) any delay in completion of the Post Completion Works on or before the Contractual Post Completion Works Acceptance Date or (following the Contractual Post Completion Works Acceptance Date but before the Post Completion Works Longstop Date) any delay in completing the Post Completion Works;

- (f) any failure to provide any Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the JEAPP Provision Timetable or (following the relevant date in the JEAPP Provision Timetable) the delay in providing any Available Prisoner Place, in either case for any period; and/or
  - (g) any breach of the Contractor's obligations under this Contract; and
- 15.5.3.2 the Estimated Change in Project Costs, time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

## 15.6 Giving of Relief and Compensation

In the event that the Contractor has complied with its obligations under **clause 15.5 (Procedure for Relief and Compensation)**, then:

### 15.6.1 in the case of a delay:

- 15.6.1.1 the Contractual Opening Date or (following the Contractual Opening Date) the Longstop Date;
- 15.6.1.2 any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place or (following any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place) the Longstop Date;
- 15.6.1.3 the Contractual Full Operation Date or (following the Contractual Full Operation Date) the Longstop Date; and/or
- 15.6.1.4 the Contractual Post Completion Works Acceptance Date or (following the Contractual Post Completion Works Acceptance Date) the Post Completion Works Longstop Date;
- 15.6.1.5 any date specified in the JEAPP Provision Timetable for the provision of any Available Prisoner Place,

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

- 15.6.2 the period referred to in paragraphs (i) and (q) of the definition of Contractor Default, shall be extended by such time as shall be

reasonable for such a Compensation Event, taking into account the likely effect of delay;

15.6.3 in the case of an additional cost being incurred or revenue being lost by the Contractor:

15.6.3.1 on or before the later of the Actual Full Operation Date and the Post Completion Works Acceptance Date; or

15.6.3.2 as a result of Capital Expenditure being incurred by the Contractor at any time,

the Authority shall compensate the Contractor for the Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated), within thirty (30) Days after its receipt of a written demand by the Contractor supported by all relevant information;

15.6.4 in the case of a payment of compensation for the Estimated Change in Project Costs and, without double counting, for revenue actually lost that does not result in Capital Expenditure being incurred by the Contractor referred to in **clause 15.6.3.2 (Giving of Relief and Compensation)** but which reflects a change in the costs and/or without double counting, loss of revenue being incurred by the Contractor during the Custodial Service Period the Authority shall compensate the Contractor in accordance with **clause 15.9 (Method of Calculating Compensation)** by an adjustment to the Contract Price in accordance with **clause 69 (Financial Adjustments)**; and/or

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

## 15.7 **Late Provision of Notice or Information**

In the event that information is provided after the dates referred to in **clause 15.5 (Procedure for Relief and Compensation)**, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under this Contract in respect of the period for which the relevant information is delayed.

## 15.8 **Failure to Agree**

If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Contractor's obligations under this Contract, or the Authority disagrees that a Compensation Event has occurred (or as to its consequences), or that the

Contractor is entitled to relief under this **clause 15 (Compensation Events)**, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

#### **15.9 Method of Calculating Compensation**

Any payment of compensation referred to in **clause 15.6 (Giving of Relief and Compensation)** shall be calculated in accordance with **clause 69 (Financial Adjustments)**.

### **15A COMPENSATION EVENTS (HOUSEBLOCK WORKS)**

#### **15A.1 Notice**

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

15A.1.1 the Actual Houseblock Opening Date may not be achieved on or before the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date) the Actual Houseblock Opening Date may be delayed;

15A.1.2 the provision of a Houseblock Available Prisoner Place on or before the date for provision of such Houseblock Available Prisoner Place specified in the Houseblock Phase-in Period Timetable may not be achieved or (following the relevant date in the Houseblock Phase-in Period Timetable) may be further delayed, in either case for any period;

15A.1.3 the Actual Houseblock Full Operation Date may not be achieved on or before the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date but before the Houseblock Longstop Date) the Actual Houseblock Full Operation Date may be further delayed; and/or

15A.1.4 the Contractual Post Completion Houseblock Works Acceptance Date may not be achieved, or (following the Contractual Post Completion Houseblock Works Acceptance Date but before the Post Completion Houseblock Works Longstop Date) the Post Completion Houseblock Works Acceptance Date may be further delayed,

the Contractor shall as soon as reasonably practicable and in any event within twenty two (22) Business Days of becoming aware of the likely delay give notice to the Authority to that effect specifying the reason for the delay or likely delay and an estimate of the likely effect of the delay on the Houseblock Works including the achievement of the Contractual Houseblock Opening Date, the provision of any Houseblock Available Prisoner Place on or before the date

specified for the provision of that Houseblock Available Prisoner Place in the Houseblock Phase-in Period Timetable, the Contractual Houseblock Full Operation Date, the Post Completion Houseblock Works Acceptance Date (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with **clause 15A.3 (Duty to Mitigate)**).

#### **15A.2 Supply of Information**

Following service of a notice by the Contractor pursuant to **clause 15A.1 (Notice)**, the Contractor shall promptly supply to the Authority any further information relating to the delay which:

15A.2.1 is received by the Contractor; or

15A.2.2 is reasonably requested by the Authority.

#### **15A.3 Duty to Mitigate**

The Contractor shall take all reasonable steps to mitigate the delay and consequences of any delay which is the subject of a notice pursuant to **clause 15A.1 (Notice)**.

#### **15A.4 Delays Due to a Compensation Event**

If, on or before the Actual Houseblock Opening Date, any date specified for the provision of a Houseblock Available Prisoner Place, the Actual Houseblock Full Operation Date or Post Completion Houseblock Works Acceptance Date (as the case may be), as a direct result of the occurrence of a Compensation Event in relation to the carrying out of the Houseblock Works the Contractor will:

15A.4.1 be unable to achieve the Actual Houseblock Opening Date on or before the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date but before the Houseblock Longstop Date) is delayed in achieving the Actual Houseblock Opening Date;

15A.4.2 be unable to provide any Houseblock Available Prisoner Place on or before the date for provision of such Houseblock Available Prisoner Place specified in the Houseblock Phase-in Period Timetable or (following the relevant date in the Houseblock Phase-in Period Timetable but before the Houseblock Longstop Date) is delayed in providing any Houseblock Available Prisoner Place, in either case for any period;

15A.4.3 be unable to achieve the Actual Houseblock Full Operation Date on or before the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date but before the Houseblock

Longstop Date) is delayed in achieving the Actual Houseblock Full Operation Date;

15A.4.4 be unable to complete the Post Completion Houseblock Works on or before the Contractual Post Completion Houseblock Works Acceptance Date or (following the Contractual Post Completion Houseblock Works Acceptance Date but before the Post Completion Houseblock Works Longstop Date) is delayed in achieving the Post Completion Houseblock Works Acceptance Date;

15A.4.6 be unable to comply with its obligations under this Contract; and/or

15A.4.7 incur costs or lose revenue,

then the Contractor is entitled to apply for an extension of time to the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date) the Houseblock Longstop Date and/or any date specified in the Houseblock Phase-in Period Timetable for the provision of an Houseblock Available Prisoner Place or (following the date specified for the provision of any Houseblock Available Prisoner Place) the Houseblock Longstop Date and/or the Contractual Houseblock Full Operation Date or (after the Contractual Houseblock Full Operation Date) the Houseblock Longstop Date and/or the Contractual Post Completion Houseblock Works Acceptance Date or (after the Contractual Post Completion Houseblock Works Acceptance Date) the Post Completion Houseblock Works Longstop Date and/or relief from its obligations and/or to claim compensation under this Contract (but without double counting any amount claimed by the Contractor pursuant to clause 15 (Compensation Events) in respect of a Compensation Event arising out of the same event.

## **15A.5 Procedure for Relief and Compensation**

Subject to **clause 15A.7 (Late Provision of Notice or Information)**, to obtain relief, extension and/or claim compensation, the Contractor must:

15A.5.1 as soon as practicable, and in any event within twenty three (23) Business Days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Contract and/or the Contractor to incur costs or lose revenue, give to the Authority a notice of its claim for:

15A.5.1.1 an extension of time to (as appropriate):

- (a) the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date) the Houseblock Longstop Date;



- (b) any date specified in the Houseblock Phase-in Period Timetable for the provision of any Houseblock Available Prisoner Place or (following any date specified in the Houseblock Phase-in Period Timetable for the provision of any Houseblock Available Prisoner Place) the Houseblock Longstop Date;
- (c) the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date) the Houseblock Longstop Date; and/or
- (d) the Contractual Post Completion Houseblock Works Acceptance Date or (following the Contractual Post Completion Houseblock Works Acceptance Date) the Post Completion Houseblock Works Longstop Date;

15A.5.1.2 payment of compensation (including relief from liability to pay Deductions in respect of affected Custodial Services (if any)); and/or

15A.5.1.3 relief from its obligations under this Contract (including in respect of affected Custodial Services (if any));

15A.5.2 within twelve (12) Business Days after receipt by the Authority of the notice referred to in **clause 15A.5.1 (Procedure for Relief and Compensation)** give full details of the Compensation Event and the extension of time and/or relief from its obligations under this Contract and/or any Estimated Change in Project Costs claimed; and

15A.5.3 demonstrate to the reasonable satisfaction of the Authority that:

15A.5.3.1 the Compensation Event was the direct cause of:

- (a) the Estimated Change in Project Costs;
- (b) any delay in the achievement of the Actual Houseblock Opening Date on or before the Contractual Houseblock Opening Date (or following the Contractual Houseblock Opening Date but before the Houseblock Longstop Date) the delay in achieving the Actual Houseblock Opening Date;
- (c) any failure to provide any Houseblock Available Prisoner Place on or before the date for provision of such Houseblock Available Prisoner Place specified in the Houseblock Phase-in Period Timetable or (following the relevant date in the Houseblock Phase-in Period Timetable but before the Houseblock Longstop Date) the delay in

providing any Houseblock Available Prisoner Place, in either case for any period;

- (d) any delay in the achievement of the Actual Houseblock Full Operation Date on or before the Contractual Houseblock Full Operation Date (or following the Contractual Houseblock Full Operation Date but before the Houseblock Longstop Date) any delay in the achievement of the Actual Houseblock Full Operation Date;
- (e) any delay in completion of the Post Completion Houseblock Works on or before the Contractual Post Completion Houseblock Works Acceptance Date or (following the Contractual Post Completion Houseblock Works Acceptance Date but before the Post Completion Houseblock Works Longstop Date) any delay in completing the Post Completion Houseblock Works; and/or
- (f) any breach of the Contractor's obligations under this Contract; and

15A.5.3.2 the Estimated Change in Project Costs, time lost, and/or relief from the obligations under this Contract claimed, could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice.

## **15A.6 Giving of Relief and Compensation**

In the event that the Contractor has complied with its obligations under **clause 15A.5 (Procedure for Relief and Compensation)**, then:

15A.6.1 in the case of a delay:

- 15A.6.1.1 the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date) the Houseblock Longstop Date;
- 15A.6.1.2 any date specified in the Houseblock Phase-in Period Timetable for the provision of any Houseblock Available Prisoner Place or (following any date specified in the Houseblock Phase-in Period Timetable for the provision of any Houseblock Available Prisoner Place) the Houseblock Longstop Date;
- 15A.6.1.3 the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date) the Houseblock Longstop Date; and/or
- 15A.6.1.4 the Contractual Post Completion Houseblock Works Acceptance Date or (following the Contractual Post

Completion Houseblock Works Acceptance Date) the Post Completion Houseblock Works Longstop Date,

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

15A.6.2 the period referred to in paragraph (b) of the definition of Houseblock Events of Default, shall be extended by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;

15A.6.3 in the case of an additional cost being incurred or revenue being lost by the Contractor:

15A.6.3.1 on or before the later of the Actual Full Houseblock Operation Date and the Post Completion Houseblock Works Acceptance Date; or

15A.6.3.2 as a result of Capital Expenditure being incurred by the Contractor at any time,

the Authority shall compensate the Contractor for the Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated), by an adjustment to the Houseblock Works Fee upon receipt by the Authority of a written demand by the Contractor supported by all relevant information, such compensation to be paid by the Authority in accordance with the provisions in **Schedule 41 (Houseblock Works Fee)**;

15A.6.4 in the case of a payment of compensation for the Estimated Change in Project Costs and, without double counting, for revenue actually lost that does not result in Capital Expenditure being incurred by the Contractor referred to in **clause 15A.6.3.2 (Giving of Relief and Compensation)** but which reflects a change in the costs and/or, without double counting, loss of revenue being incurred by the Contractor during the Custodial Service Period the Authority shall compensate the Contractor in accordance with **clause 15A.9 (Method of Calculating Compensation)** by an adjustment to the Houseblock Works Fee; and/or

15A.6.5 the Authority shall give the Contractor such relief from its obligations under this Contract, as is reasonable for such a Compensation Event.

#### **15A.7 Late Provision of Notice or Information**

In the event that information is provided after the dates referred to in **clause 15A.5 (Procedure for Relief and Compensation)**, then the Contractor shall not be entitled to any extension of time, compensation, or relief from its obligations under this Contract in respect of the period for which the relevant information is delayed.

#### **15A.8 Failure to Agree**

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

#### **15A.9 Method of Calculating Compensation**

Any payment of compensation referred to in **clause 15A.6 (Giving of Relief and Compensation)** shall be calculated in accordance with **clause 15A.6 (Giving of Relief and Compensation)** and/ or **clause 69 (Financial Adjustments)** (as the case may be).

### **16. INDEPENDENT ENGINEER'S DECLARATION**

#### **16.1 Inspection of the Prison**

The Contractor shall give the Authority and the Independent Engineer not less than six (6) Business Days' notice of the date when the Contractor believes that the Prison is ready for inspection with a view to achieving:

16.1.1 the issue of the Independent Engineer's Declaration in respect of the Prison; and/or

16.1.2 the issue of the Post Completion Works Acceptance Certificate in respect of the Prison,

and on such dates the Independent Engineer shall inspect the Prison and representatives from the Authority, the Contractor and the senior lenders shall be entitled to make a joint inspection with the Independent Engineer.

#### **16.2 Post Completion Works**

Following issue of the Independent Engineer's Declaration, the Contractor shall or shall procure that the Construction Sub-Contractor shall carry out the Post Completion Works at the Original Site so that such Post Completion Works are

completed by the Contractual Post Completion Works Acceptance Date, provided that, if the Contractor fails to comply with this obligation, then the Authority shall be entitled to employ an alternative contractor to carry out such Post Completion Works and shall be entitled to be reimbursed by the Contractor for any costs reasonably and properly incurred in the carrying out of such Post Completion Works.

**16.3 Independent Engineer**

The Independent Engineer's Deed of Appointment specifies the duties of the Independent Engineer owed to the Authority and the Contractor.

**16.4 Issue of Independent Engineer's Declaration or Notice of Non Completion**

16.4.1 Within five (5) Business Days after any inspection referred to in **clause 16.1 (Inspection of the Prison)** to determine whether the Independent Engineer's Declaration Requirements have been met or completion of the Post Completion Works has been achieved in relation to the Prison, the Independent Engineer shall:

16.4.1.1 issue the Independent Engineer's Declaration confirming that he is satisfied that the Independent Engineer's Declaration Requirements have been met in respect of the Prison;

16.4.1.2 issue a Post Completion Works Acceptance Certificate confirming that he is satisfied that the relevant Post Completion Works Acceptance Requirements have been met in respect of the Prison; or

16.4.1.3 issue a notice stating that the Independent Engineer's Declaration or the Post Completion Works Acceptance Certificate (as the case may be) has not been issued and specifying any outstanding matters that must be attended to before the Independent Engineer's Declaration or the Post Completion Works Acceptance Certificate (as the case may be) can be issued in respect of the Prison,

provided that if the Independent Engineer's Declaration Requirements or the Post Completion Works Acceptance Requirements (as the case may be) have been met, the Independent Engineer shall issue the Independent Engineer's Declaration or the Post Completion Works Acceptance Certificate (as the case may be) notwithstanding that there are Snagging Items in respect of the Prison.

16.4.2 The Parties shall procure that where the Independent Engineer reasonably considers that in relation to the Prison the Independent Engineer's Declaration Requirements or the relevant Post Completion Works Acceptance Requirements (as the case may be) have not been met, he shall, immediately following his inspection pursuant to **clause 16.1 (Inspection of the Prison)**, issue to the Authority and the Contractor a notice (a "Notice of Non Completion") detailing all outstanding matters which are required to be attended to before the Prison can be considered to have met the Independent Engineer's Declaration Requirements or the relevant Post Completion Works can be considered to have met the relevant Post Completion Works Acceptance Requirements (as the case may be).

16.4.3 Following receipt of a Notice of Non Completion, the Contractor shall attend to such outstanding matters referred to in **clause 16.4.2 (Issue of Independent Engineer's Declaration or Notice of Non Completion)** and shall give the Authority and the Independent Engineer further notice in accordance with **clause 16.1 (Inspection of the Prison)** (but dealing only with matters raised in the Notice of Non Completion and with a notice period of no less than 24 hours for the purposes of **clause 16.1 (Inspection of the Prison)**) so that the procedures in **clause 16.4.1 (Issue of Independent Engineer's Declaration or Notice of Non Completion)** are repeated as often as necessary to ensure that all outstanding matters in relation to the Prison are attended to and the Independent Engineer's Declaration or the Post Completion Works Acceptance Certificate (as the case may be) can be issued in accordance with **clauses 16.4.1.1 (Issue of Independent Engineer's Declaration or Notice of Non Completion)** or **16.4.1.2 (Issue of Independent Engineer's Declaration or Notice of Non Completion)**.

#### 16.5 **Effect of Issue of Independent Engineer's Declaration or Post Completion Works Acceptance Certificate**

The issue of the Independent Engineer's Declaration or Post Completion Works Acceptance Certificate shall, in the absence of manifest error, bad faith or fraud, indicate for the purpose of ascertaining whether the Independent Engineer's Declaration Requirements have been met (or ascertaining the Post Completion Works Acceptance Date) only that the Prison is in compliance with the Independent Engineer's Declaration Requirements (or that the relevant Post Completion Works are in accordance with the Post Completion Works Acceptance Requirements (as the case may be)) and, without prejudice to the right of either Party to make a claim under the Independent Engineer's Deed of Appointment, shall in no way lessen or affect the other obligations of the Contractor under this Contract in relation to the Prison or any other part of the Works or the Custodial

Service or signify the Authority's approval of the means of delivery of the Custodial Service, and the Contractor shall, pursuant to **clause 16.6 (Snagging Items)** following the date of issue of the Independent Engineer's Declaration or the Post Completion Works Acceptance Certificate (as the case may be) carry out and complete such (if any) of the items on the Snagging List as have not been so completed on the date of issue of the Independent Engineer's Declaration or the Post Completion Works Acceptance Certificate (as the case may be).

## **16.6 Snagging Items**

If the Independent Engineer's Declaration or the Post Completion Works Acceptance Certificate is expressed to be subject to Snagging Items:

- 16.6.1 the Independent Engineer shall, within five (5) Business Days after the issue of the Independent Engineer's Declaration or the Post Completion Works Acceptance Certificate, issue to the Contractor and the Authority a list of the relevant Snagging Items (the "Snagging List");
- 16.6.2 within five (5) Business Days after receipt from the Independent Engineer of the Snagging List, the Contractor shall provide to the Authority and the Independent Engineer a reasonable programme for making good each Snagging Item set out in the Snagging List, provided that such programme shall require that each Snagging Item shall be made good within twenty (20) Business Days after the date of provision of that programme or within such time as is reasonably practicable;
- 16.6.3 the Parties shall seek to agree such programme and, in the absence of agreement, shall refer the matter for determination under the Dispute Resolution Procedure;
- 16.6.4 the programme agreed or determined in accordance with this **clause 16.6 (Snagging Items)** shall be known as the "Snagging Programme";
- 16.6.5 the Contractor shall procure that each Snagging Item is made good in accordance with the Snagging Programme to the satisfaction of the Independent Engineer; and
- 16.6.6 if any Snagging Item has not been rectified by the date set out in the Snagging Programme then the Authority shall be entitled to effect such repairs as may be necessary and recover the costs of doing so from the Contractor as a debt.

## **16A INDEPENDENT ENGINEER'S HOUSEBLOCK DECLARATION**

**16A Inspection of the Houseblock**

16A.1 The Contractor shall or shall procure that the Houseblock Construction Sub-Contractor shall give the Authority and the Independent Engineer not less than five (5) Business Days' notice of the date when the Houseblock Construction Sub-Contractor believes that a Houseblock IEPD Phase or the Post Completion Houseblock Works is ready for inspection with a view to achieving:

16A.1.1 the issue of the Independent Engineer's Houseblock Declaration in respect of that Houseblock IEPD Phase; and/or

16A.1.2 the issue of the Post Completion Houseblock Works Acceptance Certificate,

and on such dates the Independent Engineer shall inspect that phase of the Houseblock or the Post Completion Houseblock Works (as the case may be) and representatives from the Authority, the Contractor, the Operating Sub-Contractor, the Houseblock Construction Sub-Contractor and the Senior Creditors shall be entitled to make a joint inspection with the Independent Engineer.

**16A.2 Post Completion Houseblock Works**

16A.2.1 [REDACTED]

16A.2.2 [REDACTED]

16A.2.3 [REDACTED]





### **16A.3 Independent Engineer**

The Independent Engineer's Houseblock Deed of Appointment specifies the duties of the Independent Engineer owed to the Authority and the Contractor.

### **16A.4 Issue of Independent Engineer's Houseblock Declaration or Houseblock Notice of Non Completion**

16A.4.1 Within five (5) Business Days after any inspection referred to in **clause 16A.1 (Inspection of the Houseblock)** to determine whether the Independent Engineer's Houseblock Declaration Requirements have been met in respect of each phase of the Houseblock or completion of the Post Completion Houseblock Works has been achieved in relation to the Houseblock, the Independent Engineer shall:

16A.4.1.1 issue the Independent Engineer's Houseblock Declaration confirming that he is satisfied that the Independent Engineer's Houseblock Declaration Requirements have been met in respect of the relevant Houseblock IEPD Phase;

16A.4.1.2 issue the Post Completion Houseblock Works Acceptance Certificate confirming that he is satisfied that the Post Completion Houseblock Works Acceptance Requirements have been met; or

16A.4.1.3 issue a notice stating that the Independent Engineer's Houseblock Declaration or the Post Completion Houseblock Works Acceptance Certificate (as the case may be) has not been issued and specifying any outstanding matters that must be attended to before the Independent Engineer's Houseblock Declaration or the Post Completion Houseblock Works Acceptance Certificate (as the case may be) can be issued in respect of the relevant phase of the Houseblock or the Post Completion Houseblock Works (as the case may be),

provided that if the Independent Engineer's Houseblock Declaration Requirements or the Post Completion Houseblock Works Acceptance Requirements (as the case may be) have been met, the Independent Engineer shall issue the Independent Engineer's Houseblock

Declaration in respect of the relevant Houseblock IEPD Phase or the Post Completion Houseblock Works Acceptance Certificate (as the case may be) notwithstanding that there are Snagging Items in respect of the relevant Houseblock IEPD Phase or the Post Completion Houseblock Works (as the case may be).

- 16A.4.2 The Parties shall procure that where the Independent Engineer reasonably considers that in relation to the relevant Houseblock IEPD Phase the Independent Engineer's Houseblock Declaration Requirements or the relevant Post Completion Houseblock Works Acceptance Requirements (as the case may be) have not been met, he shall, immediately following his inspection pursuant to **clause 16A.1 (Inspection of the Houseblock)**, issue to the Authority and the Contractor a notice (a "Houseblock IEPD Phase Notice of Non Completion") detailing all outstanding matters which are required to be attended to before the relevant Houseblock IEPD Phase can be considered to have met the Independent Engineer's Houseblock Declaration Requirements or the relevant Post Completion Houseblock Works in the relevant Houseblock IEPD Phase can be considered to have met the relevant Post Completion Houseblock Works Acceptance Requirements (as the case may be).
- 16A.4.3 Following receipt of a Houseblock IEPD Phase Notice of Non Completion, the Contractor shall attend to such outstanding matters referred to in **clause 16A.4.2 (Issue of Independent Engineer's Houseblock Declaration or Houseblock Notice of Non Completion)** and shall give the Authority and the Independent Engineer further notice in accordance with **clause 16A.1 (Inspection of the Houseblock)** (but dealing only with matters raised in the Houseblock IEPD Phase Notice of Non Completion and with a notice period of no less than 24 hours for the purposes of **clause 16A.1 (Inspection of the Prison)**) so that the procedures in **clause 16A.4.1 (Issue of Independent Engineer's Houseblock Declaration or Houseblock Notice of Non Completion)** are repeated as often as necessary to ensure that all outstanding matters in relation to the relevant Houseblock IEPD Phase are attended to and the Independent Engineer's Houseblock Declaration or the Post Completion Houseblock Works Acceptance Certificate (as the case may be) can be issued in accordance with **clauses 16A.4.1.1 (Issue of Independent Engineer's Houseblock Declaration or Notice of Non Completion)** or **16A.4.1.2 (Issue of Independent Engineer's Houseblock Declaration or Houseblock Notice of Non Completion)**.

#### **16A.5 Effect of Issue of Independent Engineer's Houseblock Declaration or Post Completion Houseblock Works Acceptance Certificate**

The issue of the Independent Engineer's Houseblock Declaration for a Houseblock IEPD Phase or Post Completion Houseblock Works Acceptance Certificate shall, in the absence of manifest error, bad faith or fraud, indicate for the purpose of ascertaining whether the Independent Engineer's Houseblock Declaration Requirements have been met (or ascertaining the Post Completion Houseblock Works Acceptance Date) only that the relevant Houseblock IEPD Phase or the Houseblock (as the case may be) is in compliance with the Independent Engineer's Houseblock Declaration Requirements (or that the relevant Post Completion Houseblock Works are in accordance with the Post Completion Houseblock Works Acceptance Requirements (as the case may be)) and, without prejudice to the right of either Party to make a claim under the Independent Engineer's Houseblock Deed of Appointment, shall in no way lessen or affect the other obligations of the Contractor under this Contract in relation to the Houseblock or any other part of the Houseblock Works or the Custodial Service or signify the Authority's approval of the means of delivery of the Custodial Service, and the Contractor shall, pursuant to **clause 16A.6 (Houseblock Snagging Items)** following the date of issue of the Independent Engineer's Houseblock Declaration for a Houseblock IEPD Phase or the Post Completion Houseblock Works Acceptance Certificate (as the case may be) carry out and complete such (if any) of the items on the Houseblock Snagging List as have not been so completed on the date of issue of the Independent Engineer's Houseblock Declaration or the Post Completion Houseblock Works Acceptance Certificate (as the case may be).

#### **16A.6 Houseblock Snagging Items**

If the Independent Engineer's Houseblock Declaration for a Houseblock IEPD Phase or the Post Completion Houseblock Works Acceptance Certificate is expressed to be subject to Snagging Items:

- 16A.6.1 the Independent Engineer shall, within five (5) Business Days after the issue of the Independent Engineer's Houseblock Declaration for a Houseblock IEPD Phase or the Post Completion Houseblock Works Acceptance Certificate, issue to the Contractor and the Authority a list of the relevant Snagging Items (the "Houseblock Snagging List");
- 16A.6.2 within five (5) Business Days after receipt from the Independent Engineer of a Houseblock Snagging List, the Contractor shall provide to the Authority and the Independent Engineer a reasonable programme for making good each Snagging Item set out in the relevant Houseblock Snagging List, provided that such programme shall require that each Snagging Item shall be made good within twenty (20)

Business Days after the date of provision of that programme or within such time as is reasonably practicable;

- 16A.6.3 the Parties shall seek to agree such programme and, in the absence of agreement, shall refer the matter for determination under the Dispute Resolution Procedure;
- 16A.6.4 each programme agreed or determined in accordance with this **clause 16A.6 (Snagging Items)** shall be known as the "Houseblock Snagging Programme" for the relevant Houseblock IEPD Phase;
- 16A.6.5 the Contractor shall procure that each Snagging Item is made good in accordance with each Houseblock Snagging Programme to the satisfaction of the Independent Engineer; and
- 16A.6.6 if any Snagging Item has not been rectified by the date set out in the relevant Houseblock Snagging Programme then the Authority shall be entitled to effect such repairs as may be necessary and recover the costs of doing so from the Contractor as a debt.

## 17. PREPARATION FOR OPERATION OF THE PRISON

### 17.1 Initial Custodial Service Delivery Plan

- 17.1.1 The Contractor shall provide to the Authority and to the Authority's Representative at least nine (9) Months prior to the Contractual Opening Date, an initial plan detailing how the Contractor intends to prepare for providing and provide (on and from the Contractual Opening Date), the Custodial Service for the period commencing on the date which is six (6) Months prior to the Contractual Opening Date and expiring on the 31 March after the Actual Opening Date (the "Initial Custodial Service Delivery Plan").
- 17.1.2 The Contractor shall ensure that the Initial Custodial Service Delivery Plan shall contain:
  - 17.1.2.1 the plans listed in Part 6 of the Custodial Service Specification;
  - 17.1.2.2 the staff handbook;
  - 17.1.2.3 the public relations procedures;
  - 17.1.2.4 the Contractor's mobilisation plan, with milestones and individuals responsible for the fulfilment of the milestones;
  - 17.1.2.5 the dates by which the Operating Procedures are to be delivered to the Authority's Representative; and
  - 17.1.2.6 details of the requirements for training on the Authority's ICT System pursuant to **clause 10.5 (Training)**.
- 17.1.3 The Contractor shall ensure that the Initial Custodial Service Delivery Plan shall comply with the requirements of:
  - 17.1.3.1 NOMS's national commissioning priorities and areas of focus contained within the National Commissioning Framework;
  - 17.1.3.2 the Regional Commissioning Plan; and
  - 17.1.3.3 the Regional Reducing Re-offending Delivery Plan,provided that, if any changes to the National Commissioning Framework, the Regional Commissioning Plan or the Regional Reducing Re-offending Delivery Plan require the Contractor to change the Initial Custodial Service Delivery Plan or result in an increase or decrease in

the Contractor's costs of providing the Custodial Service this shall be deemed to be an Authority Change.

## **17.2 Approval of Initial Custodial Service Delivery Plan**

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

17.2.1.1 issue a certificate (the "ICSDP Approval Certificate") confirming that he is satisfied that the Initial Custodial Service Delivery Plan is in accordance with the requirements of the Contract; or

17.2.1.2 issue a notice (an "ICSDP Notice of Non-Compliance") stating that the ICSDP Approval Certificate has not been issued, specifying the grounds on which the ICSDP Notice of Non-Compliance is based (provided that such grounds shall be one or more of those set out in paragraphs 3.1.1 (Grounds of Objection) or 3.1.7 (Grounds of Objection) of the Review Procedure) and specifying any matters that must be attended to before the ICSDP Approval Certificate can be issued.

17.2.2 Following receipt of an ICSDP Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the ICSDP Notice of Non-Compliance and shall deliver the revised Initial Custodial Service Delivery Plan to the Authority within ten (10) Business Days after receipt of the ICSDP Notice of Non-Compliance so that the procedure in **clause 17.2.1 (Approval of Initial Custodial Service Delivery Plan)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Initial Custodial Service Delivery Plan are attended to and the ICSDP Approval Certificate can be issued in accordance with **clause 17.2.1.1 (Approval of Initial Custodial Service Delivery Plan)**.

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

17.2.4 There shall be no Available Prisoner Places until the Authority's Representative has approved the Initial Custodial Service Delivery Plan.

## **17.3 Updates to the Initial Custodial Service Delivery Plan**

17.3.1 The Contractor shall:

- 17.3.1.1 produce updates to the Initial Custodial Service Delivery Plan each Month up to and including the 31 March after the Actual Opening Date (each an "ICSDP Report"); and
- 17.3.1.2 ensure that the ICSDP Reports contain details of the Contractor's progress against the Initial Custodial Service Delivery Plan.
- 17.3.2 The Parties acknowledge that the production of an ICSDP Report may require the Initial Custodial Service Delivery Plan to be amended.
- 17.3.3 If the Initial Custodial Service Delivery Plan requires amendment, the Contractor shall:
  - 17.3.3.1 amend the Initial Custodial Service Delivery Plan accordingly; and
  - 17.3.3.2 issue it to the Authority's Representative for approval,
 and the procedure outlined in **clause 17.2 (Approval of Initial Custodial Service Delivery Plan)** shall be repeated in order for the amended Initial Custodial Service Delivery Plan to be approved by the Authority.

#### 17.4 **Operating Procedures**

The Contractor shall provide to the Authority and the Authority's Representative each Operating Procedure on or before the relevant date for the provision of such Operating Procedure listed in the second column of the table in Part 3 of **Schedule 3 (Initial Availability Requirements)**.

#### 17.5 **Approval of Operating Procedures**

- 17.5.1 Within twenty (20) Business Days after receipt of each Operating Procedure, the Authority's Representative shall either:
  - 17.5.1.1 issue a certificate (an "Operating Procedure Approval Certificate") confirming that he is satisfied that the Operating Procedure in question is in accordance with the requirements of this Contract; or
  - 17.5.1.2 issue a notice (an "Operating Procedure Notice of Non-Compliance") stating that the Operating Procedure Approval Certificate has not been issued, specifying the grounds on which the Operating Procedure Notice of Non-Compliance is based (provided that such grounds shall be one or more of those set out in paragraphs 3.1.1 (Grounds

of Objection) or 3.1.7 (Grounds of Objection) of the Review Procedure) and specifying any matters that must be attended to before the Operating Procedure Approval Certificate can be issued.

17.5.2 Following receipt of an Operating Procedure Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the Operating Procedure Notice of Non-Compliance and shall deliver such revised Operational Procedure to the Authority's Representative within five (5) Business Days after receipt of the Operating Procedure Notice of Non-Compliance so that the procedure in **clause 17.5.1 (Approval of Operating Procedures)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Operating Procedure are attended to and the Operating Procedure Approval Certificate can be issued in accordance with **clause 17.5.1.1 (Approval of Operating Procedures)**.

17.5.3 There shall be no Available Prisoner Places until all of the Operating Procedures have been approved by the Authority's Representative.

## 17.6 **Testing of Operating Procedures**

17.6.1 The Authority's Representative may at any time notify the Contractor, that it requires the Contractor to test the Operating Procedures (the "Operating Procedure Test") whether or not such Operating Procedure has been approved by the Authority's Representative.

17.6.2 The Contractor shall:

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

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

17.6.2.3 carry out the Operating Procedure Test:

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

(b) as soon as reasonably practicable after the date of any notice pursuant to **clause 17.6.1 (Testing of Operating Procedures)**.



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

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

17.6.3.2 issue a notice stating that the Operating Procedure Test has demonstrated that the Operating Procedure is not satisfactory, and specifying any matters that must be attended to.

17.6.4 Following receipt of a notice pursuant to **clause 17.6.3.2 (Testing of Operating Procedures)**, the Contractor shall attend to the matters referred to in such notice and shall re-run the test in accordance with **clause 17.6.2 (Testing of Operating Procedures)** except that the notice period to the Authority's Representative shall be two (2) Business Days instead of the five (5) Business Days as often as necessary to ensure that all outstanding matters in relation to the Operating Procedure in question are attended to and the Operating Procedure satisfies the test.

## 17.7 Operational Staff Information

17.7.1 At least three (3) Months prior to the Actual Opening Date, the Contractor shall submit to the Authority's Representative:

17.7.1.1 the names of, and such other information as the Authority's Representative 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 41 (Certification of Prisoner Custody Officers)** and **42 (The Contractor's Staff)**; and

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

together the "Operational Staff Information".

17.7.2 Within twenty (20) Business Days after receipt of the Operational Staff Information the Authority's Representative shall either:

- 17.7.2.1 issue a certificate (the "Operational Staffing Certificate") confirming that he is satisfied that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the Contractor has and will be capable of providing sufficient properly trained and certified Operational Staff; or
- 17.7.2.2 issue a notice (an "Insufficient Operational Staffing Notice") stating that the Operational Staffing Certificate has not been issued, specifying the grounds on which the Insufficient Operational Staffing Notice is based (provided that such grounds shall be one or more of those set out in paragraphs 3.1.1 (Grounds of Objection) or 3.1.7 (Grounds of Objection) of the Review Procedure) and specifying any matters that must be attended to before the Operational Staffing Certificate can be issued.
- 17.7.3 Following receipt of an Insufficient Operational Staffing Notice, the Contractor shall attend to such outstanding matters referred to in the Insufficient Operational Staffing Notice and shall deliver such revised Operational Staff Information to the Authority's Representative within five (5) Business Days after receipt of the Insufficient Operational Staffing Notice (or such other period as is reasonably necessary having regard to the information required) so that the procedure in **clause 17.7.1 (Operational Staff Information)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Operational Staff Information are attended to and the Operational Staffing Certificate can be issued in accordance with **clause 17.7.2.1 (Operational Staff Information)**.
- 17.7.4 There shall be no Available Prisoner Places until the Operational Staffing Certificate has been issued by the Authority's Representative.

17A. **PREPARATION FOR OPERATION OF THE HOUSEBLOCK**

The Parties acknowledge and agree that the arrangements for the preparation for operation of the Houseblock (and parts thereof) will be contained in the Annual Custodial Service Delivery Plan submitted prior to the Contractual Houseblock Opening Date which the Contractor is required to submit pursuant to **clause 31 (Annual Custodial Service Delivery Plan)**.

## 18. **INITIAL CELL CERTIFICATION**

### 18.1 **Inspection of Prison Cells**

The Contractor shall give the Authority's Representative not less than twenty (20) Business Days' notice of:

18.1.1 the date when the Contractor considers that a Prison Cell at the Prison is first capable of meeting the Cell Certificate Requirements; and

18.1.2 the number of Prison Cells and Available Prisoner Places that the Contractor considers it can provide to the Authority on such date,

and, on or before such date the Authority's Representative, and any other person as the Authority may specify, shall inspect such Prison Cells and the Prison for the purpose of determining whether or not those Prison Cells in which such Prisoner Places are located comply with the Cell Certificate Requirements.

### 18.2 **Issue of Cell Certificate**

18.2.1 Within five (5) Business Days after any inspection referred to in **clause 18.1 (Inspection of Prison Cells)** to determine whether a Cell Certificate can be issued in respect of any Prison Cell at the Prison, the Authority's Representative, shall either:

18.2.1.1 issue a Cell Certificate confirming that the Prison Cell in question complies with the Cell Certificate Requirements; or

18.2.1.2 issue a Non-Compliance Notice if the Prison Cell in question does not comply with the Cell Certificate Requirements.

18.2.2 If the Authority's Representative fails to issue a Cell Certificate or a Non-Compliance Notice in respect of any Prison Cell pursuant to **clause 18.2.1 (Issue of Cell Certificate)** within the five (5) Business Day period, and any Prisoner Place located within such Prison Cell would, but for the Authority's Representative's failure to issue a Cell Certificate or a Non-Compliance Notice, have been treated as being an Available Prisoner Place, then for the sole purpose of **clause 22 (Liability for Liquidated Damages)** and paragraph 4 of **Schedule 5 (Payment Mechanism)**, the Prisoner Place shall be treated as an Available Prisoner Place until such time as the Authority's Representative issues a Cell Certificate or a Non-Compliance Notice in respect of such Prison Cell.

- 18.2.3 Following receipt of a Non-Compliance Notice pursuant to **clause 18.2.1 (Issue of Cell Certificate)**, the Contractor shall attend to such matters that are preventing the relevant Cell Certificate from being issued and shall give the Authority's Representative further notice in accordance with **clause 18.1 (Inspection of Prison Cells)** (but dealing only with the matters referred to in the Non-Compliance Notice and with a notice period of not less than three (3) Business Days for the purposes of **clause 18.1 (Inspection of Prison Cells)**) so that the procedures in **clause 18.2 (Issue of Cell Certificate)** are repeated as often as necessary to ensure that all outstanding matters in relation to the Prison are attended to and a Cell Certificate is issued in respect of such Prison Cell.

## **18A INITIAL CELL CERTIFICATION - HOUSEBLOCK**

### **18A.1 Inspection of Prison Cells**

The Contractor shall give the Authority's Representative not less than twenty (20) Business Days' notice of:

- 18A.1.1 the date when the Contractor considers that all Prison Cells contained in a Houseblock Cell Certification Phase are first capable of meeting the Cell Certificate Requirements; and
- 18A.1.2 the number of Prison Cells and Houseblock Available Prisoner Places that the Contractor considers it can provide at the Houseblock to the Authority on such date, which must not be less than those in the relevant Houseblock Cell Certification Phase,

and, on or before such date the Authority's Representative, and any other person as the Authority may specify, shall inspect such Prison Cells and the relevant part of the Houseblock for the purpose of determining whether or not those Prison Cells contained in the Houseblock Cell Certification Phase comply with the Cell Certificate Requirements.

### **18A.2 Issue of Cell Certificate**

- 18A.2.1 Within five (5) Business Days after any inspection referred to in **clause 18A.1 (Inspection of Prison Cells)** to determine whether a Cell Certificate can be issued in respect of those Prison Cells in a Houseblock Cell Certification Phase, the Authority's Representative, shall either:

- 18A.2.1.1 Issue a Cell Certificate confirming that the Prison Cells in the relevant Houseblock Cell Certification Phase comply with the Cell Certificate Requirements; or
  - 18A.2.1.2 issue a Non-Compliance Notice if the Prison Cells in the relevant Houseblock Cell Certification Phase do not comply with the Cell Certificate Requirements.
- 18A.2.2 If the Authority's Representative fails to issue a Cell Certificate or a Non-Compliance Notice in respect of the Prison Cells within the relevant Houseblock Cell Certification Phase pursuant to **clause 18A.2.1 (Issue of Cell Certificate)** within the five (5) Business Day period, and any Prisoner Place located within such Prison Cell would, but for the Authority's Representative's failure to issue a Cell Certificate or a Non-Compliance Notice, have been treated as being a Houseblock Available Prisoner Place, then for the sole purpose of **clause 22A (Liability for Liquidated Damages - Houseblock)** and **paragraph 4 of Schedule 5 (Payment Mechanism)**, the Prisoner Place shall be treated as a Houseblock Available Prisoner Place until such time as the Authority's Representative issues a Cell Certificate or a Non-Compliance Notice in respect of such Prison Cells in the relevant Houseblock Cell Certification Phase.
- 18A.3 Following receipt of a Non-Compliance Notice pursuant to **clause 18A.2.1 (Issue of Cell Certificate)**, the Contractor shall attend to such matters that are preventing the relevant Cell Certificate from being issued and shall give the Authority's Representative further notice in accordance with **clause 18A.1 (Inspection of Prison Cells)** (but dealing only with the matters referred to in the Non-Compliance Notice and with a notice period of not less than three (3) Business Days for the purposes of **clause 18A.1 (Inspection of Prison Cells)**) so that the procedures in **clause 18A.2 (Issue of Cell Certificate)** are repeated as often as necessary to ensure that all outstanding matters in relation to the Houseblock are attended to and a Cell Certificate is issued in respect of all such Prison Cells.

## 19. INITIAL AVAILABILITY OF PRISONER PLACES

- 19.1 A Prisoner Place (other than a Prisoner Place in the Houseblock, to which Clause 19.2 shall apply) shall not be capable of constituting an Available Prisoner Place until it has satisfied the Initial Availability Requirements, provided that, if a Prisoner Place has satisfied the Initial Availability Requirements prior to the date specified in the Phase In Timetable for the provision of that Prisoner Place, the Prisoner Place in question shall not be deemed to be an Available Prisoner Place and the Contractor shall not be entitled to payment for such Prisoner Place until

the date specified for the provision of that Prisoner Place in the Phase In Timetable.

- 19.2 A Prisoner Place in the Houseblock shall not be capable of constituting a Houseblock Available Prisoner Place until it has satisfied the Houseblock Initial Availability Requirements, provided that, if a Houseblock Prisoner Place has satisfied the Houseblock Initial Availability Requirements prior to the date specified in the Houseblock Phase-in Period Timetable for the provision of that Houseblock Prisoner Place, the Houseblock Prisoner Place in question shall not be deemed to be a Houseblock Available Prisoner Place and the Contractor shall not be entitled to payment for such Houseblock Prisoner Place until the date specified for the provision of that Houseblock Prisoner Place in the Houseblock Phase-in Period Timetable.

20. **PHASE-IN**

- 20.1 On and from each date listed in the first column of the Phase-In Timetable, the Contractor shall provide to the Authority the number of Available Prisoner Places shown in the corresponding row of the second column of the Phase-In Timetable.
- 20.2 On and from each date listed in the first column of the Houseblock Phase-in Period Timetable, the Contractor shall provide to the Authority the number of Houseblock Available Prisoner Places shown in the corresponding row of the second column of the Houseblock Phase-in Period Timetable.

21. **CONTRACTUAL FULL OPERATION DATE**

- 21.1 Subject to the terms of this Contract, the Contractor shall:
- 21.1.1 at all times on and from the Contractual Full Operation Date, provide to the Authority no less than six hundred (600) Available Prisoner Places; and
- 21.1.2 at all times on and from the Contractual Houseblock Full Operation Date in respect of the Houseblock provide to the Authority no less than three hundred and thirty-two (332) Houseblock Available Prisoner Places for adult male Category C Prisoners.
- 21.2 The proportion of Remand Prisoners in the Prison (excluding the Category C Prisoners in the Houseblock) shall on average be no greater than 75% (seventy five per cent) or less than 60% (sixty per cent) of the Prison Population (the "Normal Remand Level") in the first three (3) consecutive Months from the Actual Opening Date and every consecutive three Month period thereafter (the "Remand Review Period").

- 21.3 If the proportion of Remand Prisoners within the Prison Population (excluding the Category C Prisoners in the Houseblock) is different to Normal Remand Level in any one or more Remand Review Period (a "Remand Prisoner Event") then the Authority shall forthwith reimburse the Contractor for any Change in Costs which may arise out of or in connection with such Remand Prisoner Event.
- 21.4 The Authority will issue an Authority Notice of Change to the extent that the Authority and the Contractor, both acting reasonably, agree that the Prison will continue to operate outside of the Normal Remand Level for the next Remand Review Period or longer and such Change shall include proposed amendments to the Contract such that the Contractor is in a no better and no worse position as a consequence of such prolonged Remand Prisoner Event.
- 21.5 The Authority is entitled to make Deductions during the period in which the Prison is operating outside the Normal Remand Level for matters that do not arise out of or in connection with a Remand Prisoner Event provided that no Deductions may be made which would otherwise arise where the Contractor can demonstrate that such Deductions arise as a result of a requirement for the prison to operate outside the Normal Remand Level.

**21A. PROVISION OF JEAPPS**

Subject to the terms of this Contract, the Contractor shall:

- 21A.1 provide the Available Prisoner Places specified in the JEAPP Provision Timetable on the date specified in the JEAPP Provision Timetable; and
- 21A.2 at all times on and from the Final JEAPP Provision Date, provide to the Authority no less than nine hundred (900) Available Prisoner Places.

**22. DELAY AND LIQUIDATED DAMAGES**

**22.1 Liability for Liquidated Damages**

To the extent that on or before the Actual Full Operation Date any Prisoner Place has not satisfied the Initial Availability Requirements and as a consequence the Contractor is unable to provide any Available Prisoner Place on or before the date specified for the provision of such Available Prisoner Place in the Phase-In Timetable, (including any Available Prisoner Places as required under **clause 20.2 (Contractual Full Operation Date)**), the Contractor shall be liable to pay liquidated damages to the Authority.

**22.2 Amount of Liquidated Damages**

- 22.2.1 [REDACTED]





accrued for that Month, of any such amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) (an "LD Disputed Amount"), and submit to the Contractor such supporting evidence as the Authority may have.

#### **22.4 Payment of Liquidated Damages**

- 22.4.1 Subject to **clause 22.4.3 (Payment of Liquidated Damages)**, the Contractor shall pay the amount stated in any LD Report submitted under **clause 22.3.1 (Liquidated Damages Report)** on or before the date falling thirty (30) Days after receipt of any notice given by the Authority pursuant to **clause 22.3.2.1 (Liquidated Damages Report)**.
- 22.4.2 If the Authority disputes any part of the LD Report, the provisions of this **clause 22.5 (Disputed Liquidated Damages Amounts)** shall apply.
- 22.4.3 The Contractor may withhold payment of any LD Disputed Amount pending agreement or determination of the Authority's entitlement in relation to the LD Disputed Amount but shall pay on the due date any undisputed amounts.

#### **22.5 Disputed Liquidated Damages Amounts**

- 22.5.1 Within ten (10) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to **clause 22.3.2.2 (Liquidated Damages Report)**, the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice.
- 22.5.2 If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Contractor shall pay the LD Disputed Amount on or before the date falling thirty (30) Days from the earlier of the date of the Contractor's response pursuant to **clause 22.5.1 (Disputed Liquidated Damages Amounts)** and the expiry of the ten (10) Business Day period referred to in **clause 22.5.1 (Disputed Liquidated Damages Amounts)**.
- 22.5.3 If the Contractor responds (pursuant to **clause 22.5.1 (Disputed Liquidated Damages Amounts)**) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to **clause 22.3.2.2 (Liquidated Damages Report)**, the matter shall be determined under the Dispute Resolution Procedure.

## 22.6 **Determination of Liquidated Damages Dispute**

If the determination of any dispute conducted pursuant to **clause 22.5.3 (Disputed Liquidated Damages Amounts)** shows that Authority is entitled to the LD Disputed Amount (or any part of it) the Contractor shall pay such amount to the Authority with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made until all relevant monies have been paid in full and whether before or after judgment.

## 22.7 **Recovery of Liquidated Damages**

The Authority may deduct the sums referred to in **clause 22.1 (Liability for Liquidated Damages)** from any monies due to the Contractor under this Contract or the Authority may recover such sums from the Contractor as a debt except to the extent that such sums have been recovered by the Authority from the Construction Sub-Contractor pursuant to the terms of the Collateral Warranty between the Authority, the Contractor and the Construction Sub-Contractor.

## 22A **DELAY AND LIQUIDATED DAMAGES - HOUSEBLOCK**

### 22A.1 **Liability for Liquidated Damages**

To the extent that on or before the Actual Houseblock Full Operation Date any Prisoner Place has not satisfied the Houseblock Initial Availability Requirements and as a consequence the Contractor is unable to provide any Houseblock Available Prisoner Place on or before the date specified for the provision of such Houseblock Available Prisoner Place in the Houseblock Phase-In Period Timetable, (including any Houseblock Available Prisoner Places as required under **clause 21B (Contractual Houseblock Full Operation Date)**), the Contractor shall be liable to pay liquidated damages to the Authority.

### 22A.2 **Amount of Liquidated Damages**

22A.2.1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
  
[REDACTED]  
  
[REDACTED]  
  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

22A.2.2 [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

22A.2.3 The Parties agree that such rate represents a genuine pre-estimate of the Authority's loss arising from delay and, except where expressly stated otherwise in this Contract, shall be the Authority's sole remedy for Losses arising as a result of such delay.

**22A.3 Liquidated Damages Report**

22A.3.1 Within six (6) Business Days after the end of each Month in which the Contractor is liable to pay liquidated damages to the Authority pursuant to **clause 22A.1 (Liability for Liquidated Damages)**, the Contractor shall submit to the Authority a report showing for that Month the amount of any liquidated damages relating to each Day of that Month and calculated in accordance with **clause 22A.2 (Amount of Liquidated Damages)** (the "Houseblock LD Report").

22A.3.2 Within ten (10) Business Days after receipt of the Houseblock LD Report, the Authority shall notify the Contractor in writing:

22A.3.2.1 that it agrees with all or part of the Houseblock LD Report;  
or

22A.3.2.2 if the Authority believes that the Houseblock LD Report shows a greater or lesser amount of liquidated damages than has accrued for that Month, of any such amount (insofar as at the time of such notice the Authority is reasonably able to quantify it) (a "Houseblock LD Disputed Amount"), and submit to the Contractor such supporting evidence as the Authority may have.

#### **22A.4 Payment of Liquidated Damages**

- 22A.4.1 Subject to **clause 22A.4.3 (Payment of Liquidated Damages)**, the Contractor shall pay the amount stated in any Houseblock LD Report submitted under **clause 22A.3.1 (Liquidated Damages Report)** on or before the date falling thirty five (35) Days after receipt of any notice given by the Authority pursuant to **clause 22A.3.2.1 (Liquidated Damages Report)**.
- 22A.4.2 If the Authority disputes any part of the Houseblock LD Report, the provisions of this **clause 22A.5 (Disputed Liquidated Damages Amounts)** shall apply.
- 22A.4.3 The Contractor may withhold payment of any Houseblock LD Disputed Amount pending agreement or determination of the Authority's entitlement in relation to the Houseblock LD Disputed Amount but shall pay on the due date any undisputed amounts.

#### **22A.5 Disputed Liquidated Damages Amounts**

- 22A.5.1 Within thirteen (13) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to **clause 22A.3.2.2 (Liquidated Damages Report)**, the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice.
- 22A.5.2 If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Contractor shall pay the Houseblock LD Disputed Amount on or before the date falling thirty five (35) Days from the earlier of the date of the Contractor's response pursuant to **clause 22A.5.1 (Disputed Liquidated Damages Amounts)** and the expiry of the thirteen (13) Business Day period referred to in **clause 22A.5.1 (Disputed Liquidated Damages Amounts)**.
- 22A.5.3 If the Contractor responds (pursuant to **clause 22A.5.1 (Disputed Liquidated Damages Amounts)**) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to **clause 22A.3.2.2 (Liquidated Damages Report)**, the matter shall be determined under the Dispute Resolution Procedure.

#### **22A.6 Determination of Liquidated Damages Dispute**

If the determination of any dispute conducted pursuant to **clause 22A.5.3 (Disputed Liquidated Damages Amounts)** shows that Authority is entitled to the Houseblock LD Disputed Amount (or any part of it) the Contractor shall pay

such amount to the Authority with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made until all relevant monies have been paid in full and whether before or after judgment.

#### **22A.7                    Recovery of Liquidated Damages**

The Authority may deduct the sums referred to in **clause 22A.1 (Liability for Liquidated Damages)** from any monies due to the Contractor under this Contract in respect of the Houseblock Works (subject to **clause 47.1 (Rights of Set Off)**) or the Authority may recover such sums from the Contractor as a debt except to the extent that such sums have been recovered by the Authority from the Houseblock Construction Sub-Contractor or the Operating Sub-Contractor pursuant to the terms of the Collateral Warranty between the Authority, the Contractor and the Houseblock Construction Sub-Contractor or the Operating Sub-Contractor.

## **PART V - THE CUSTODIAL SERVICE**

### **23. CONDUCT OF OPERATION**

#### **23.1 Standard of Performance**

23.1.1 The Contractor shall, at all times, ensure that the Custodial Service complies with and meets all the requirements of:

- 23.1.1.1 this Contract;
- 23.1.1.2 the Authority's Requirements;
- 23.1.1.3 the Custodial Service Delivery Proposals;
- 23.1.1.4 the Initial Custodial Service Delivery Plan;
- 23.1.1.5 the Annual Custodial Service Delivery Plan;
- 23.1.1.6 the Operating Procedures;
- 23.1.1.7 Good Industry Practice;
- 23.1.1.8 all applicable Guidance; and
- 23.1.1.9 all applicable Legislation,

with effect from the Actual Opening Date.

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

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

23.1.4 The Custodial Service Specification shall at all times have priority over the Contractor's Operational Documents and the Contractor shall comply with the Custodial Service Specification and provide the Custodial Service in accordance with the Custodial Service Specification.

#### **23.2 Disclosure of Information to Emergency Services**

23.2.1 Notwithstanding **clause 71 (Information and Confidentiality)**, the Authority and/or the Authority's Representative shall have the right to disclose to the police and/or any other emergency service (the

"Emergency Services") Confidential Information if the Authority and/or the Authority's Representative reasonably believes such information is material to the matters in respect of which the Authority and/or the Authority's Representative consults or confers with such member of the Emergency Services and subject, in each case, to such member of the Emergency Services undertaking to keep the information confidential and to use it only for the purpose for which it was provided.

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

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

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

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

## 24. **RIOT DAMAGES ACT**

The Contractor shall:

24.1.1 at all times, not act, and shall use reasonable endeavours to ensure that the Contractor's Staff do not act, in a way which is likely to cause or provoke or does cause or provoke a Riot at the Prison;

24.1.2 If a Riot does occur at the Prison, take reasonable steps, having regard to all relevant circumstances, to limit as far as possible the duration and consequences of the Riot, including minimising the risk of personal injury or death and limiting the damage to the Prison arising from the Riot or any related incident; and

24.1.3 provide a written report to the Authority's Representative, headed "Riot Risk Report" in accordance with the Custodial Service Specification, detailing any incidents that might reasonably be regarded as evidence of an increased risk of a Riot occurring and details of such measures that the Contractor has taken in response to such increased risk; and

- 24.1.4 without prejudice to the generality of **clause 24.1.1 (Riot Damages Act)** and **24.1.2 (Riot Damages Act)**, enter into such arrangements with the Emergency Services as may be reasonably appropriate in order to establish the basis upon which the Emergency Services will or may respond in the event of a Riot occurring and shall provide to the Authority's Representative copies of any documentation relating to any such arrangements.

25. **CELL CERTIFICATION AND ACCEPTANCE OF PRISONERS**

25.1 **Compliance with Cell Certificate Requirements**

The Contractor shall ensure that each and every Prison Cell, and any other living accommodation allocated to a Prisoner (which is an Available Prisoner Place or Houseblock Available Prisoner Place), shall comply with the Cell Certificate Requirements during the Custodial Service Period.

25.2 **Further Inspections and Non-Compliance**

- 25.2.1 The Authority's Representative may, at his discretion, carry out further inspections during the Custodial Service Period from time to time in order to reassess the certification of any Prison Cell.

- 25.2.2 If the Authority's Representative identifies during any such further inspection that a Prison Cell does not comply with the Cell Certificate Requirements, he shall issue to the Contractor a Non-Compliance Notice. The Cell Certificate in respect of that Prison Cell shall be deemed to be revoked on the date of the Non-Compliance Notice and any affected Prisoner Place shall be treated as an Unavailable Prisoner Place pursuant to paragraph 10.2 of **Schedule 5 (Payment Mechanism)**.

25.3 **Notification of Events Affecting Cell Certificates or Availability**

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

- 25.3.1 a Cell Certificate being withdrawn if the Authority were to exercise its rights pursuant to **clause 25.2 (Further Inspection and Non-Compliance)**; or
- 25.3.2 a failure to comply in all respects with the Minimum Requirements and in such circumstances paragraph 10.1 of **Schedule 5 (Payment Mechanism)** shall apply.



#### 25.4 **Acceptance of Prisoners**

The Contractor shall not refuse to accept a prisoner for an Available Prisoner Place or Houseblock Available Prisoner Place where:

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

#### 25.5 **Category A Prisoners**

- 25.5.1 Subject to **clause 25.4.2 (Acceptance of Prisoners)**, the Contractor shall, at the Authority's request, accept any Category A Prisoner in an emergency.
- 25.5.2 If the Contractor accepts any Category A Prisoner in an emergency following a request from the Authority:
  - 25.5.2.1 such Category A Prisoner shall be removed from the Prison as soon as is reasonably practicable; and
  - 25.5.2.2 the Authority and the Contractor shall agree the level of extra resources (if any) which the Authority shall provide to ensure that the Contractor is able to maintain security and control within the Prison (provided that no such extra resources shall be required to be provided by the Authority if the number of Category A Prisoner Days is less than four (4) Days in any six (6) Month period).
- 25.5.3 If the provision of any extra resource by the Authority pursuant to **clause 25.5.2 (Category A Prisoners)** is by way of payment, the level of such payment shall be calculated in accordance with the principles of **clause 69.3 (No better No Worse)**.

#### 26. **MAINTENANCE OF PRISON**

The Contractor shall ensure on a continuing basis that at all times the maintenance and operating procedures set out in the Contractor's Proposals and the Contractor's Operational Documents are and remain sufficient to ensure that:

- 26.1 the Custodial Service is continuously available as required by this Contract, the Authority's Requirements and, from the Actual Houseblock Opening Date, the Authority's Houseblock Requirements;
- 26.2 the Prison is kept in good structural and decorative order (subject to fair wear and tear) in accordance with this Contract, the Authority's Requirements, the Authority's Houseblock Requirements and the Contractor's Operational Documents;
- 26.3 it can maintain the design intention of the Prison to achieve its full working life as set out in Design and Construction Requirements and the Houseblock Design and Construction Requirements for the term of this Contract;
- 26.4 it can provide the Custodial Service in accordance with this Contract and the Custodial Service Specification;
- 26.5 it maintains an up to date Equipment Register of all equipment used by it in the performance of the Custodial Service; and
- 26.6 the Prison is handed back to the Authority on the Expiry Date in a condition complying with the requirements of this **clause 26 (Maintenance of Prison)**.

26A **MAINTENANCE OF THE WESTERN DITCH**

26A1 The Contractor shall:

26A1.1 be responsible for all grounds maintenance associated with the Western Ditch, including the management of any vegetation found at the Western Ditch;

26A1.2 within five (5) Business Days of becoming aware of any damage or fault with the Western Ditch, notify the Authority in writing of any maintenance, repairs and/or replacement works that are reasonably required; and

26A1.3 at least once a Year, in accordance with Good Industry Practice, visually inspect the Western Ditch and, within five (5) Business Days of any such inspection, notify the Authority in writing of any maintenance, repairs and/or replacement works that are reasonably required.

26A2 Where, pursuant to **clauses 26A1.1, 26A1.2** and/or **26A1.3**, maintenance, repairs and/or replacement works are so required, the Authority shall notify the Contractor in writing if it shall require the Contractor to carry out such works, any such notice shall constitute an Authority Notice of Change.

26A3 The Authority reserves the right to carry out the works, identified in **clause 26A1.2** and/or **clause 26A1.3**, itself or to procure that the works are carried

out by a third party and the Contractor shall provide full and unimpeded access to that part of the Site required to carry out the works.

## 27. **DILAPIDATION SURVEY**

### 27.1 **Right to carry out Survey**

27.1.1 If the Authority reasonably believes that the Contractor is in breach of its obligations under **clause 26 (Maintenance of Prison)** then it may carry out (or procure the carrying out of) a survey of the Prison to assess whether the Prison has been and is being maintained by the Contractor in accordance with its obligations under **clause 26 (Maintenance of Prison)**. This right may not be exercised more than once every two (2) Years.

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

27.1.3 When carrying out any survey, the Authority shall use reasonable endeavours to minimise any disruption caused to the provision of the Custodial Service by the Contractor. The cost of the survey shall, except where **clause 27.2.1.3 (Results of Survey)** applies, be borne by the Authority. The Contractor shall give the Authority (free of charge) any reasonable assistance required by the Authority from time to time during the carrying out of any survey.

### 27.2 **Results of Survey**

27.2.1 If a survey shows that the Contractor has not complied or is not complying with its obligations under **clause 26 (Maintenance of Prison)**, the Authority shall:

27.2.1.1 notify the Contractor of the standard that the condition of the Prison should be in to comply with its obligations under **clause 26 (Maintenance of Prison)** and this Contract generally;

- 27.2.1.2 specify a reasonable period within which the Contractor must carry out any necessary rectification and/or maintenance work; and
  - 27.2.1.3 be entitled to be reimbursed by the Contractor for the cost of the survey and any administrative costs incurred by the Authority in relation to such survey.
- 27.2.2 The Contractor shall carry out such rectification and/or maintenance work within the period specified by the Authority and any costs it incurs in carrying out such rectification and/or maintenance work shall be at its own expense.

## 28. **RIGHTS OF ACCESS**

### 28.1 **Rights of Access and Inspection**

- 28.1.1 The Authority, the Authority's Representative or any other representative of the Authority may, at all times during the Custodial Service Period enter upon any property used by the Contractor and/or its Sub-Contractors to perform the Custodial Service, to inspect the construction, operation and maintenance of the Project and to monitor compliance by the Contractor with its obligations.
- 28.1.2 The Authority, the Authority's Representative or any other representative of the Authority may enter upon any property used by the Contractor and/or its Sub-Contractors as training or workshop facilities and places where work is being prepared or materials being obtained for the Project.
- 28.1.3 The Contractor shall procure that satisfactory facilities are made available to the Authority, the Authority's Representative or any other representative of the Authority and that reasonable assistance is given for the purposes of **clauses 28.1.1 (Rights of Access and Inspection) and 28.1.2 (Rights of Access and Inspection)**, subject to the Contractor's and its Sub-Contractors' construction and/or operational requirements not being adversely affected and to reimbursement of any reasonable costs or expenses of the Contractor.
- 28.1.4 If the Authority is or becomes aware of a breach by the Contractor of its obligations under **clause 26 (Maintenance of Prison)**, then the Authority may exercise its right of access and remedy such breach and shall be entitled to recover any costs or expenses incurred from the Contractor as a debt.

28.1.5 The Authority, the Authority's Representative or any other representative of the Authority shall at all times comply with any health and safety requirements when exercising its rights under this **clause 28 (Rights of Access and Inspection)**.

28.1.6 If the Authority, the Authority's Representative or any other representative of the Authority causes material damage to the Prison in exercising any right under this **clause 28 (Rights of Access and Inspection)**, then the Authority shall be liable to the Contractor for the reasonable costs directly caused by such damage.

## 29. **HAZARDOUS SUBSTANCES**

### 29.1 **Storage**

The Contractor shall:

29.1.1 ensure that any hazardous materials or equipment used or intended to be used in the carrying out of the Works or the Houseblock Works or the provision of the Custodial Service are kept under control and in safe keeping in accordance with all relevant Legislation and Good Industry Practice;

29.1.2 ensure that all such materials are properly and clearly labelled on their containers;

29.1.3 promptly inform the Authority's Representative of all such materials being used or stored at the Site; and

29.1.4 comply with any other reasonable requirement of the Authority's Representative in respect of such materials and equipment.

### 29.2 **COSHH Register**

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

30. **PERFORMANCE MONITORING**

30.1 **Contractor Audits**

The Contractor shall audit its performance in the delivery of the Custodial Service in accordance with **paragraph 5 of Part 2 of Schedule 1 (Custodial Service Specification)** and **Schedule 6 (Contract Delivery Indicators)**.

30.2 **Authority Auditing**

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

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

30.2.3 Without prejudice to the Authority's rights under **clause 52 (Termination on Contractor Default)** and to any other express rights under this Contract, where the Contractor has been found to:

30.2.3.1 be fraudulent in the submission of Contract Delivery Management Information pursuant to paragraph 7 of the Custodial Service Specification or claims for payment under **clause 45 (Payment Provisions)**; or

30.2.3.2 have submitted:

(a) Contract Delivery Management Information pursuant to paragraph 7 of the Custodial Service Specification which contains at least three (3) material errors; or

(b) Daily Reports which contain at least four (4) material errors,

within any consecutive three (3) Month period (provided that materiality shall not, for the purposes of this **clause 30.2.3.2 (Authority Auditing)** include clerical errors),

the Authority's Representative may, by notice to the Contractor increase the level of its auditing of the Contractor, and/or (at the Authority's Representative's option), of the Contractor's auditing of its own performance of its obligations under this Contract in respect of the relevant Custodial Service the subject of such fraudulent or erroneous reporting until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority's Representative that it will perform (and is capable of performing) its obligations under this Contract.

30.2.4 For the purposes of **clause 30.2.3 (Authority Auditing)**, the Authority's Representative acknowledges that if the Contractor has otherwise failed to have demonstrated to the reasonable satisfaction of the Authority's Representative as required by **clause 30.2.3 (Authority Auditing)** but:

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

30.2.4.2 (under **clause 30.2.3.2 (Authority Auditing)**, if in the following consecutive three (3) Month period after the date of the Authority's Representative's notice (if it has not already been established) there have been no further material errors of any kind,

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

30.2.5 If the Authority's Representative issues a notice under **clause 30.2.3 (Authority Monitoring)**, the Contractor shall bear its own costs and indemnify and keep indemnified in full the Authority from and against all reasonable costs and expenses incurred by or on behalf of the Authority in relation to such increased level of auditing arising due to circumstances under **clause 30.2.3 (Authority Monitoring)**.

**31. ANNUAL CUSTODIAL SERVICE DELIVERY PLAN**

**31.1 Delivery of Custodial Service Progress Plan**

31.1.1 On or before the date which is four (4) Months before 1 April in the first (1<sup>st</sup>) Contract Year and on or before each 1 January in each subsequent Contract Year, the Contractor shall provide to the Authority's Representative a plan (the "Annual Custodial Service Delivery Plan") to show how it will provide the Custodial Service in the next Contract Year. The Annual Custodial Plan which is submitted on or before the 1 January immediately preceding the Contractual Houseblock Opening Date shall show how the Contractor will provide the Custodial Services in respect of the Houseblock.

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

31.1.2.1 all of the Operating Procedures;

31.1.2.2 the Contractor's proposed review dates for each of the Operating Procedures;

31.1.2.3 the plans listed in Section 7 of the Custodial Service Specification;

31.1.2.4 the staff handbook; and

31.1.2.5 the public relations procedures.

31.1.3 The Contractor shall ensure that each Annual Custodial Service Delivery Plan shall comply with the requirements of:

31.1.3.1 NOMS's national commissioning priorities and areas of focus contained within the National Commissioning Framework;

31.1.3.2 the Regional Commissioning Plan; and

31.1.3.3 the Regional Reducing Re-offending Delivery Plan,

provided that, if any changes to the National Commissioning Framework, the Regional Commissioning Plan or the Regional Reducing Re-offending Delivery Plan require the Contractor to change the Annual Custodial Service Delivery Plan or result in an increase or decrease in the Contractor's costs of providing the Custodial Service this shall be deemed to be an Authority Change.



## 31.2 **Approval of Annual Custodial Service Delivery Plan**

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

31.2.1.1 issue a certificate (the "ACSDP Approval Certificate") confirming that he is satisfied that the Annual Custodial Service Delivery Plan is in accordance with the requirements of the Contract; or

31.2.1.2 issue a notice (an "ACSDP Notice of Non-Compliance") stating that the ACSDP Approval Certificate has not been issued, specifying the grounds on which the ACSDP Notice of Non-Compliance is based (provided that such grounds shall be one or more of those set out in paragraphs 3.1.1 (Grounds of Objection) or 3.1.7 (Grounds of Objection) of the Review Procedure) and specifying any matters that must be attended to before the ACSDP Approval Certificate can be issued.

31.2.2 Following receipt of an ACSDP Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the ACSDP Notice of Non-Compliance and shall deliver the revised Annual Custodial Service Delivery Plan to the Authority's Representative within ten (10) Business Days after receipt of the ACSDP Notice of Non-Compliance so that the procedure in **clause 31.2.1 (Approval of Annual Custodial Service Delivery Plan)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Annual Custodial Service Delivery Plan are attended to and the ACSDP Approval Certificate can be issued in accordance with **clause 31.2.1.1 (Approval of Annual Custodial Service Delivery Plan)**.

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

## 32. **OPERATING MANUAL**

### 32.1 **Maintenance of Manual**

The Contractor shall throughout the Custodial Service Period maintain and update an operating and maintenance manual setting out the procedures for providing the Custodial Service and maintaining the Prison (the "Operating Manual").

## **32.2 Access to Manual**

The Contractor shall at the request of the Authority's Representative provide the Authority's Representative with access to the Operating Manual in order to demonstrate that the Contractor has complied with its obligation to maintain and update the Operating Manual under **clause 32.1 (Maintenance of Manual)**.

## **32.3 Copy on Termination**

The Contractor shall:

32.3.1 no less than three (3) Months before the Expiry Date; or

32.3.2 if earlier, no more than two (2) Business Day after the date of any Termination Notice,

provide two (2) copies of the Operating Manual to the Authority in such format as the Authority reasonably requires.

## **33. QUALITY ASSURANCE**

### **33.1 General Quality Assurance**

The Contractor shall procure that all aspects of the Works, the Houseblock Works and the Custodial Service are the subject of, and are conducted in accordance with the approved quality assurance systems as set out in **clauses 33.2 (Works Quality Assurance), 33.2A (Houseblock Works Quality Assurance) and 33.3 (Registration of Construction Sub-Contractor)**.

### **33.2 Works Quality Assurance**

Not later than ten (10) Business Days after the date of this Contract, the Contractor shall submit to the Authority's Representative a proposed quality assurance system for the Works complying with ISO 9001 or, where it does not so comply, the system set out in the Construction Proposals.

### **33.2A Houseblock Works Quality Assurance**

Not later than twelve (12) Business Days after the date of the Amending Agreement, the Contractor shall submit to the Authority's Representative a proposed quality assurance system for the Houseblock Works complying with ISO 9001 or, where it does not so comply, the system set out in the Houseblock Construction Proposals.

### **33.3 Registration of Construction Sub-Contractor**

The Contractor shall procure that the Construction Sub-Contractor in relation to the Works and the Operating Sub-Contractor in relation to the Houseblock Works

(who the Contractor shall require procures the Houseblock Construction Sub-Contractor in relation to the Houseblock Works) are, at all times during the carrying out of the Works and the Houseblock Works (as appropriate), registered pursuant to BS 5750 or ISO 9001 (or such other quality standard as may replace or supersede the same or, in the absence of a replacement or a superseding quality standard or equivalent or such other quality assurance system acceptable to the Authority (acting reasonably)) in relation to the Works or the Houseblock Works as the case may be.

#### **33.4 Quality Management Officer**

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

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

#### **33.5 Monitoring of Quality Assurance Systems**

- 33.5.1 The Authority may carry out periodic audits of the quality assurance systems.
- 33.5.2 The Contractor shall procure that the Authority shall have the same right in respect of any relevant sub-contractors.
- 33.5.3 The Contractor shall co-operate and shall procure that any relevant sub-contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its rights under this **clause 33 (Quality Assurance)**.

### **34. CO-OPERATION FOR INVESTIGATION AND SECURITY**

#### **34.1 Co-operation**

The Contractor shall co-operate with any investigation relating to a breach of safety or security which is carried out by or on behalf of the Authority and:

- 34.1.1 shall use its reasonable endeavours to make its employees (and other Contractor Related Parties) identified by the Authority available to be interviewed by the Authority for the purposes of the investigation; and
- 34.1.2 shall, subject to any legal restriction on their disclosure, provide all copies of Documents, records or other material of any kind which may reasonably be required by the Authority for the purposes of the investigation.

#### 34.2 **Infectious Diseases**

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

### 35. **BENCHMARKING, MARKET TESTING AND VALUE TESTING**

#### 35.1 **Benchmarking of the Tested Custodial Service**

Prior to each Benchmarking Review Date, the Tested Custodial Service shall be subject to a Benchmarking Exercise pursuant to the remainder of this **clause 35.1 (Benchmarking of the Tested Custodial Service)**. The following criteria shall apply to the Benchmarking of the Tested Custodial Service:

- 35.1.1 each Benchmarking Exercise shall be undertaken to ascertain the relative quality and competitiveness of the Tested Custodial Service;
- 35.1.2 no less than 6 Months before the relevant Benchmarking Review Date, the Parties shall meet to agree the scope, methodology and timetable for the Benchmarking Exercise;
- 35.1.3 subject to the scope and methodology agreed by the Parties pursuant to **clause 35.1.2 (Benchmarking of the Tested Custodial Service)**, the Benchmarking Exercise shall be undertaken in good faith by the Contractor and the Authority);
- 35.1.4 the Benchmarking Exercise shall be carried out by the Contractor and the Authority on the basis of an open book, objective and like for like comparison of the Tested Custodial Services, by comparing the standards and prices of the Tested Custodial Service and the costs of providing them with the standards and prices of equivalent services and the costs of providing them in similar circumstances by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Tested Custodial Services;

35.1.5 the Contractor and the Authority shall complete the Benchmarking Exercise available by the date occurring one (1) Month before the relevant Benchmarking Review Date with a view to the Authority and the Contractor making the appropriate adjustments to the Contract Price on the basis set out in **clause 35.1.6 (Benchmarking of the Tested Custodial Service)**. The outcome shall indicate the extent to which (if at all) the Market Costs differ (in percentage terms) from the Latest Custodial Service Element; and

35.1.6 where the Market Costs are between ninety five per cent (95%) and one hundred and five per cent (105%) of the Latest Custodial Service Element, no change shall be made to the Contract Price or the Latest Custodial Service Element. Where the Market Costs are less than ninety five per cent (95%) or more than one hundred and five per cent (105%) of the Latest Custodial Service Element, the Parties shall adjust the Contract Price on the basis that:

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

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

and the Base Case shall be adjusted to reflect the revision to the Latest Custodial Service Element in accordance with **clause 69 (Financial Adjustments)**.

35.1.7 Where in relation to the Tested Custodial Service:

35.1.7.1 the Contractor and Authority have been unable to complete the Benchmarking Exercise; or

35.1.7.2 the Contractor and the Authority, acting reasonably, consider that they do not have adequate information to complete the Benchmarking Exercise or to achieve an objective and like for like comparison of the Tested Custodial Service with the standards and prices and costs of equivalent services,

and the Authority, acting reasonably, considers that there would be a sufficient number of prospective tenderers (provided that any prospective tenderer shall possess an appropriate degree of skill,

resources, reputation and financial standing relative to the provision of the Tested Custodial Service) to enable the Contractor to conduct a market test and receive at least one valid tender other than the tender submitted by the current provider of the Tested Custodial Service, the Authority shall conduct a Market Testing in accordance with **clause 35.2 (Market Testing of the Tested Custodial Service)**.

- 35.1.8 Any dispute under this **clause 35.1 (Benchmarking of the Tested Custodial Service)** (including as to the results of the Benchmarking Exercise) shall be determined in accordance with the Dispute Resolution Procedure.

## 35.2 **Market Testing of the Tested Custodial Service**

- 35.2.1 Where **clause 35.2 (Market Testing of the Tested Custodial Service)** applies, the Tested Custodial Service shall be Market Tested pursuant to the remainder of this **clause 35.2 (Market Testing of the Tested Custodial Service)**. The following procedure shall apply to the Market Testing of the Tested Custodial Service:

- 35.2.1.1 within at least fifty (50) Business Days of the failure to complete the Benchmarking Exercise the Parties shall endeavour to agree:
- (a) the number and identity of prospective tenderers that will be invited to prepare and submit tenders for the Tested Custodial Service in question provided that any prospective tenderer shall possess an appropriate degree of skill, resources, reputation and financial standing relative to the provision of the Tested Custodial Service (and any dispute as to the selection of a prospective tenderer shall be determined in accordance with the Dispute Resolution Procedure);
  - (b) the timetable for completing the Market Testing exercise;
  - (c) subject to **Schedule 9 (Change Protocol)**, whether any changes are required to the relevant Tested Custodial Service;
  - (d) whether or not an independent tender manager needs to be appointed by the Contractor to manage the tender process; and
  - (e) the form and contents of the Tender Documents (which shall include the Custodial Service Specification to the

extent that it relates to the Tested Custodial Service) and are to be delivered to prospective tenderers. The Tender Documents shall specify that tenderers must submit a tender for the Tested Custodial Service and not for any part of the Tested Custodial Service;

- 35.2.1.2 within thirty (30) Business Days of agreeing the timetable for the Market Testing exercise, the Contractor shall prepare and deliver to the Authority a draft Market Testing Proposal, which shall incorporate all of the matters agreed by the Parties and shall reflect the payment structure contained in this Contract;
- 35.2.1.3 If the Parties are unable to agree any of the matters set out in the Market Testing Proposal or if the Authority reasonably considers that the Contractor has made a material error or omission in the Market Testing Proposal, the Authority may (subject to **clause 35.2.1.4 (Market Testing of the Tested Custodial Service)** and without prejudice to **Schedule 9 (Change Protocol)**) amend the provisions of the Market Testing Proposal to accord with statutory and government requirements at its sole discretion;
- 35.2.1.4 the Contractor may upon receiving any amendments made by the Authority in accordance with **clause 35.2.1.3 (Market Testing of the Tested Custodial Service)** refer the matter to the Dispute Resolution Procedure;
- 35.2.1.5 the Contractor shall manage the Market Testing tendering process in accordance with the Market Testing Proposal agreed or determined in accordance with this **clause 35.2 (Market Testing of the Tested Custodial Service)**;
- 35.2.1.6 the Contractor shall provide to the Authority as soon as reasonably practicable a copy of the Tender Documents and each response to the Tender Documents;
- 35.2.1.7 following the expiry of the tender period for the return of responses to the Tender Documents the Contractor shall determine, following consultation with the Authority, which tender to select, if any, in respect of the Tested Custodial Service;
- 35.2.1.8 the Contractor shall, by no later than thirty (30) Business Days following receipt of the responses to the Tender

Documents, select the most economically advantageous tender received in respect of the provision of the Tested Custodial Service, provided that nothing in this **clause 35.2.1.8 (Market Testing of the Tested Custodial Service)** shall oblige the Contractor to accept the lowest tender. The Contractor shall procure that the selected tenderer becomes a sub-contractor to either it or the Operating Sub-Contractor. Any dispute under this **clause 35.2.1.8 (Market Testing of the Tested Custodial Service)** shall be determined in accordance with the Dispute Resolution Procedure; and

35.2.1.9 the Authority shall have the right to object to the selection of a tenderer where the tenderer has committed a Prohibited Act and such tenderer shall not be selected.

35.2.2 Where the tender price of the Successful Tenderer is lower than the Latest Custodial Service Element, then the cost difference between the Successful Tenderer's tender price and the Latest Custodial Service Element shall be deducted from the Contract Price with effect from the relevant Benchmarking Review Date and the Base Case shall be adjusted to reflect a corresponding revision to the Latest Custodial Service Element in accordance with **clause 69 (Financial Adjustments)**.

35.2.3 Where the tender price of the Successful Tenderer is higher than the Latest Custodial Service Element, then the cost difference between the Successful Tenderer's tender price and the Latest Custodial Service Element shall be added to the Contract Price with effect from the relevant Benchmarking Test Review Date and the Base Case shall be adjusted to reflect a corresponding revision to the Latest Custodial Service Element in accordance with **clause 69 (Financial Adjustments)**.

### 35.3 **Costs of Market Testing**

The Contractor shall be responsible for its own costs of any Market Testing or Benchmarking Exercise.

### 35.4 **Value Testing Option**

35.4.1 The Authority shall consider which element of the Custodial Service shall be subject to value testing (the "Value Tested Service") pursuant to the remainder of this **clause 35.4 (Value Testing Option)** and shall inform the Contractor of its decision on or before the 1 January prior to the due date of the Annual Custodial Service Delivery Plan



provided to the Authority's Representative in accordance with **clause 31.1 (Delivery of Custodial Service Progress Plan)**, provided that:

- 35.4.1.1 the first Value Testing Exercise shall not take place before the second (2nd) anniversary of the Actual Opening Date;
  - 35.4.1.2 no element of the Custodial Service shall be tested more frequently than once every three (3) Years;
  - 35.4.1.3 no more than ten per cent (10%) of the Custodial Service may be tested in any Year; and
  - 35.4.1.4 subject to **clause 35.4.3 (Value Testing Option)**, the Authority shall pay the costs incurred as a result of a Value Testing Exercise.
- 35.4.2 The Contractor shall notify the Authority of whether or not it agrees to carry out a Value Testing Exercise within fourteen (14) Business Days after receipt of the Authority's notice pursuant to **clause 35.4.1 (Value Testing Option)**.
- 35.4.3 If the Contractor agrees to carry out the Value Testing Exercise, then the costs, method, timescales and responsibility for such Value Testing Exercise shall be discussed, on the basis of open book accounting, and agreed by both Parties, acting in good faith, during the development of the Annual Custodial Service Delivery Plan;
- 35.4.4 Each Value Testing Exercise will be undertaken to ascertain the competitiveness and quality of the Value Tested Service in question and will be carried out in good faith and on the basis of open booking accounting.
- 35.4.5 The Authority shall be entitled to receive a fifty per cent (50%) share of any gain arising from any Value Testing Exercise.
- 35.4.6 Any failure to agree or dispute in relation this **clause 35.4 (Value Testing Option)** shall not be determined in accordance with the Dispute Resolution Procedure.

## **PART VI - GENERAL PERFORMANCE OBLIGATIONS**

### **36. EQUALITY AND DIVERSITY**

#### **36.1 Compliance**

From the date of this Contract, the Contractor shall (and shall procure that its sub-contractors shall) comply with:

- 36.1.1 any and all Legislation relating to discrimination (whether in relation to race, gender, age, disability, religious belief, sexual orientation or otherwise) and, in particular, promote the principle of equal treatment at all times and shall co-operate fully with the Authority to exchange experiences and good practice;
- 36.1.2 PSI 32/2011 (Ensuring Equality);
- 36.1.3 Prison Service Standard 8 (Disabled Prisoners);
- 36.1.4 Prison Service Standard 48 (Race Equality (Prisoners)); and
- 36.1.5 the codes of practice prepared and issued from time to time by the Commission for Equality and Human Rights or any other Relevant Authority.

#### **36.2 Promotion and Engagement**

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

#### **36.3 Monitoring**

The Contractor shall:

- 36.3.1 monitor the representation among the Contractor's Staff of:
  - 36.3.1.1 persons of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics (or any successor of it));
  - 36.3.1.2 persons with disabilities; and
  - 36.3.1.3 the balance of gender,

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

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

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

36.3.2.2 the use of employment agencies and careers offices;

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

36.3.2.4 the provision of appropriate training and the encouragement of members of the Contractor's Staff from such groups to apply for promotion or transfer to do work in which such groups are under-represented.

#### 36.4 **Equality Duties**

The Contractor acknowledges that the Authority is subject to those obligations and duties set out in **clauses 36.1.1 (Compliance) and 36.1.5 (Compliance)** (the "Equality Duties") and shall not (and shall procure that its sub-contractors shall not) by its or their acts or omissions cause, contribute to or otherwise give rise to a breach by the Authority of the Equality Duties in relation to the Project.

#### 36.5 **Provision of Information and Assistance**

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

36.5.1 enable the Authority to conduct reviews of the Contractor's performance in relation to compliance with this **clause 36 (Equality and Diversity)**;

- 36.5.2 facilitate the Authority in preparing any report or statement to the Commission for Equality and Human Rights or any other Relevant Authority;
- 36.5.3 enable the Authority to comply with any direction of the Commission for Equality and Human Rights or any other Relevant Authority; and/or
- 36.5.4 assist the Authority in any risk assessment and equality impact assessment in relation to the Equality Duties and the Contractor's compliance with this **clause 36 (Equality and Diversity)**.

#### 36.6 **Sub-contractors**

The Contractor shall put in place and maintain practices and procedures to ensure that its sub-contractors comply with the obligations set out in **clauses 36.1 (Compliance) to 36.5 (Provision of Information and Assistance)** (inclusive).

#### 36.7 **Equality and Diversity Officer**

The Contractor shall nominate, or shall procure the nomination of, as soon as reasonably practicable following the date of this Contract, an individual who will be responsible for managing and promoting equality and diversity in respect of the Works, the Houseblock Works and Custodial Service and for the implementation of all equality and diversity arrangements and the monitoring and reporting of the Contractor's compliance with this **clause 36 (Equality and Diversity)**.

#### 36.8 **Equality and Diversity Reports**

- 36.8.1 The Contractor shall provide a report at each Contract Review Meeting which shall include:
  - 36.8.1.1 the racial make-up, proportion of persons with disabilities and the gender breakdown of the Contractor's Staff in respect of the Custodial Service only;
  - 36.8.1.2 details of any complaints and/or investigations in relation to equality and diversity and details of any action taken;
  - 36.8.1.3 any allegations of discrimination and/or harassment relating to race, gender, age, disability, religious belief, sexual orientation or otherwise;
  - 36.8.1.4 details of training provided by the Contractor to the Contractor's Staff in relation to equality and diversity;

- 36.8.1.5 details of recruitment during the period covered by the report;
  - 36.8.1.6 details of any equal opportunity impact assessments carried out by the Contractor; and
  - 36.8.1.7 details of any claims, the outcome of any claims and any recommendations made by an employment tribunal or other.
- 36.8.2 The Contractor shall twelve (12) Months after the date of this Contract and on each twelve (12) Month anniversary of such date, submit a report to the Authority demonstrating its compliance with **clauses 36.1 (Compliance) to 36.6 (Sub-contractors)** (inclusive) and its proposals in respect of equality and diversity for the following twelve (12) Months.

#### 36.9 **Non-compliance and Investigations**

- 36.9.1 If, in the reasonable opinion of the Authority, the Contractor fails to comply with its obligations in **clauses 36.1 (Compliance) to 36.6 (Sub-contractors)** (inclusive), the Contractor shall co-operate fully with the Authority to remedy such non-compliance, provided that the Authority reserves the right to report any non-compliance to any Relevant Authority.
- 36.9.2 Where any investigation is undertaken by a Relevant Authority and/or proceedings are instituted in accordance with any matter relating to the Contractor's obligations set out in this **clause 36 (Equality and Diversity)**, the Contractor shall (and shall ensure that its sub-contractors shall):
- 36.9.2.1 provide any information requested in the timescale allotted;
  - 36.9.2.2 attend and permit members of the Contractor's Staff to attend any meetings as required;
  - 36.9.2.3 allow itself and any member of the Contractor's Staff to appear as witnesses in any ensuing proceedings; and
  - 36.9.2.4 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation and/or proceedings.
- 36.9.3 If any Relevant Authority makes a finding of any unlawful discrimination (whether in relation to race, gender, age, disability,

religious belief, sexual orientation or otherwise) against the Contractor or any of its sub-contractors the Contractor shall:

36.9.3.1 take all reasonable steps to eliminate such unlawful discrimination and shall otherwise comply with all the requirements and recommendations of such Relevant Authority; and

36.9.3.2 as soon as reasonably practicable, provide the Authority with details of such requirements and (if any) recommendations and the remedial steps to be taken by the Contractor.

## **37. SUSTAINABILITY**

### **37.1 Sustainability Strategy**

The Contractor shall ensure that:

37.1.1 the Construction Proposals comply with the Authority's requirements for sustainable development as set out in paragraph 3.21 of the Design and Construction Requirements;

37.1.1A the Houseblock Construction Proposals comply with the Authority's requirements for sustainable development as set out in paragraph 3.10 of the Houseblock Design and Construction Requirements; and

37.1.2 the Sustainability Strategy:

37.1.2.1 is compliant with the Government Sustainable Development and Waste Management Policies; and

37.1.2.2 sets out a strategy for meeting the targets set out in SOGE.

### **37.2 Compliance**

37.2.1 The Contractor shall ensure that the Custodial Service is performed in accordance with the Sustainability Strategy, in order to achieve to the extent reasonably practicable:

37.2.1.1 reductions in carbon emissions from offices and road vehicles;

37.2.1.2 reductions in water consumption;

37.2.1.3 reductions in waste;

- 37.2.1.4 increases in energy efficiency;
  - 37.2.1.5 increases in the proportion of energy sourced from renewables and from combined heat and power;
  - 37.2.1.6 increases in recycling;
  - 37.2.1.7 biodiversity management (where applicable); and
  - 37.2.1.8 the utilisation of an accredited environmental management system such as ISO 1401 or EMAS.
- 37.2.2 The Contractor shall assess the impact that the performance of the Custodial Service has on the environment and shall (subject to the prior written approval of the Authority (such approval not to be withheld or delayed)) amend the Sustainability Strategy (to the extent reasonably practicable) if such assessment shows that the performance of the Custodial Services is not achieving the matters referred to in **clause 37.2.1 (Compliance)**.
- 37.2.3 The Contractor shall provide the Authority, promptly and in any event within twenty five (25) Business Days after receipt of a request, with all information available to the Contractor or capable of being discovered by the Contractor by means of reasonable enquiries, as to the origin of any goods, materials, consumables, packaging or other items, the nature and source of any ingredients or components, the physical conditions in which they were manufactured, assembled or processed, the means by which they were tested and any matters relating to the impact of their production on the natural environment.

### 37.3 **Monitoring and Reporting**

From the Actual Opening Date, the Contractor shall:

- 37.3.1 measure and collect all relevant data in accordance with the requirements set out in the SOGE Return and notified in writing to the Contractor by the Authority;
- 37.3.2 use the data measured and collected pursuant to **clause 37.3.1 (Monitoring and Reporting)** to prepare a SOGE Report; and
- 37.3.3 issue the SOGE Report to the Authority every twelve (12) Months, commencing on the date that is twelve (12) Months after the Contractual Opening Date,

in order to assist the Authority to issue a SOGE Return to the Relevant Authority from time to time.

#### 37.4 **Sub-contractors**

The Contractor shall ensure that its Sub-Contractors comply with the obligations set out in **clauses 37.1 (Sustainability Strategy) to 37.3 (Monitoring and Reporting)** (inclusive).

#### 37.5 **Sustainability Officer**

The Contractor shall appoint, or shall procure the appointment of, as soon as reasonably practicable following the date of this Contract, an individual (the "Sustainability Officer") who shall be responsible for:

- 37.5.1 managing and promoting sustainable development and waste management in respect of the Works, the Houseblock Works and the Custodial Service;
- 37.5.2 implementing the Sustainability Strategy; and
- 37.5.3 monitoring and reporting of the Contractor's compliance with this **clause 37 (Sustainability)**.

#### 37.6 **Non compliance**

Without prejudice to the Contractor's express rights and remedies under or pursuant to this Contract, if, in the reasonable opinion of the Authority, the Contractor fails to comply with its obligations in this **clause 37.1 (Sustainability Strategy) to 37.5 (Sustainability Officer)** (inclusive), the Contractor shall co-operate fully with the Authority to remedy such non-compliance.



## **PART VII - ESCORT ARRANGEMENTS AND VISITORS**

### **38. ESCORT ARRANGEMENTS**

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

### **39. VISITORS**

Notwithstanding any other provision of this Contract, 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 to the Prison, for whatever purpose.

## **PART VIII - STAFF AND PERSONNEL**

### **40. THE DIRECTOR**

#### **40.1 Conditions for Appointment of the Director**

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

40.1.1 approved by the Authority's Representative pursuant to **clause 40.2 (Appointment of the Director)**; and

40.1.2 certified as a Prisoner Custody Officer in accordance with **clause 41 (Certification as Prisoner Custody Officer)**.

#### **40.2 Appointment of the Director**

40.2.1 The Contractor shall submit a nomination for the position of the Director to the Authority's Representative in accordance with **clause 17.7 (Operational Staff Information)** or, after the appointment of the first Director at any time after that appointment, which nomination the Authority's Representative may approve or reject as he thinks fit. The Contractor shall submit to the Authority's Representative such further particulars of the proposed Director and the terms of his employment contract as the Authority's Representative may require in order to decide whether to approve the appointment. The Authority's Representative shall consult with the Contractor with respect to any such proposed Director and if a Contractor's proposed Director is rejected by the Authority's Representative, the Authority's Representative shall provide reasons for the rejection, and the Contractor shall nominate a new proposed Director for the Authority's Representative's approval or rejection in the same manner as the earlier nomination.

40.2.2 The Contractor shall ensure that any person required to exercise the powers of the Director, by reason of the Director's absence, or to replace the existing Director or for whatsoever reason, will be subject to the same terms of approval, appointment and certification as specified in this **clause 40 (The Director)**.

#### **40.3 Status of the Director**

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

## 41. **CERTIFICATION AS PRISONER CUSTODY OFFICERS**

### 41.1 **Certification**

The Contractor shall:

- 41.1.1 ensure that all persons carrying out Custodial Duties in the Prison shall be subject to certification as Prisoner Custody Officers by the Authority as required by sections 85 and 89 (and where appropriate section 80) of, and Schedule 10 to, the Criminal Justice Act 1991; and
- 41.1.2 in order to obtain such certification by the Authority submit to the Authority:
  - 41.1.2.1 the name of any proposed Prisoner Custody Officer;
  - 41.1.2.2 without prejudice to **clause 42.1.2 (Recruitment and Training)**, the results of a check of the most extensive available kind made with the Criminal Records Bureau in respect of each person who it is proposed will be employed as a Prisoner Custody Officer at the Prison; and
  - 41.1.2.3 such other information as the Authority may require, to assist in the Authority's decision as to his certification.

### 41.2 **Suspended or Revoked Certificates**

- 41.2.1 The Contractor shall ensure that 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.
- 41.2.2 The Contractor shall notify the Authority's Representative immediately of any behaviour of any Prisoner Custody Officer which would cast doubt on his fitness for certification as a Prisoner Custody Officer, including if any member of the Operational Staff receives a Conviction or an ASBO.

## 42. **THE CONTRACTOR'S STAFF**

### 42.1 **Recruitment and Training**

The Contractor shall:

- 42.1.1 be responsible for the recruitment and provision of Operational Staff;
- 42.1.2 in respect of any person who it is proposed will be concerned with the provision of the Custodial Service or after the Actual Opening Date,

any member of the Construction Staff who is carrying out work in areas of the Prison which are accessible to Prisoners:

- 42.1.2.1 question each such person as to whether he or she has any Convictions or ASBOs;
- 42.1.2.2 carry out a check of the most exhaustive available kind with the Criminal Records Bureau; and
- 42.1.2.3 notify the Authority's Representative of the results of such checks;
- 42.1.3 ensure that no person who discloses any Convictions or ASBOs, or who is found to have any Convictions following the results of a Criminal Records Bureau check, is employed or engaged as a member of the Operational Staff or after the Actual Opening Date, any member of the Construction Staff who is carrying out work in areas of the Prison which are accessible to Prisoners without the Authority's Representative's Approval (such approval not to be unreasonably delayed);
- 42.1.4 advise the Authority's Representative at all times of any person who, subsequent to his or her commencement of employment as a member of the Operational Staff or after the Actual Opening Date, any member of the Construction Staff who is carrying out work in areas of the Prison which are accessible to Prisoners receives a Conviction or ASBO or whose previous Convictions or ASBOs become known to the Contractor (or any sub-contractor); and
- 42.1.5 ensure that all Operational Staff receive proper training and supervision in their functions and duties to ensure the proper performance of the Custodial Service, such training to be subject to the Authority's Representative's Approval (such approval not to be unreasonably delayed).

## 42.2 **Uniforms**

The Contractor shall:

- 42.2.1 submit for the Authority's Representative's Approval any and all uniforms to be worn by Operational Staff (including the Prisoner Custody Officers) at least three (3) Months prior to Contractual Opening Date and, in any event, before such uniforms are taken into use;

- 42.2.2 not take such uniforms into use and/or implement the Contractor's and Operating Sub-Contractor's required standards of dress for Operational Staff without the Authority's Representative's Approval; and
- 42.2.3 not change the uniforms or standards of dress without the Authority's Representative's Approval.

#### 42.3 **Approval of Contractor's Staff**

The Contractor shall for the Custodial Service:

- 42.3.1 ensure that it obtains the Authority's Representative's Approval to any member of the Contractor's Staff who is not required to be certified as a Prisoner Custody Officer (including, for the purposes of this **clause 42.3 (Approval of Contractor's Staff)**) at the Prison; and
- 42.3.2 provide to the Authority's Representative such details of those members of the Contractor's Staff who are not required to be certified as Prisoner Custody Officers as may be required by the Authority's Representative for the purposes of deciding whether to give the Authority's Representative's Approval,

provided that the Authority's Representative may exempt certain categories of the Contractor's Staff from the requirements of this **clause 42.3 (Approval of Contractor's Staff)**.

#### 42.4 **Approval of New Members of Contractor's Staff**

If, during the Custodial Service Period, the Contractor or any sub-contractor seeks to engage a new member of the Contractor's Staff, and such person has not been the subject of prior approval or certification (as the case may be) in accordance with this **clause 42 (The Contractor's Staff)**, **clauses 40 (The Director)** and/or **41 (Certification as Prisoner Custody Officers)**, or such approval or certification has lapsed, the Contractor shall not permit such person to commence work at the Prison until the Contractor has complied with such provisions of this **clause 42 (The Contractor's Staff)**, **clauses 40 (The Director)** and/or **41 (Certification as Prisoner Custody Officers)** (as the case may be).

#### 42.5 **Operating and Procedural Instructions**

The Contractor shall provide all Operational Staff with:

- 42.5.1 those parts of the Contractor's Operational Documents that are relevant to them in accordance with the Custodial Service Specification; and

- 42.5.2 those parts of any revised or amended Contractor's Operational Documents that are relevant to them and may be issued by the Contractor during the term of this Contract.

#### 42.6 **Obligation of Confidentiality**

The Contractor shall:

- 42.6.1 ensure that all Contractor's Staff are under an obligation of confidence owed to the Contractor and the Authority not to disclose any information acquired during the course of their employment otherwise than in the proper discharge of their duties or as authorised by the Authority; and
- 42.6.2 provide in the terms of the Sub-Contracts that:
- 42.6.2.1 the Sub-Contractors will undertake to the Authority in the same terms as the provisions of this **clause 42.6 (Obligation of Confidentiality)**; and
- 42.6.2.2 that the Sub-Contractors shall ensure that all sub-contractors undertake in the same terms as the provisions of this **clause 42.6 (Obligation of Confidentiality)**.

#### 42.7 **Suspension of Staff**

- 42.7.1 Without prejudice to **clauses 40 (The Director)** and **41 (Certification as Prisoner Custody Officers)**, if, in the opinion of the Authority's Representative, any member of the Contractor's Staff is guilty of misconduct, incapable of efficiently performing his duties or it is not in the public interest for such individual to work in the Prison, then the Authority's Representative may, by notice to the Contractor require the Contractor to immediately suspend such individual from his work and refuse the admission of such individual to the Prison (except, with the Authority's Representative's Approval, in connection with disciplinary matters) (a "Suspended Member of Staff") and shall, immediately on being required to do so, remove such Suspended Member of Staff from the Prison.
- 42.7.2 The Contractor will ensure that such Suspended Member of Staff's work is performed by such other member of the Operational Staff as is necessary. The Authority's Representative may, in respect of any such Suspended Member of Staff, take such action as it considers appropriate.

- 42.7.3 The Contractor and the Authority's Representative shall, following the suspension, refusal of admission and/or removal of such Suspended Member of Staff pursuant to **clause 42.7 (Suspension of Staff)**, consult in good faith to ascertain whether the Suspended Member of Staff should be allowed to recommence his duties in the Prison.
- 42.7.4 If the Contractor considers in good faith that suspension is no longer appropriate and that the Suspended Member of Staff should be allowed to resume his duties at the Prison, it shall notify the Authority's Representative in writing (a "Cessation of Suspension Notice").
- 42.7.5 Following receipt of any Cessation of Suspension Notice by the Authority's Representative, the Authority's Representative shall be entitled, by giving notice in writing (a "Continued Suspension Notice") to the Contractor within ten (10) Business Days after receipt of the Cessation of Suspension Notice, to require continued suspension and refusal of admission to the Prison of such Suspended Member of Staff for a specified period or permanently.
- 42.7.6 If the Authority's Representative does not give a Continued Suspension Notice within the period specified in **clause 42.7.5 (Suspension of Staff)**, the Suspended Member of Staff may be allowed to continue his duties and to be admitted to the Prison.

#### 42.8 **Job Description and Details**

The Contractor shall:

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

#### 42.9 **Section 88**

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

#### 42.10 **Sufficient Operational Staff**

The Contractor shall:

- 42.10.1 maintain a sufficient number of Operational Staff engaged in the provision of the Custodial Service and with the requisite level of skill and experience; and
- 42.10.2 ensure that there are sufficient Operational Staff to cover for periods of holiday, sickness, other absences and anticipated and actual peaks in demand for the Custodial Service or any part of it.

#### 42.11 **Continual Availability**

42.11.1 The Contractor shall ensure that:

- 42.11.1.1 sufficient Operational Staff (including Prisoner Custody Officers, the Director and other senior management of the Prison or their delegated representatives that have sufficient authority to take decisions necessary for the proper operation of the Prison); and
- 42.11.1.2 a member of the senior management of the Contractor and the Operating Sub-Contractor (as distinguished from the senior management of the Prison),

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

42.11.2 The Contractor shall:

- 42.11.2.1 inform the Authority's Representative not less than three (3) Months prior to the Contractual Opening Date of the procedures by which the obligations referred to in **clause 42.11.1 (Continual Availability)** will be performed (and any changes to such procedures); and
- 42.11.2.2 obtain the Authority's Representative's Approval to such procedures (and any such changes) before implementing them.

#### 42.12 **Responsibility for Staff Costs**

As between the Contractor and the Authority:



- 42.12.1 the Contractor shall be entirely responsible for all aspects, including costs, of the contracts of employment of its and its sub-contractors' employees; and
- 42.12.2 except where otherwise specifically provided, 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 Contractor's 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 and/or otherwise.

#### 42.13 **Offers of Employment**

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

#### 42.14 **Contractor's Key Staff**

42.14.1 The Contractor shall appoint an individual to each of the positions listed in the column headed 'Position' in the table in **Schedule 22 (Contractor's Key Staff)**, in accordance with the provisions of the clauses listed in the column headed 'Clause reference' in the table in **Schedule 22 (Contractor's Key Staff)** where appropriate.

42.14.2 The Contractor shall notify the Authority's Representative:

- 42.14.2.1 of the identity of each individual appointed to each position on or before the date of the initial appointments to those positions; and

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

### 43. **TUPE AND EMPLOYEES**

#### 43.1 **Retendering**

43.1.1 The Contractor shall (and shall procure that any Sub-Contractor shall) within the period of twelve (12) Months immediately preceding the

expiry of this Contract or such longer period as the Authority may reasonably require or following the service of a notice under **clauses 51 (Termination on Authority Default) to 57 (Termination for Breach of the Refinancing Provisions)** or as a consequence of the Authority notifying the Contractor of its intention to retender this Contract:

- 43.1.1.1 on receiving a written request from the Authority, provide in respect of any person engaged or employed by the Contractor or any Sub-Contractor in the provision of the Custodial Service (the "Assigned Employees") full and accurate details regarding the identity, age, sex, length of service, job title, grade, information on any disciplinary procedure taken against any of the Assigned Employees, information on any grievance procedure taken by any of the Assigned Employees and terms and conditions of employment (including details of pensions, bonuses and benefits) of and other matters (including any outstanding claims arising out of their employment) affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any Sub-Contractor (as the case may be) until immediately before the Termination Date, would be Relevant Employees (the "Retendering Information");
- 43.1.1.2 provide the Retendering Information promptly and at no cost to the Authority;
- 43.1.1.3 notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
- 43.1.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees, other than in the ordinary course of business and with the Authority's prior written approval (such approval not to be unreasonably withheld or delayed);
- 43.1.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees, other than in the ordinary course of business and with the Authority's prior written approval (such approval not to be unreasonably withheld or delayed); and

43.1.1.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Custodial Service to provide the Custodial Service, except with the Authority's prior written approval (such approval not be unreasonably withheld or delayed).

43.1.2 The Contractor shall indemnify and keep indemnified in full the Authority, its employees, agents and contractors and, at the Authority's request, any Future Service Provider against all Direct Losses arising from any claim whatsoever by any party as a result of the Contractor or Sub-Contractor failing to provide or promptly to provide the Authority and/or any Future Service Provider where requested by the Authority with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information.

#### 43.2 **Expiry and Termination of Contract**

43.2.1 On the Expiry Date or if earlier the Termination Date (the "Custodial Service Transfer Date"), the Parties acknowledge that TUPE may apply in respect of the provision after the Custodial Service Transfer Date of any service equivalent to the Custodial Service but the position shall be determined in accordance with the law at the Custodial Service Transfer Date and this **clause 43.2 (Expiry and Termination of Contract)** is without prejudice to such determination.

43.2.2 For the purposes of this **clause 43.2 (Expiry and Termination of Contract)** "Relevant Employees" shall mean those employees wholly or mainly engaged in the provision of the Custodial Service (as the case may be) as immediately before the Custodial Service Transfer Date whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. Upon the Custodial Service Transfer Date, the provisions of this **clause 43.2 (Expiry and Termination of Contract)** shall apply:

43.2.2.1 the Contractor shall ensure that all wages, salaries and other benefits of the Relevant Employees and other employees or former employees of the Contractor or any Sub-Contractors (who had been engaged in the provision of the Custodial Service) and all PAYE tax deductions and national insurance contributions relating to the

employment of the Relevant Employees (and such other employees or former employees of the Contractor or any Sub-Contractors) up to the Custodial Service Transfer Date are satisfied;

43.2.2.2 the Authority shall ensure that all wages, salaries and other benefits of the Relevant Employees (who had been engaged in the provision of the Custodial Service) and all PAYE tax deductions and national insurance contributions relating to the employment of the Relevant Employees on and after the Custodial Service Transfer Date are satisfied;

43.2.2.3 without prejudice to **clause 43.2.2.1 (Expiry and Termination of Contract)**, the Contractor shall:

- (a) remain (and procure that any Sub-Contractors shall remain) (as relevant) responsible for all the Contractor's or any Sub-Contractor's employees (other than the Relevant Employees) on or after the Custodial Service Transfer Date and shall indemnify and keep indemnified in full the Authority, its employees, agents, contractors and any Future Service Provider against all Direct Losses incurred by the Authority, its employees, agents, contractors and any Future Service Provider arising from any claim whatsoever whether arising before, on or after the Custodial Service Transfer Date by or on behalf of any of the Contractor's or Sub-Contractor's employees who do not constitute the Relevant Employees; and
- (b) in respect of those employees who constitute Relevant Employees, indemnify and keep indemnified in full the Authority, its employees, agents, contractors and any Future Service Provider against all Direct Losses incurred by the Authority, its employees, agents, contractors and any Future Service Provider arising from any claim whatsoever by or on behalf of any of the Relevant Employees in respect of the period on or before the Custodial Service Transfer Date (whether any such claim, attributable to the period on and before the Custodial Service Transfer Date, arises before, on or after the Custodial Service Transfer Date) where such claim arises out of any act, fault or omission of the Contractor and/or any Sub-Contractor including any failure by the Contractor or any Sub-Contractor to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such Legislation applied, (even if it does not in fact apply) except to the extent that any such failure to comply arises as a result of an act or omission of the Authority, its employees, agents, contractors or any Future Service Provider.

43.2.3 The Authority shall be entitled to assign the benefit of the indemnity set out in **clause 43.2.2.3 (Expiry and Termination of Contract)** to any Future Service Provider.

43.2.4 The Authority shall indemnify and keep indemnified in full the Contractor and each relevant Sub-Contractor in respect of those employees who constitute Relevant Employees against all Direct Losses incurred by the Contractor or any relevant Sub-Contractor in connection with or as a result of any failure by the Authority, its employees, agents, contractors and any Future Service Provider to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such Legislation applied (even if it does not in fact apply) except to the extent that any such failure to comply arises as a result of an act or omission of the Contractor or any Sub-Contractor.

### 43.3 **Offer of Employment on Expiry or Termination**

43.3.1 If TUPE does not apply on the Custodial Service Transfer Date, the Authority may procure that each Future Service Provider (including the Authority) shall offer employment to the persons employed by the Contractor or any Sub-Contractors in the provision of the Custodial Service immediately before the Custodial Service Transfer Date.

43.3.2 If an offer of employment is made in accordance with **clause 43.3.1 (Offer of Employment on Expiry or Termination)**, the employment shall be on the same terms and conditions as applied immediately before the Custodial Service Transfer Date, including full continuity of employment, except that the Authority or Future Service Provider may, at its absolute discretion, not offer such terms and conditions if there has been any change to the terms and conditions of the persons concerned in breach of **clause 43.1 (Retendering)**.

43.3.3 Where any such offer as referred to in **clause 43.3.1 (Offer of Employment on Expiry or Termination)** is accepted, the Contractor shall indemnify and keep indemnified in full the Authority, its employees, agents, contractors and/or any Future Service Provider against:

43.3.3.1 all Direct Losses incurred by the Authority, its employees, agents, contractors and any Future Service Provider in connection with or as a result of any claim or demand against the Authority, its employees, agents, contractors and any Future Service Provider by:

- (a) any person who is or has been employed or engaged by the Contractor or any Sub-Contractor in connection with the provision of any part of the Custodial Service; or
- (b) any trade union or staff association or employee representative in respect of any such person,

in either case where such claim arises as a result of any act, fault or omission of the Contractor and/or any Sub-Contractor;

43.3.3.2 all Direct Losses incurred by the Authority, its employees, agents, contractors and any Future Service Provider in connection with or as a result of a failure by the Contractor to or to procure that any relevant Sub-Contractor is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is employed or engaged by the Contractor or any relevant Sub-Contractor in connection with the provision of any part of the Custodial Service, including all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise; and

43.3.3.3 all Direct Losses incurred by the Authority, its employees, agents, contractors and any Future Service Provider in connection with or as a result of any claim by any Relevant Employee, trade union, staff association or employee representative (whether or not recognised by the Contractor and/or any Sub-Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor and/or any Sub-Contractor to comply with any legal obligation to such trade union, staff association or other employee representative, whether under Regulation 13 of TUPE, under the Directive or otherwise and whether any such claim arises or has its origin before, on or after the Custodial Service Transfer Date.

43.3.4 Where any such offer as referred to in **clause 43.3.1 (Offer of Employment on Expiry or Termination)** is not accepted and TUPE does not apply, the employee shall remain an employee of the Contractor or Sub-Contractor, as appropriate.

#### 43.4 **Sub-Contractors**

If the Contractor enters into any Sub-Contract (except the Construction Sub-Contract) in connection with this Contract, it shall impose obligations on its Sub-Contractors in the same terms as those imposed on it pursuant to **clauses 40 (The Director) to 43 (TUPE and Employees)** (inclusive) and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify and keep indemnified in full the Authority, its employees, agents, contractors and any Future Service Provider against all Direct Losses arising as a result of or in connection with any failure on the part of the Contractor to comply with this **clause 43.4 (Sub-Contractors)** and/or the Sub-Contractor's failure to comply with such terms.

#### 44. **THE CONTROLLER**

##### 44.1 **Section 85**

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

##### 44.2 **Unrestricted Access**

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

## **PART IX - PAYMENT PROVISIONS**

### **45. PAYMENT PROVISIONS**

#### **45.1 Payment of the Contract Price**

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

#### **45.2 Report and Invoice**

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

- 45.2.1 a report showing for that Month the Contract Price and, individually, each item taken into account in calculating the Contract Price for that Month pursuant to paragraph 6.3 of **Schedule 5 (Payment Mechanism)**; and
- 45.2.2 an invoice for the amount (if any) shown by the report as owing by the Authority to the Contractor and for any VAT payable by the Authority in respect of that amount.

#### **45.3 Payment**

- 45.3.1 Subject to **clause 45.5 (Disputed Amounts)**, the Authority shall pay the amount stated in any invoice submitted under **clause 45.2 (Report and Invoice)** on or before the date falling thirty (30) Days after receipt of the invoice.
- 45.3.2 Where a report shows a net amount owed by the Contractor to the Authority, the Contractor shall pay that amount to the Authority on or before the date falling thirty (30) Days after the date of the invoice, or at the option of the Authority carry forward that amount to the next invoice in reduction of amount which would otherwise have been owed by the Authority to the Contractor.

#### **45.4 Interest on Late Payment**

Except where otherwise specifically provided, where any payment or sum of money due from the Contractor to the Authority or from the Authority to the Contractor under any provision of this Contract is not paid on or before the due date, it shall bear interest on that amount at the Prescribed Rate from the due date (whether before or after any judgment) until actual payment and it is agreed between the Parties that the Prescribed Rate and the provisions of this



Contract provide the Contractor with a substantial remedy pursuant to sections 8 and 9 of the Late Payment of Commercial Debts (Interest) Act 1998.

#### 45.5 **Disputed Amounts**

45.5.1 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor pursuant to this **clause 45 (Payment Provisions)**, the provisions of this **clause 45.5 (Disputed Amounts)** shall apply.

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

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

#### 45.6 **Response to Authority Notice**

Within ten (10) Business Days following receipt by the Contractor of any notice served by the Authority pursuant to **clause 45.5.2 (Disputed Amounts)**, the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree, or if the Contractor fails to make such a response within that time limit, the Authority shall be entitled:

45.6.1 to retain on a permanent basis any amounts withheld pursuant to **clause 45.5.3 (Disputed Amounts)**; and

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

#### 45.7 **Dispute**

If the Contractor responds (pursuant to **clause 45.6 (Response to Authority Notice)**) that it does not agree with all or any of the statements made in any

notice served by the Authority pursuant to **clause 45.6.2 (Response to Authority Notice)**, the matter or matters in question shall be determined under the Dispute Resolution Procedure.

#### **45.8 Determination of Dispute**

If the determination of any dispute conducted pursuant to **clause 45.7 (Dispute)** shows that:

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

45.8.2 the Contractor has claimed under **clause 45 (Payment Provisions)** any amount which it was not entitled to be paid,

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay the Authority) or from the date on which 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.

#### **45.9 Construction Indexation**

45.9.1 The Parties agree that payment of the Construction Indexation Adjustment Payment shall be made to the Contractor by the Authority (or if the amount is negative to the Authority by the Contractor):

- (a) within ten (10) Business Days of receipt of an invoice for the same in accordance with this Contract provided that such invoice shall not be submitted before the Independent Engineer's Declaration; or
- (b) within ten (10) Business Days of termination for any reason whatsoever of this Contract prior to the Independent Engineer's Declaration.

45.9.2 The amount of the Construction Indexation Adjustment Payment shall be agreed between the Parties on 31st October 2010 or such other date as the relevant information becomes available or shall otherwise be determined in accordance with this Contract.

#### **45A Houseblock Works Fee**

45A.1 The Authority shall pay to the Contractor in accordance with **Schedule 41 (Houseblock Works Fee)** the Houseblock Works Fee.

#### **46. TAXATION**

##### **46.1 Value Added Tax**

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

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

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

46.1.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Contract and payable by the Authority to the Contractor.

##### **46.2 Construction Industry Scheme**

46.2.1 This **clause 46.2 (Construction Industry Scheme)** relates to the Construction Industry Scheme (the "Scheme") the framework of which is contained in the Finance Act 2004 with the operational details contained in the Income Tax (Construction Industry Scheme) Regulations 2005 SI 2005/2045 (the "2005 Regulations") and which commenced in April 2007.

46.2.2 All payments made under this Contract shall be paid in accordance with this **clause 46.2 (Construction Industry Scheme)**.

46.2.3 The Parties believe that all payments made under this Contract will be exempt from the Scheme under Regulation 23 of the 2005 Regulations.

46.2.4 If and to the extent that payments are not exempt from the Scheme by virtue of Regulation 23 of the 2005 Regulations, the Parties agree to operate the Scheme in accordance with the 2005 Regulations, the Finance Act 2004 or any other statute or subordinate Legislation (the

"Relevant Legislation") relating to the Scheme as from time to time modified or replaced whether before, on or after the date of this Contract and in particular the Authority shall be entitled to make the statutory deduction from any payment due to the Contractor in accordance with the 2005 Regulations and/or the Relevant Legislation.

- 46.2.5 If compliance with this **clause 46.2 (Construction Industry Scheme)** involves the Authority or the Contractor in not complying with any other provisions of this Contract (save for the Parties' obligations to comply with Legislation), then the provisions of this **clause 46.2 (Construction Industry Scheme)** shall prevail.

#### 46.3 **Adjustment to Deemed Lease Premium Relief**

- 46.3.1 The Base Case includes an assumption as to the Deemed Lease Premium Relief. The Contractor and Authority intend that the Deemed Lease Premium Relief is agreed with HMRC as soon as reasonably possible after the Actual Opening Date, and that there is an adjustment, in accordance with **clause 69 (Financial Adjustments)**, to the Base Case and the Contract Price to reflect the Deemed Lease Premium Relief agreed with HMRC.

- 46.3.2 The Contractor shall:

46.3.2.1 use all reasonable endeavours to agree with HMRC as soon as reasonably possible the amount of qualifying expenditure under the Capital Allowances Act 2001 to which the carrying out of the Works gives, or will give, rise to the extent that this is necessary in order for the Deemed Lease Premium Relief to be determined and agreed with HMRC; and

46.3.2.2 provide the Authority and, following their appointment, the DLPR Expert with details in writing of the amount of such qualifying expenditure agreed with HMRC and the plant and machinery and other items to which it relates.

- 46.3.3 The Contractor and the Authority shall within thirty (30) Business Days following the Actual Opening Date consult in good faith in an attempt to come to an agreement in relation to the appointment of an independent firm of chartered accountants to determine and agree with HMRC the Deemed Lease Premium Relief. If the Parties do not agree upon the selection and/or do not appoint an independent firm of chartered accountants after a further fifteen (15) Business Days, an independent firm of chartered accountants will be selected on the application of either the Contractor or the Authority by the president

for the time being of the Institute of Chartered Accountants in England and Wales (the "**President**") and appointed by the Parties within ten (10) Business Days of the President notifying the Parties in writing of that selection and such person, whether selected by the Parties or by the President in accordance with this **clause 46.3.3 (Adjustment to Deemed Lease Premium Relief)**, will be referred to as the "**DLPR Expert**".

46.3.4 The terms of appointment of the DLPR Expert and the basis upon which the DLPR Expert will act (as the Contractor and the Authority hereby acknowledge and agree) will be as follows (and both the Contractor and the Authority will instruct the DLPR Expert accordingly):

46.3.4.1 the DLPR Expert will act as an expert and not as an arbitrator and will owe an equal duty of care to the Authority and Contractor;

46.3.4.2 the DLPR Expert will appoint and obtain an appropriate valuation (the "**DLPR Valuation**") from a "**Qualified Valuer**" (which, for the avoidance of doubt, may be a partner or employee of the DLPR Expert) of the Deemed Lease Premium for the purposes of determining and agreeing with HMRC the Deemed Lease Premium Relief;

46.3.4.3 the DLPR Expert will determine what the Deemed Lease Premium Relief would be based on the DLPR Valuation and negotiate and agree the Deemed Lease Premium Relief with HMRC, if necessary including negotiating the valuation of the Deemed Lease Premium with HMRC and/or the Valuation Office Agency and appointing the Qualified Valuer to assist with such negotiations;

46.3.4.4 the Parties will each promptly provide the DLPR Expert with all assistance and information, including access to documents and records within their possession or control and access to the Site, which the DLPR Expert or the Qualified Valuer may reasonably require or request for the purpose of obtaining and agreeing with HMRC and/or the Valuation Office Agency the valuation of the Deemed Lease Premium and determining and agreeing with HMRC the Deemed Lease Premium Relief;

46.3.4.5 the DLPR Expert's fees and any costs and expenses incurred in relation to his appointment, including the costs

of obtaining and negotiating the DLPR Valuation, will be borne by the Authority and paid directly to the DLPR Expert/or if paid by the Contractor the Authority will pay the Contractor in advance an amount equal to the payment due to be made by the Contractor to the DLPR Expert; and

46.3.4.6 require the DLPR Expert to:

- (a) give the Parties a reasonable opportunity to make written representations or submissions to the DLPR Expert in respect of and in advance of each of the DLPR Valuation and the determination of the Deemed Lease Premium Relief by the DLPR Expert and of any significant communication with the Qualified Valuer, HMRC or the Valuation Office Agency, and as soon as reasonably practicable supply each Party with a copy of any such written representations or submissions made by the other Party; and
- (b) keep both Parties informed of the DLPR Expert's progress, including as soon as reasonably practicable supplying both Parties with:
  - (i) a copy of the DLPR Valuation;
  - (ii) written details of the DLPR Expert's determination of the Deemed Lease Premium Relief based on the DLPR Valuation;
  - (iii) copies of all correspondence with HMRC or the Valuation Office Agency which relates to or may affect the Deemed Lease Premium Relief; and
  - (iv) written details of the Deemed Lease Premium Relief agreed with HMRC.

46.3.5 As soon as reasonably possible following the DLPR Expert providing the Parties with written details of the Deemed Lease Premium Relief agreed with HMRC or the Deemed Lease Premium Relief being otherwise agreed with HMRC or determined so that it is binding on HMRC pursuant to **clause 46.3.7**, and subject to **clause 46.3.5** and **clause 46.3.8**, the Base Case shall be adjusted in accordance with **clause 69 (Financial Adjustments)** so that it and the Contract Price are adjusted to reflect the Deemed Lease Premium Relief agreed with HMRC or determined so that it is binding on HMRC. For the avoidance of doubt this will include the Base Case being updated to include actual

Deemed Lease Premium Relief agreed with HMRC. To the extent this changes the amount of tax losses, at that point, the revised amount of tax losses will be taken into account in calculating future tax payments and accordingly the price charged to the Authority going forward.

- 46.3.6 The Contractor shall not, and shall procure that its advisers shall not, seek to agree the valuation of the Deemed Lease Premium with HMRC or the Valuation Office Agency or the Deemed Lease Premium Relief with HMRC prior to the appointment of the DLPR Expert and following the appointment of the DLPR Expert, the Contractor shall not, and shall procure that its advisers (for the avoidance of doubt, other than the DLPR Expert) shall not have any correspondence or discussions with HMRC or the Valuation Office Agency which may relate to or affect the Deemed Lease Premium Relief unless requested or approved in advance by the DLPR Expert.
- 46.3.7 In the event that the DLPR Expert has not agreed the Deemed Lease Premium Relief with HMRC within three (3) years of the Actual Opening Date, then the Contractor and Authority shall consult in good faith in an attempt to come to an agreement in relation to how to agree the Deemed Lease Premium Relief with HMRC. If the Parties cannot reach agreement on this, or at any time following such agreement having been reached, the Parties acting reasonably and in good faith cannot agree how to proceed with the determination of the Deemed Lease Premium Relief, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure, except that the Adjudicator shall not be a person nominated from the Construction Panel or Operational Panel but shall be such appropriate expert as the Parties shall agree on having consulted in good faith and if the Parties do not agree upon the selection and/or do not appoint an appropriate expert after fifteen (15) Business Days, an appropriate expert will be selected on the application of either the Contractor or the Authority by the President for the time being of the Chartered Institute of Arbitrators and appointed by the Parties within twenty (20) Business Days of the President notifying the Parties in writing of that selection.
- 46.3.8 The Parties undertake and agree that they will do or procure the doing of all such acts and things and will sign and execute or procure the signature and execution of all such documents as may be reasonably necessary or desirable to give effect to this **clause 46.3** and otherwise to comply with the terms and provisions of this **clause 46.3**.
- 46.3.9 The Authority will pay its own costs and all costs and expenses of the Contractor in connection with the determination and agreement with HMRC of the Deemed Lease Premium Relief including, where

applicable, any costs associated with the appointment of and making representations or submissions to the DLPR Expert.

47. **SET OFF**

47.1 **Rights of Set Off**

The Contractor shall not be entitled to retain or set off any amount due to the Authority by it. The Authority may retain or set off any amount owed to it by the Contractor under this Contract which has fallen due and payable against any amount due to the Contractor under this Contract provided that the Authority shall not be entitled to retain or set off any amount owed to it by the Contractor which relates to the carrying out of the Houseblock Works against any amount due to the Contractor under this Contract which does not relate to the carrying out of the Houseblock Works, subject to **clause 59 (Set Off on Termination)**.

47.2 **Set Off and Disputed Amounts**

If the payment or deduction of any amount referred to in **clause 47.1 (Set Off)** is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

48. **REFINANCING**

48.1 **Requirement for Authority Consent**

The Contractor shall obtain the Authority's prior written consent to any Qualifying Refinancing and both the Authority and the Contractor shall at all times act in good faith with respect to any Refinancing.

48.2 **Share of Gain**

[REDACTED]

[REDACTED] [REDACTED]  
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The Refinancing Gain shall be calculated after taking into account the reasonable and proper professional costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that all reasonable and proper professional costs incurred by the Authority will be paid to the Authority by the Contractor within twenty eight (28) Business Days after any Qualifying Refinancing.

#### **48.8 Notification**

Without prejudice to the other provisions of this **clause 48 (Refinancing)**, the Contractor shall:

- 48.8.1 notify the Authority of all Notifiable Financings on becoming aware of them and again when they are entered into and provide full details of the same; and
- 48.8.2 include a provision in the Financing Agreements whereby it is entitled to be informed of any proposals which the Senior Creditors may have to refinance the Financing Agreements.

#### **48.9 Right to Require a Refinancing**

- 48.9.1 If the Authority (acting reasonably) considers the funding terms generally available in the market to be more favourable than those reflected in the Financing Agreements, the Authority may, by notice in writing to the Contractor, require the Contractor to request potential funders to provide terms for a potential Refinancing (a "Refinancing Notice").
- 48.9.2 The Refinancing Notice shall set out in reasonable detail the grounds upon which the Authority believes such funding terms to be available. The Contractor and Authority shall meet to discuss the Refinancing Notice within twenty eight (28) Days. Such a meeting will consider the evidence available to both Parties about the availability of funding terms for a potential Refinancing. The Authority shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within ten (10) Days following the meeting.
- 48.9.3 If the Authority serves a Refinancing Notice which is not withdrawn pursuant to **clause 48.9.2 (Authority Right to Request Refinancing)**, then the Contractor shall:
  - 48.9.3.1 act promptly, diligently and in good faith with respect to the potential Refinancing;

48.9.3.2 use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that the Contractor shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in the United Kingdom to that operated by the Contractor, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of **clause 48.7 (Costs)**; and

48.9.3.3 either:

- (a) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to the Authority:
    - (i) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of the Authority that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in **clause 48.9.3.2 (Authority Right to Request Refinancing)**; and
    - (ii) initial drafts of any changes to this Contract including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
  - (b) if the Contractor (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements in accordance with the requirements of **clause 48.9.3.2 (Authority Right to Request Refinancing)**, provide evidence to the reasonable satisfaction of the Authority for such belief and evidence to the reasonable satisfaction of the Authority that the Contractor has complied with its obligations in **clauses 48.9.3.1 (Authority Right to Request Refinancing)** and **48.9.3.2 (Authority Right to Request Refinancing)**.
- 48.9.4 Following receipt of the information referred to in **clause 48.9.3.3(a) (Authority Right to Request Refinancing)**, the Authority shall (in its absolute discretion) either:

48.9.4.1 instruct the Contractor to implement the proposed Refinancing; or

48.9.4.2 instruct the Contractor to discontinue the proposed Refinancing,

provided that if the Authority reasonably considers that the requirements of **clause 48.9.3.3(a) (Authority Right to Request Refinancing)** have not been satisfied, the Authority may require the Contractor to satisfy its obligations under **clause 48.9.3.3(a) (Authority Right to Request Refinancing)** whereupon the provisions of **clauses 48.9.3 (Authority Right to Request Refinancing)** and **48.9.4 (Authority Right to Request Refinancing)** shall apply as if the Authority had served a Refinancing Notice.

48.9.5 If the Authority instructs the Contractor to implement the proposed Refinancing:

48.9.5.1 the Contractor shall, as soon as reasonably practicable, use all reasonable endeavours to procure that such proposed Refinancing is implemented;

48.9.5.2 such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and

48.9.5.3 the provisions of **clauses 48.1 (Requirement for Authority Consent)** to **48.8 (Notification)** shall apply.

48.9.6 If:

48.9.6.1 the Authority instructs the Contractor to discontinue the potential Refinancing pursuant to **clause 48.9.4.2 (Authority Right to Request Refinancing)**; or

48.9.6.2 the requirements of **clause 48.9.3.3(b) (Authority Right to Request Refinancing)** are satisfied,

then, the Authority shall reimburse the Contractor for the reasonable and proper professional costs incurred by the Contractor in relation to the potential Refinancing, such costs to be paid to the Contractor by the Authority within twenty eight (28) Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by the Contractor except insofar as:

- (a) it can be demonstrated to the reasonable satisfaction of the Authority that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties; and
- (b) the Authority has, by prior written agreement, approved the use of such internal management resource.

48.9.7 The Authority shall be entitled to issue a Refinancing Notice under **clause 48.9.1 (Authority Right to Request Refinancing)** at any time but not more than once in any two (2) Year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under **clause 48.9.2 (Authority Right to Request Refinancing)** has been issued for the purpose of this **clause 48.9.7 (Authority Right to Request Refinancing)**.

## **PART X - EXPIRY AND TERMINATION**

### **49. DIRECT AGREEMENT**

With the exception of **clauses 52A (Termination of Houseblock Construction Sub-contract), 52B (Houseblock Works Termination), 52C (Houseblock Works Consequential Arrangements on Termination), 52D (Excusing Causes) and 53A (Termination of Houseblock Works on Force Majeure)** and the provisions set out in this **Part X (Expiry and Termination)** of this Contract are subject to the Direct Agreement.

### **50. EXPIRY**

Where this Contract expires due to effluxion of time then the Authority shall have the option to require the Contractor to transfer to the Authority, or as directed by the Authority, all of its rights, title and interest in and to the Assets at no cost to the Authority.

### **51. TERMINATION ON AUTHORITY DEFAULT**

#### **51.1 Termination on Authority Default**

51.1.1 If an Authority Default has occurred and the Contractor wishes to terminate this Contract (including in respect of the Houseblock on and from the date of the Amending Agreement), the Contractor must serve a termination notice (the "Contractor Termination Notice") on the Authority within thirty (30) Business Days after becoming aware of the Authority Default.

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

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

#### **51.2 Compensation on Termination for Authority Default**

51.2.1 On termination of this Contract under **clause 51.1 (Termination on Authority Default)**, the Authority shall pay the Contractor the "Authority Default Termination Sum" in accordance with **clauses 58 (Gross Up of Termination Payments) to 60 (Method of Payment)** (inclusive) on the Termination Date. Subject to **clauses 51.2.3 to 51.2.5 (Compensation on Termination for Authority Default)**,

the Authority Default Termination Sum shall be an amount equal to the aggregate of:

- 51.2.1.1 the Base Senior Debt Termination Amount;
  - 51.2.1.2 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs; and
  - 51.2.1.3 the aggregate amount for which the share capital of the Contractor and the amounts outstanding under the Subordinated Financing Agreements could have been sold on an open market basis based on the Relevant Assumptions.
- 51.2.2 On termination under this **clause 51 (Termination on Authority Default)**, the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets to the Authority or as directed by the Authority.
- 51.2.3 If the aggregate of the amounts referred to in **clauses 51.2.1.1 (Compensation on Termination for Authority Default)** and **51.2.1.3 (Compensation on Termination for Authority Default)** is less than the Revised Senior Debt Termination Amount, then the Authority Default Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount referred to in **clause 51.2.1.2 (Compensation on Termination for Authority Default)**, provided always that:
- 51.2.3.1 the amount referred to in **clause 51.2.1.2 (Compensation on Termination for Authority Default)** shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
  - 51.2.3.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.

- 51.2.4 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under clause 11.4.4(a) of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Authority Default Termination Sum, provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 51.2.5 If the Contractor has wilfully or through gross negligence failed to comply with its obligations under clause 11.4.4(b) of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this **clause 51.2 (Compensation for Termination on Authority Default)**, then the Authority Default Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Authority Default Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 51.3 Where termination of the Contract occurs pursuant to this **clause 51 (Termination on Authority Default)** after the date of the Amending Agreement the Authority shall, on the Termination Date, pay to the Contractor the aggregate of:
- 51.3.1 the Authority Default Termination Sum pursuant to **clause 51.2.1 (Compensation on Termination for Authority Default)**; and
- 51.3.2 the amount calculated in accordance with Part 1 of **Schedule 42 (Payments on Houseblock Termination)**.

#### **51A. TERMINATION ON AUTHORITY HOUSEBLOCK DEFAULT**

- 51A.1 If an Authority Houseblock Default has occurred and the Contractor wishes to terminate this Contract, the Contractor must serve a termination notice (the "Contractor Houseblock Termination Notice") on the Authority within thirty (30) Business Days after becoming aware of the Authority Houseblock Default.
- 51A.2 Unless the Authority rectifies the Authority Houseblock Default within twenty (20) Business Days after receipt of the Contractor Houseblock



Termination Notice, this Contract will terminate on the day falling thirty (30) Business Days after the date the Authority receives the Contractor Houseblock Termination Notice and the provisions of **clause 52C (Houseblock Works Consequential Arrangements on Termination)** shall apply.

## **52. TERMINATION ON CONTRACTOR DEFAULT**

### **52.1 Persistent Breach**

52.1.1 If a particular breach (other than any breach for which Performance Points could have accrued and/or for which a Deduction could have been made and/or any breach of the Contractor's obligations in respect of the carrying out of the Houseblock Works) has continued for more than fourteen (14) Days or occurred more than three (3) times in any six (6) Month period then the Authority may serve a notice on the Contractor:

52.1.1.1 specifying that it is a formal warning notice;

52.1.1.2 giving reasonable details of the breach; and

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

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

52.1.2.1 specifying that it is a Final Warning Notice;

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

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

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

## 52.2 Rectification

52.2.1 If a Contractor Default has occurred and the Authority wishes to terminate this Contract (including, for the avoidance of doubt, the Houseblock Works from the date of the Amending Agreement), it must serve a Termination Notice on the Contractor.

52.2.2 The Termination Notice must specify:

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

52.2.2.2 that in the case of any Contractor Default falling within paragraphs **Error! Reference source not found.**, (g), (i), (n) and (q) of the definition of Contractor Default this Contract will terminate on the Day falling forty (40) Business Days after the date the Contractor receives the Termination Notice, unless:

- (a) in the case of a breach under paragraph **Error! Reference source not found.** of the definition of Contractor Default the Contractor puts forward an acceptable rectification programme within twenty (20) Business Days after the date the Contractor receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Contractor Default in accordance with the programme); or
- (b) in the case of any Contractor Default falling with paragraphs **Error! Reference source not found.**, (g), (i), (n) and (q) of the definition of Contractor Default the Contractor rectifies the Contractor Default within forty (40) Business Days after the date the Contractor receives the Termination Notice; or
- (c) that in the case of any other Contractor Default (not being paragraphs **Error! Reference source not found.**, (g), (i), (n) and (q) and of the definition of Contractor Default), this Contract will terminate on the date falling forty (40) Business Days after the date the Contractor receives the Termination Notice.

52.2.3 If the Contractor either rectifies the Contractor Default within the time period specified in the Termination Notice, or implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and this Contract will continue.

52.2.4 If:

52.2.4.1 in the case of a Contractor Default within paragraph **Error! Reference source not found.** of the definition of Contractor Default, no acceptable rectification programme has been put forward pursuant to **clause 52.2.2.2(a) (Rectification)** and the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice; or

52.2.4.2 in the case of a Contractor Default falling within paragraphs (g), (i), (n) and (q) of the definition of Contractor Default the Contractor fails to rectify the Contractor Default within the time period specified in the Termination Notice,

the Authority may give notice stating that this Contract (including, for the avoidance of doubt, the Houseblock Works from the date of the Amending Agreement) will, subject to the terms of the Direct Agreement, terminate on the date falling five (5) Business Days after the date of receipt of such notice.

52.2.5 If the Contractor fails to implement any rectification programme in accordance with its terms, this Contract (including, for the avoidance of doubt, the Houseblock Works from the date of the Amending Agreement) will, subject to the terms of the Direct Agreement, terminate on the date falling five (5) Business Days after the date of notification by the Authority to the Contractor of such failure to implement the rectification programme in accordance with its terms.

### 52.3 **Notice of Default Events**

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

### 52.4 **Compensation on Termination for Contractor Default**

52.4.1 Subject to **clause 52.4.2 (Compensation on Termination for Contractor Default)**, the Authority shall be entitled either to:

52.4.1.1 retender the provision of the Project in accordance with **clause 52.5 (Retendering Procedure)**; or

52.4.1.2 require an expert determination in accordance with **clause 52.6 (No Retendering Procedure)**.

52.4.2 The Authority shall be entitled to retender the provision of the Project in accordance with **clause 52.5 (Retendering Procedure)** if:

52.4.2.1 the Authority notifies the Contractor on or before the date falling twenty (20) Business Days after the Termination Date that it intends to retender; and

52.4.2.2 there is a Liquid Market; and either:

(a) the Senior Creditors have not exercised their rights to step-in under clause 5 of the Direct Agreement; or

(b) the Contractor or Senior Creditors have not procured the transfer of the Contractor's rights and liabilities under this Contract to a Suitable Substitute Contractor and have failed to use all reasonable efforts to do so,

but otherwise the Authority shall not be entitled to retender the provision of the Project and **clause 52.6 (No Retendering Procedure)** shall apply.

## 52.5 **Retendering Procedure**

If the Authority elects to retender the provision of the Project under **clause 52.4 (Compensation on Termination for Contractor Default)**, then the following provisions shall apply:

52.5.1 The objective of the retendering procedure shall be to establish and pay to the Contractor the Adjusted Highest Compliant Tender Price, as a result of the Tender Process.

52.5.2 The Authority shall (subject to any legal requirements preventing it from doing so) use its reasonable endeavours to complete the Tender Process as soon as practicable.

52.5.3 The Authority shall notify the Contractor of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process but shall act reasonably in setting such requirements and terms.

52.5.4 The Contractor authorises the release of any information by the Authority under the Tender Process which would otherwise be prevented under **Part XV (Information and Publicity)** of this Contract that is reasonably required as part of the Tender Process.

52.5.5 The Contractor may, at its own cost, appoint a person (the "Tender Process Monitor") to monitor the Tender Process for the purpose of monitoring and reporting to the Contractor and the Senior Creditors on the Authority's compliance with the Tender Process and making

representations to the Authority. The Tender Process Monitor shall not disclose any confidential information to the Contractor or any other person (and shall provide an undertaking to the Authority to such effect as a condition of its appointment) but shall be entitled to advise the Contractor as to whether it considers that the Authority has acted in accordance with the Tender Process, and correctly determined the Adjusted Highest Compliant Tender Price.

52.5.6 The Tender Process Monitor shall enter into a confidentiality agreement with the Authority in a form acceptable to the Authority and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of the tender documentation and bids and shall be required to make written representations to the Authority regarding compliance with the Tender Process. All representations shall be made by the Tender Process Monitor in a timely manner as the Tender Process proceeds. The Authority shall not be bound to consider or act upon such representations but acknowledges that such representations may be referred to by the Contractor in the event that the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure.

52.5.7 For all or any part of a Month, falling within the period from the Termination Date to the Compensation Date, the Authority shall pay to the Contractor:

52.5.7.1 the Post Termination Service Amount for that Month, on or before the date falling ten (10) Business Days after the end of that Month; and

52.5.7.2 the Post Termination Service Amount for the period ending on the Compensation Date, on or before the date falling twenty (20) Business Days after the Compensation Date.

52.5.8 If any Post Termination Service Amount is less than zero then it shall be carried forward and shall be set off against any future positive Post Termination Service Amounts. If any such Post Termination Service Amount has not been set off on or before the Compensation Date then it shall be taken into account in the calculation of the Adjusted Highest Compliant Tender Price.

52.5.9 The Authority shall require bidders to bid on the basis that they will receive the benefit of any outstanding claims under material damage insurance policies and amounts (if any) standing to the credit of the

Joint Insurance Account on the date that the New Contract is entered into.

- 52.5.10 As soon as practicable after tenders have been received, the Authority shall (acting reasonably) determine the Compliant Tenders and shall notify the Contractor of the Adjusted Highest Compliant Tender Price.
- 52.5.11 If the Contractor refers a dispute relating to the Adjusted Highest Compliant Tender Price to dispute resolution in accordance with the Dispute Resolution Procedure, the Authority shall be entitled to enter into a New Contract. The Authority shall pay to the Contractor the Adjusted Highest Compliant Tender Price on or before the date falling twenty (20) Business Days after it has been determined in accordance with the Dispute Resolution Procedure and the Authority shall pay interest to the Contractor at the Senior Debt Rate on any amount of Adjusted Highest Compliant Tender Price which had been withheld, from the date specified in **clause 52.5.12 (Retendering Procedure)** until the date specified in this **clause 52.5.11 (Retendering Procedure)**. For the avoidance of doubt, where there is an agreed amount and a disputed amount in respect of the Adjusted Highest Compliant Tender Price the Authority shall (where it is agreed that the Adjusted Highest Compliant Tender Price is a positive number) pay to the Contractor the agreed amount no later than the date specified in **clause 52.5.12 (Retendering Procedure)**, with the disputed amount being dealt with in accordance with this **clause 52.5.11 (Retendering Procedure)**.
- 52.5.12 Subject to **clauses 52.5.11 (Retendering Procedure)** and **52.5.15 (Retendering Procedure)**, the Authority shall pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price no later than the date falling twenty (20) Business Days after the date of the New Contract.
- 52.5.13 Without prejudice to the provisions of clause 52.5.19, the discharge by the Authority of its payment obligation in **clauses 52.5.11 (Retendering Procedure)** and/or **52.5.12 (Retendering Procedure)** shall be in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Contract and the Project Documents whether under contract, tort, restitution or otherwise, save for any liability of the Authority which arose prior to the Termination Date that has not already been taken into account in the Adjusted Highest Compliant Tender Price.
- 52.5.14 Subject to **clauses 52.5.15 (Retendering Procedure)** and **52.5.18 (Retendering Procedure)**, if the Authority has not paid an amount

equal to the Adjusted Highest Compliant Tender Price to the Contractor on or before the date falling two (2) Years after the Termination Date then the following provisions of this **clause 52.5 (Retendering Procedure)** shall not apply to that termination and the provisions of **clause 52.6 (No Retendering Procedure)** shall apply instead.

- 52.5.15 If the Adjusted Highest Compliant Tender Price is zero or a negative number then the Authority shall have no obligation to make any payment to the Contractor and with effect from the time that the Authority gives notice of that event to the Contractor, the Authority shall be released from all liability to the Contractor for breaches and/or termination of this Contract and any other Project Document whether under contract, tort, restitution or otherwise save for any antecedent liability of the Authority which arose prior to the Termination Date (but not from the termination itself) that has not already been taken into account in determining the Adjusted Highest Compliant Tender Price.
- 52.5.16 If the Adjusted Highest Compliant Tender Price is less than zero then an amount equal to the Adjusted Highest Compliant Tender Price shall be due and payable by the Contractor to the Authority on the date of the New Contract.
- 52.5.17 The Authority may elect at any time prior to the receipt of a Compliant Tender to follow the no retendering procedure under **clause 52.6 (No Retendering Procedure)** by notifying the Contractor that this election has been made.
- 52.5.18 If the Authority has received all bids from bidders under the Tender Process and has received a Compliant Tender but decides not to complete the Tender Process, it shall notify the Contractor of this decision and pay to the Contractor an amount equal to the Adjusted Highest Compliant Tender Price within twenty (20) Business Days after such notification.
- 52.5.19 Where termination of the Contract occurs pursuant to this **clause 52 (Termination on Contractor Default)** and **clause 52.5 (Retendering Procedure)** applies, and such termination occurs after the date of the Amending Agreement the Authority shall pay to the Contractor the aggregate of:
- 52.5.19.1 the Post Termination Service Amount calculated in accordance with **clause 52.5.7 (Retendering Procedure)** plus the Adjusted Highest Compliant Tender Price payable in accordance with **clause 52.5.11** or **52.5.12** (as the case may be); and

52.5.19.2 the amount calculated in accordance with Part 2 of **Schedule 42 (Payments on Houseblock Termination)**, which shall be paid no later than the date falling twenty (20) Business Days after the date of the New Contract.

## 52.6 **No Retendering Procedure**

If either the Authority is not entitled to retender the provision of the Project under **clause 52.4 (Compensation on Termination for Contractor Default)** or the Authority elects to require an expert determination in accordance with this **clause 52.6 (No Retendering Procedure)** then the following procedure shall apply.

52.6.1 Subject to **clause 52.6.2 (No Retendering Procedure)**, the Contractor shall not be entitled to receive any Post Termination Service Amount.

52.6.2 If the Authority elects to require an expert determination in accordance with this **clause 52.6 (No Retendering Procedure)** after it has elected to follow the procedure under **clause 52.5 (Retendering Procedure)**, then the Authority shall continue to pay to the Contractor each Post Termination Service Amount until the Compensation Date, in accordance with **clause 52.5 (Retendering Procedure)**.

52.6.3 In agreeing or determining the Estimated Fair Value of the Contract the Parties shall be obliged to follow the principles set out below:

52.6.3.1 all forecast amounts should be calculated in nominal terms at current prices, recognising the adjustment for indexation in respect of forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Contract;

52.6.3.2 the total of all future payments of the Maximum Contract Price (without deductions) forecast to be made shall be calculated and discounted to the Termination Date at the Termination Date Discount Rate;

52.6.3.3 the total of all costs forecast to be incurred by the Authority as a result of termination shall be calculated and discounted at the Termination Date Discount Rate and deducted from the payment calculated pursuant to **clause 52.6.3.2 (No Retendering Procedure)**, such costs to include (without double counting):



- (a) a reasonable risk assessment of any cost overruns that will arise, whether or not forecast in the Base Case;
- (b) the costs of the Custodial Service forecast to be incurred by the Authority in providing the Project to the standard required; and
- (c) any rectification costs required to deliver the Project to the standard required (including any costs forecast to be incurred by the Authority to complete construction or development work and additional operating costs required to restore operating services standards),

in each case such costs to be forecast at a level that will deliver the Maximum Contract Price (without Deductions) referred to in **clause 52.6.3.2 (No Retendering Procedure)**.

- 52.6.4 If the Parties cannot agree on the Adjusted Estimated Fair Value of the Contract on or before the date falling twenty (20) Business Days after the date on which the Authority elected to require an expert determination in accordance with this **clause 52.6 (No Retendering Procedure)**, then the Adjusted Estimated Fair Value of the Contract shall be determined in accordance with the Dispute Resolution Procedure.
- 52.6.5 The Authority shall pay to the Contractor an amount equal to the Adjusted Estimated Fair Value of the Contract on the date falling forty (40) Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this **clause 52.6 (No Retendering Procedure)**.
- 52.6.6 Without prejudice to the provisions of clause 52.6.8, the discharge by the Authority of its obligation in **clause 52.6.5 (No Retendering Procedure)** is in full and final settlement of all the Contractor's claims and rights against the Authority for breaches and/or termination of this Contract or other Project Document whether in contract, tort, restitution or otherwise save for any liability that arose prior to the Termination Date (but not from the termination itself) that has not been taken into account in determining the Adjusted Estimated Fair Value of the Contract.
- 52.6.7 To the extent that the Adjusted Estimated Fair Value of the Contract is less than zero, then an amount equal to the Adjusted Estimated Fair

Value of the Contract shall be due and payable by the Contractor to the Authority on the Compensation Date.

52.6.8 Where this Contract is terminated pursuant to this **clause 52 (Termination On Contractor Default)** and **clause 52.6 (No Retendering Procedure)** applies, and such termination occurs after the date of the Amending Agreement, the Authority shall pay to the Contractor the aggregate of:

52.6.8.1 the Adjusted Estimated Fair Value of the Contract in accordance with **clause 52.6.5 (No Retendering Procedure)**; and

52.6.8.2 the amount calculated in accordance with Part 2 of **Schedule 42 (Payments on Houseblock Termination)**,

on or before the date falling forty (40) Business Days after the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined in accordance with this **clause 52.6 (No Retendering Procedure)**.

## 52.7 **Transfer of Assets on Contractor Default**

On termination under this **clause 52 (Termination on Contractor Default)**, the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

## 52.8 **Houseblock Works and Contractor Default**

Notwithstanding any provision of this Contract, the Authority shall not in any circumstances be entitled to terminate this Contract by reason of the performance or non-performance by the Contractor of its obligations in relation to the Houseblock Works under this Contract or by reason of the carrying out or failure to carry out of any activities contemplated by this Contract in respect of the Houseblock Works.

52.9 Notwithstanding any provision of this Contract and without prejudice to **clause 52D (Excusing Causes)** and **clause 98 (Houseblock Works Cap)**, the Authority waives any rights to claim general damages for breach of the terms of this Contract relating to the carrying out of the Houseblock Works or in relation to any activities contemplated by the provisions of this Contract relating to the carrying out of the Houseblock Works and further the Authority's sole remedies for breach of this Contract relating to the carrying out of the Houseblock Works

and in relation to any activities contemplated by this Contract relating to the carrying out of the Houseblock Works shall be:

- 52.9.1 any applicable rights to make Deductions in respect of the Custodial Services performed in respect of the Houseblock;
  - 52.9.2 any other express right of the Authority pursuant to this Contract;
  - 52.9.3 the Authority's right to claim on or after termination its reasonable costs, losses, and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Agreement relating to the Houseblock Works by the Contractor, save to the extent that the same has already been recovered by the Authority pursuant to this Agreement or has been taken into account to calculate any compensation payable pursuant to Part X (Expiry and Termination);
  - 52.9.4 to injunctive relief; and
  - 52.9.5 to specific performance of any obligation under this Contract (where specific performance would be a remedy available in respect of that obligation).
- 52.10 Except as expressly provided for in **clauses 52.5.19.2** or **52.6.8.2**, in determining any amount payable under this **clause 52 (Termination on Contractor Default)**, any failure to perform or other default on the part of the Contractor in respect of the carrying out of the Houseblock Works shall be excluded.

## **52A TERMINATION OF HOUSEBLOCK CONSTRUCTION SUB-CONTRACT**

52A.1 If and whenever it becomes reasonably apparent to the Contractor that the fulfilment of its obligations under the Contract are being or are likely to be delayed or adversely affected, such that the Contractor will not meet its obligations under the Contract in respect of the Houseblock Works as a result of a Houseblock Construction Sub-contractor Event of Default, the Contractor shall forthwith give written notice to the Authority (the "Houseblock Construction Sub-contract Default Notice") of the relevant circumstances.

52A.2 The Houseblock Construction Sub-contract Default Notice shall:

- (a) identify the nature of the Houseblock Construction Subcontractor Event of Default; and
- (b) identify clearly which of the Contractual Houseblock Opening Date, the Contractual Houseblock Full Operation Date and the dates in the Houseblock Phase-in Period Timetable or other obligations in respect of the Houseblock Works are likely to be affected (and in the reasonable opinion of the Contractor

the extent to which they are to be affected) by the Houseblock Construction Sub-contractor Event of Default; and

(c) the action the Contractor intends to take under the Houseblock Construction Sub-contract.

52A.3 As soon as reasonably practicable following service of a Houseblock Construction Sub-contract Default Notice, the parties shall meet and seek to agree the action to be taken by the Contractor.

52A.4 If the Contractor does not intend to procure that the Operating Subcontractor terminates the Houseblock Construction Sub-contract, the Contractor shall provide to the Authority, as soon as reasonably practicable, and in any event within twenty five (25) Days following service of the Houseblock Construction Sub-contract Default Notice, details of the programme for rectification or remedy of the Houseblock Construction Sub-contractor Event of Default.

52A.5 If the Contractor intends to procure or has procured the termination of the Houseblock Construction Sub-contract, the Contractor shall provide to the Authority, as soon as reasonably practicable, and in any event within twelve (12) weeks following service of the Houseblock Construction Sub-contract Default Notice:

(a) details of the estimated additional costs or savings of procuring a replacement construction sub-contractor to complete the Houseblock Works;

(b) details of the identity of the proposed replacement construction sub-contractor;

(c) details of whether and to what extent there will be a delay to any of the Contractor's obligations under the Contract which are to be met on or before the Contractual Houseblock Opening Date or any date in the Houseblock Phase-in Period Timetable or the Contractual Houseblock Full Operation Date in respect of the Houseblock Works;

(d) details of any changes necessary to this Contract, including in respect of the Contractual Houseblock Opening Date or any date in the Houseblock Phase-in Period Timetable, the Contractual Houseblock Full Operation Date,

and the Authority and the Contractor shall seek to agree the matters referred to in **clauses 52A.5 (a) to (d)** above, and in the event that the parties cannot reach agreement within a period of fifteen (15) Business Days the Authority shall be entitled to terminate the Houseblock Works and the provisions of **Clause 52C** shall apply.

52A.6 [REDACTED]  
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## 52B HOUSEBLOCK WORKS TERMINATION

52B.1 Where a Houseblock Event of Default has occurred by reason of any matter occurring which is referred to in paragraph (a) of the definition of Houseblock Event of Default the Authority shall give notice to the Contractor in writing (a "Houseblock Rectification Notice"), and the Contractor shall either propose a programme of rectification or remedy such Houseblock Event of Default on or before the date falling fifteen (15) Days after the date of such Houseblock Rectification Notice. For the avoidance of doubt, a Houseblock Rectification Notice shall only be issued by the Authority's Representative.

52B.2 Where no proposal for rectification is received by the Authority within fifteen (15) Days of the date of the Houseblock Rectification Notice, but the Houseblock Event of Default has been remedied within that fifteen (15) Day period, no further action will be taken and the Contract will continue.

52B.3 Where a proposal for rectification is received by the Authority within fifteen (15) Days of the date of the Houseblock Rectification Notice 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 fifty five (55) Days from the date of the Houseblock Rectification Notice, unless the Authority otherwise agrees), 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 Houseblock 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 reasonable satisfaction of the Authority, the Authority shall notify the Contractor in writing of such failure and may terminate the Houseblock Works in accordance with **clause 52B.6 (Houseblock Works Termination)**.

52B.4 If a Houseblock Event of Default occurs under paragraph (a) of the definition of Houseblock Event of Default which has not been rectified or in respect of which the Authority (acting reasonably) does not approve the proposal for rectification, or if no proposal for rectification is received by the Authority within the fifteen (15) Day period specified in **clause 52B.2 (Houseblock Works Termination)** and that Houseblock

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 Houseblock Works in accordance with **clause 52B.6 (Houseblock Works Termination)**.

52B.5 If, following approval of a proposal for rectification under **clause 52B.3 (Houseblock Works Termination)**, the Contractor fails to carry out such approved rectification to the reasonable satisfaction of the Authority, the Authority may proceed to terminate the Houseblock Works as set out in **clause 52B.6 (Houseblock Works Termination)**, save that the Houseblock Works Termination Notice must specify a Houseblock Termination Date which is at least seventy five (75) Days after the date of the Houseblock Works Termination Notice.

52B.6 Where a Houseblock Event of Default (other than under paragraphs (a) of the definition of Houseblock Event of Default) has occurred, or in the circumstances set out in **clause 52B.5 (Houseblock Works Termination)**, the Authority may proceed to terminate the Houseblock Works by giving notice in writing of its intention to terminate the Houseblock Works (a "Houseblock Works Termination Notice") to the Contractor, specifying the Houseblock Termination Date which, in the case of a Houseblock Event of Default other than under paragraphs (a) of the definition of Houseblock Event of Default, is at least ninety (90) Days after the date of the Houseblock Works Termination Notice, or in the circumstances set out in **clause 52B.5 (Houseblock Works Termination)** is at least one hundred and twenty five (125) Days after the date of the Houseblock Rectification Notice. Subject to **clause 52B.7 (Houseblock Works Termination)**, the Houseblock Works shall terminate on the Houseblock Termination Date and the Authority shall within thirty two (32) Business Days pay to the Contractor the amounts as set out in Part 2 of Schedule 42 (Payments on Houseblock Termination).

52B.7 Subject to **clause 52B.8 (Houseblock Works Termination)**, where:

- (a) a Houseblock Event of Default has occurred;
- (b) a Houseblock Works Termination Notice has been served but the Houseblock Works Termination Date has not occurred; and
- (c) the Authority is satisfied that such Houseblock Event of Default has been remedied and the Authority is reasonably satisfied that the default or defaults that gave rise to such Houseblock Event of Default are unlikely to recur, then the Houseblock Works Termination Notice shall be revoked,

provided that only two Houseblock Works Termination Notices in aggregate shall be capable of being revoked pursuant to this **clause 52B.8 (Houseblock Works Termination)**.

52B.8 The parties acknowledge and agree that each of the failures set out in paragraphs (b), (c), and (d) of the definition of Houseblock Event of Default shall (without limitation)

be a breach that is incapable of remedy for the purposes of **clause 52B.2 (Houseblock Works Termination)**.

## **52C HOUSEBLOCK WORKS CONSEQUENTIAL ARRANGEMENTS ON TERMINATION**

52C.1 On termination of the Houseblock Works pursuant to **clauses 51A (Termination on Authority Houseblock Default)**, **52A.5 (Termination Of Houseblock Construction Sub-Contract)** or **clause 52B (Houseblock Works Termination)**, the Contractor's obligations in respect of the Houseblock Works and the provision of the Houseblock Available Prisoner Places shall automatically cease (and any provisions relating to performance of the Houseblock Works and provision of the Houseblock Available Prisoner Places 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 Houseblock Works and meeting the requirements for providing the Houseblock Available Prisoner Places following which the Authority shall be fully responsible for the same including in respect of any breach including latent defects prior to the Expiry Date.

52C.2 Where the Authority does so elect to complete the Houseblock Works:

52C.2.1 the Authority shall ensure that any replacement contractor engaged by the Authority to complete the Houseblock Works has sufficient financial capacity, technical competence and resources to complete the Houseblock Works in compliance with all requirements in this Contract that would have applied had a termination pursuant to **clause 51A (Termination on Authority Houseblock Default)**, **52A.5 (Termination Of Houseblock Construction Sub-Contract)** or **clause 52B (Houseblock Works Termination)** not occurred, including without limitation:

- (a) the Authority's Houseblock Requirements;
- (b) the Houseblock Design and Construction Requirements;
- (c) the Authority Houseblock Planning Conditions; and
- (d) the Necessary Consents,

and so that on completion of the Houseblock Works the Contractor will not incur increased costs with respect to complying with its obligations to maintain and operate the Prison under this Contract compared to those which it would have incurred had the termination pursuant to Clause 52B not occurred;

52C.2.2 the Contractor shall be relieved of its obligations and liabilities (including liquidated damages) under the Contract in respect of the carrying out of the Houseblock Works and meeting the requirements for providing the Houseblock Available Prisoner Places; and



52C.2.3 the Contractor shall comply with all reasonable instructions of the Authority:

(a) to ensure an orderly and efficient transfer of the Houseblock Works Site to the Authority; and

(b) the process for and requirements of the introduction of a third party to complete the Houseblock Works and provide the Houseblock Available Prisoner Places, including any amendments to the terms of this Contract to ensure that the safe, secure and efficient running of the Prison in accordance with the terms of this Contract is not materially adversely affected; and

52C.2.4 the provisions relating to the dates for delivery of the Houseblock Available Prisoner Places shall be amended such that the Contractual Houseblock Opening Date, the Houseblock Phase-in Period Timetable and the Contractual Houseblock Full Operation Date shall be such dates as the Authority shall determine from time to time, but shall otherwise remain in full force and effect;

52C.2.5 the Authority shall give to the Contractor not less than sixty (60) Days written notice of the anticipated Actual Houseblock Opening Date; and

52C.2.6 to the extent that the costs of:

(a) completing the Houseblock Works exceed the Houseblock Works Fee, then the amount of any such excess shall borne as follows:

Amount by which the additional costs exceed the Houseblock Works Fee	Percentage to be borne by the Contractor	Percentage to be borne by the Authority
£ 1,000	100%	0%
£ 1,000 - £ 2,000	100%	0%
£ 2,000 - £ 3,000	100%	0%
£ 3,000 - £ 4,000	100%	0%
£ 4,000 - £ 5,000	100%	0%
£ 5,000 - £ 6,000	100%	0%
£ 6,000 - £ 7,000	100%	0%
£ 7,000 - £ 8,000	100%	0%
£ 8,000 - £ 9,000	100%	0%
£ 9,000 - £ 10,000	100%	0%
£ 10,000 - £ 11,000	100%	0%
£ 11,000 - £ 12,000	100%	0%
£ 12,000 - £ 13,000	100%	0%
£ 13,000 - £ 14,000	100%	0%
£ 14,000 - £ 15,000	100%	0%
£ 15,000 - £ 16,000	100%	0%
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£ 31,000 - £ 32,000	100%	0%
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£ 34,000 - £ 35,000	100%	0%
£ 35,000 - £ 36,000	100%	0%
£ 36,000 - £ 37,000	100%	0%
£ 37,000 - £ 38,000	100%	0%
£ 38,000 - £ 39,000	100%	0%
£ 39,000 - £ 40,000	100%	0%
£ 40,000 - £ 41,000	100%	0%
£ 41,000 - £ 42,000	100%	0%
£ 42,000 - £ 43,000	100%	0%
£ 43,000 - £ 44,000	100%	0%
£ 44,000 - £ 45,000	100%	0%
£ 45,000 - £ 46,000	100%	0%
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£ 295,000 - £ 296,000	100%	0%
£ 296,000 - £ 297,000	100%	0%
£ 297,000 - £ 298,000	100%	0%
£ 298,000 - £ 299,000	100%	0%
£		

or

(b)procuring a replacement construction sub-contractor to complete the Houseblock Works is lower than the Houseblock Works Fee, the amount of any such saving shall be shared as follows:

Amount by which the costs are lower than the Houseblock Works Fee	Percentage to be applied for the benefit of the Contractor	Percentage to be applied for the benefit of the Authority
£ 100,000 - £ 150,000	10%	10%
£ 150,000 - £ 200,000	20%	20%

52C.3 If the Authority makes an election pursuant to **Clause 52C.2 (Houseblock Works consequential arrangements on Termination)** and the performance by the Authority of the Contractor's obligations in respect of the Houseblock Works and the provision of the Houseblock Available Prisoner Places interferes adversely with, or causes a failure of, the performance of the Custodial Services and/or causes the occurrence of a Custodial Service Failure and provided that the effect of such adverse interference is claimed within ten (10) Business Days of the date on which the Contractor became aware (or ought reasonably to have become so aware) of such adverse interference, then (subject to **Clauses 52C.4 and 52C.5 (Houseblock Works Consequential Arrangements on Termination)**) to the extent such failure or interference or occurrence of a Custodial Service Failure arises as a result of such adverse interference:

52C.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;

52C.3.2 such interference shall be taken account of in measuring the performance of any affected Custodial Services in accordance with this Contract; and

52C.3.3 any such Custodial Service Failure 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 Services,

and to the extent that the Authority breaches its obligation in clause 52C.2.1 and without prejudice to clause 52C.1, and as a result the Contractor incurs additional costs in complying with its obligations under this Contract for which it is not reimbursed under another provision of this Contract, then the Authority shall be liable for all such Losses that the Contractor suffers or incurs.

52C.4 Without prejudice to **clause 78 (Insurance)**, the Contractor shall not be entitled to any payment which would not have been due under this Contract but for **clause**

**52C.3 (Houseblock Works Consequential Arrangements on Termination)** to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained by the Contractor in accordance with this Contract (whether or not such insurance has in fact been effected, or if effected has been vitiated as a result of any act or omission of the Contractor, including but not limited to non-disclosure or under-insurance) or any other policy of insurance which the Contractor has taken out and maintained.

52C.5 The Contractor shall take all reasonable steps to mitigate the consequences of any adverse interference (as described in **clause 52C.3 (Houseblock Works Consequential Arrangements on Termination)**) on the Contractors' ability to perform its obligations under this Contract in respect of the Custodial Services. To the extent that the Contractor does not take such steps, the Contractor shall not be entitled to and shall not receive, the relief specified in **clause 52C.3 (Houseblock Works Consequential Arrangements on Termination)**.

52C.6 Where the Authority elects not to complete the Houseblock Works, the Authority will notify the Independent Engineer of such election and will request that the Independent Engineer provides to the Authority and the Contractor (at the Authority's cost):

52C.6.1 a schedule of the activities required (the "Required Actions") to ensure that those parts of the Site upon which any part or parts of the Houseblock Works have been commenced and/or completed are left in a safe and secure condition, including the removal of any temporary buildings, tools, goods, plant, equipment and/or materials remaining on the Site in relation which the Authority has not made payments and/or is not liable to make payment to the Contractor pursuant to this Contract; and

52C.6.2 an estimate of the costs likely to be incurred in carrying out the Required Actions.

52C.7 The Contractor shall carry out the Required Actions in compliance with all instructions of the Authority, including where required by the Authority to seek the prior written agreement of the Authority to the proposed cost to be incurred in carrying out any Required Action. 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 52C (Houseblock Works Consequential Arrangements on Termination)**. Subject to compliance with the terms of this **clause 52C (Houseblock Works Consequential Arrangements on Termination)** the Authority shall reimburse the Contractor's and any sub-contractor's costs incurred in carrying out any Required Actions.

52C.8 On termination under this **clause 52C (Houseblock Works Consequential Arrangements on Termination)**, the Authority shall have the option to require the

Contractor to transfer all of its right, title and interest in and to the Assets relating to the Houseblock Works to the Authority or as directed by the Authority.

## **52D EXCUSING CAUSES**

### **52D.1 Principles**

52D.1.1 If and to the extent that an Excusing Cause interferes adversely with, or causes a failure of, the performance of the Custodial Service and/or causes the occurrence of a Custodial Services Failure then (subject to the provisions of this **clause 52D (Excusing Causes)**):

52D.1.1.1 such failure by the Contractor to perform and/or interference with, and any poor performance of, any affected Custodial Service shall not constitute a breach of the provisions of this Contract by the Contractor or a Contractor Default or Houseblock Event of Default;

52D.1.1.2 such failure by the Contractor to perform and/or interference shall not be taken account in measuring the performance of any affected Custodial Service in accordance with Schedule 5 (Payment Mechanism) and 6 (Contract Delivery Indicators), which shall be operated as though the relevant Custodial Service had been performed free from such adverse failure and/or interference and any Custodial Services Failure had not occurred; and

52D.1.1.3 any Custodial Services Failure 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 and/or the relevant Custodial Services Failure had not occurred and any consequential breach of or consequential right to terminate this Contract is hereby waived by the Authority.

52D.1.2 Without prejudice to **clause 78 (Insurance)**, the Contractor shall not be entitled to any payment which would not have been due under this Contract but for **clause 52D.1.1** above to the extent that the Contractor is or should be able to recover under any policy of insurance required to be maintained 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 (or any sub-contractor 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.

52D.1.3 The Contractor shall, acting in accordance with Good Industry Practice, take all reasonable steps (but shall not be required to incur material expenditure) to mitigate the consequences of an Excusing Cause on the Contractor's ability to perform its obligations under this Contract. 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 52D.1.1** above.

## **52D.2 Procedure for agreeing nature of relief**

52D.2.1 The Contractor shall as soon as practicable, and in any event within ten (10) Business Days after it became aware that the Excusing Cause will adversely interfere with or cause a failure of the performance of the Custodial Service and/or cause the occurrence of a Custodial Services Failure, provide to the Authority a description of such element of the Excusing Cause at a level of detail sufficient to inform an assessment of their likely impact upon the operation of the Prison, using reasonable endeavours to measure the impact in terms of its effect upon the delivery of the Custodial Service. The Contractor shall also demonstrate to the reasonable satisfaction of the Authority that:

52D.2.1.1 the Contractor and its sub-contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

52D.2.1.2 the adverse interference with or failure of the performance of the Custodial Service and/or occurrence of the Custodial Services Failure could not reasonably be expected to be mitigated by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure;

52D.2.1.3 the Contractor is using reasonable endeavours to perform its obligations under this Contract; and

52D.2.1.4 it has used and will continue to use reasonable endeavours to perform the Houseblock Works in a way designed to minimise their impact upon the normal operation of the Prison.

52D.2.2 The Contractor shall not be entitled to seek and shall not receive any relief pursuant to this **clause 52D (Excusing Causes)** to the extent that relief is sought in respect of an event which does not fall within the definition of Excusing Cause.

- 52D.3 In the event that the Contractor has complied with its obligations under **clause 52D.2.1** and **clause 52D.2.2** above, the Contractor shall be entitled to payment under the Contract as if there had been no such interference with the Custodial Services.
- 52D.4 In addition to its obligations under **clause 52D.2.1** above, the Contractor shall meet with the Authority (it is envisaged that such meetings will be between the Controller and Director) on a weekly basis or as otherwise agreed between the parties, during the carrying out of the Houseblock Works, for the purpose of determining more precisely the likely impact of any Excusing Cause and its effect on the operation of the Prison and, in particular, the likely impact on the purposeful activity provided by the Contractor at the Prison.
- 52D.5 In the event of a dispute between the parties in respect of this **clause 52D (Excusing Causes)**, the provisions of **clause 80 (Dispute Resolution)** of this Contract shall apply.

### 53. **TERMINATION ON FORCE MAJEURE**

#### 53.1 **Termination**

- 53.1.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement) for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to **clauses 53.1.5 (Termination) or 53.1.7 (Termination)**).
- 53.1.2 Nothing in clause 53.1 (Termination) shall affect any entitlement to make Deductions in the period during which the Force Majeure Event is subsisting.
- 53.1.3 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 53.1.4 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the

Force Majeure Event and facilitate the continued performance of this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date).

53.1.5 If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty (120) Business Days, then, subject to **clause 53.1.6 (Termination)**, either Party may terminate this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) by giving twenty (20) Business Days' written notice to the other Party.

53.1.6 If this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) is terminated under **clauses 53.1.5 (Termination) or 53.1.7 (Termination):**

53.1.6.1 compensation shall be payable by the Authority in accordance with **clause 53.2 (Compensation on Termination on Force Majeure); and**

53.1.6.2 the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

53.1.7 If the Contractor gives notice to the Authority under **clause 53.1.5 (Termination)** that it wishes to terminate this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date), then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires this Contract to continue. If the Authority gives the Contractor such notice:

(a) before the Actual Opening Date, then the Authority shall pay to the Contractor such amount as the Contractor reasonably requires to enable the Contractor to retain the

necessary staff and equipment required to re-commence the Works upon expiry of the relevant Force Majeure Event; or

- (b) after the Actual Opening Date, then the Authority shall pay to the Contractor (i) the Maximum Contract Price from the Day after the date on which this Contract would have terminated under **clause 53.1.5 (Termination)** as if the Custodial Service was being fully provided, plus (ii) in the period between the date of the Amending Agreement and before the Actual Houseblock Opening Date, such amount as the Contractor reasonably requires to enable the Contractor to retain the necessary staff and equipment required to re-commence the Houseblock Works upon expiry of the relevant Force Majeure Event; and
- (c) then this Contract will not terminate until expiry of written notice (of at least twenty (20) Business Days) from the Authority to the Contractor that it wishes this Contract to terminate.

53.1.8 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event. This obligation to prevent and mitigate shall include the Contractor taking reasonable steps to minimise the amount that the Authority is required to pay pursuant to **clause (a) (Termination)**.

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

## 53.2 Compensation on Termination on Force Majeure



- 53.2.1 On termination of this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) under **clauses 53.1.5 (Termination) or 53.1.7 (Termination)**, the Authority shall, in addition to the amount (if any) payable by the Authority pursuant to clause 53.2.8, pay to the Contractor the "Force Majeure Termination Sum" in accordance with **clauses 58 (Gross Up of Termination Payments) to 60 (Method of Payment)** (inclusive). Subject to **clauses 53.2.3 (Compensation on Termination on Force Majeure) to 53.2.5 (Compensation on Termination on Force Majeure)**, the Force Majeure Termination Sum shall be the amount equal to the aggregate of:
- 53.2.1.1 the Base Senior Debt Termination Amount;
  - 53.2.1.2 the Junior Debt less an amount equal to the aggregate of payments of interest made by the Contractor under the Subordinated Financing Agreements;
  - 53.2.1.3 all amounts paid to the Contractor by way of subscription for shares in the capital of the Contractor less dividends and other distributions paid (including, for the avoidance of doubt, any amounts loaned and not repaid) to the shareholders of the Contractor (save to the extent deducted under **clause 53.2.1.2 (Compensation on Termination on Force Majeure)**); and
  - 53.2.1.4 redundancy payments for employees of the Contractor that have been or will be reasonably incurred by the Contractor as a direct result of termination of this Contract and any Sub-Contractor Breakage Costs.
- 53.2.2 If the amounts referred to in **clauses 53.2.1.2 (Compensation on Termination on Force Majeure) and/or 53.2.1.3 (Compensation on Termination on Force Majeure)** are less than zero, then, for the purposes of the calculation in **clause 53.2.1 (Compensation on Termination on Force Majeure)**, they shall be deemed to be zero.
- 53.2.3 If the aggregate of the amounts referred to in **clauses 53.2.1.1 (Compensation on Termination on Force Majeure), 53.2.1.2 (Compensation on Termination on Force Majeure) and 53.2.1.3 (Compensation on Termination on Force Majeure)** is less than the Revised Senior Debt Termination Amount, then the Force Majeure Termination Sum shall be increased so that it is equal to the aggregate of the Revised Senior Debt Termination Amount and the amount

referred to in **clause 53.2.1.4 (Compensation on Termination on Force Majeure)**, provided always that:

- 53.2.3.1 the amount referred to in **clause 53.2.1.4 (Compensation on Termination on Force Majeure)** shall only be paid to the extent that the Contractor has demonstrated to the reasonable satisfaction of the Authority that the amount will not be paid in payment (in whole or in part) of any Distribution; and
- 53.2.3.2 if, at the time of termination, there are any Additional Permitted Borrowings outstanding, no Sub-Contractor Breakage Costs shall be paid in respect of any Sub-Contract in circumstances where there is an event of default under such Sub-Contract which would entitle the Contractor to terminate such Sub-Contract.
- 53.2.4 If a Distribution is made whilst any Additional Permitted Borrowing is outstanding and the Contractor has wilfully, or through gross negligence, failed to comply with its obligations under clause 11.4.4(a) of the Direct Agreement then in addition to the deduction of the Distribution referred to in paragraph (v) of the definition of Revised Senior Debt Termination Amount, the Authority shall be entitled to set off the value of that Distribution a second time against the Force Majeure Termination Sum, provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 53.2.5 If the Contractor has wilfully or through gross negligence, failed to comply with its obligations under clause 11.4.4(b) of the Direct Agreement and there has been an overstatement of the cash balances by the Contractor as at that date which has caused the Authority to reasonably believe that it would be required to pay a lesser sum at the Termination Date than it actually is required to pay under the terms of this **clause 53.2 (Compensation on Termination on Force Majeure)**, then the Force Majeure Termination Sum shall be reduced by the amount of such overstatement (to the extent such overstatement is still applicable at the Termination Date), provided that the amount of the Force Majeure Termination Sum will never be less than the Revised Senior Debt Termination Amount.
- 53.2.6 The Force Majeure Termination Sum payable pursuant to this **clause 53.2 (Compensation on Termination on Force Majeure)** shall be determined and paid in accordance with clauses 58 (Gross Up of Termination Payments) to 60 (Method of Payment).

- 53.2.7 On termination under this **clause 53 (Termination for Force Majeure)**, the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets to the Authority or as directed by the Authority.
- 53.2.8 Where termination of the Contract occurs pursuant to this **clause 53 (Termination on Force Majeure)** during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date, in relation to the Houseblock Works the Authority shall pay to the Contractor the amounts as set out in **Part 1 of Schedule 42 (Payments on Houseblock Termination)** on or before the date of payment of the Force Majeure Termination Sum pursuant to **clause 53.2.6 (Compensation on Termination on Force Majeure)**.

## 53A **TERMINATION OF HOUSEBLOCK WORKS ON FORCE MAJEURE**

### 53A.1 **TERMINATION**

- 53A.1.1 This **clause 53A** applies where and to the extent that a Force Majeure Event occurs and a Party is prevented from carrying out obligations that solely relate to the Houseblock Works.
- 53A.1.2 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations solely with respect to the Houseblock Works by that Force Majeure Event. For the avoidance of doubt, the Authority shall not be entitled to terminate this Contract for a Contractor Default or Houseblock Event of Default if such Contractor Default or Houseblock Event of Default arises from a Force Majeure Event (but without prejudice to **clauses 53A.1.5 (Termination)** or **53A.1.7 (Termination)**).
- 53A.1.3 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 53A.1.4 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the obligation under this Contract that relate to the Houseblock Works.

- 53A.1.5 If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract with respect to the Houseblock Works for a period of more than one hundred and twenty (120) Business Days, then, subject to **clause 53A.16 (Termination)**, either Party may terminate the obligations under this Contract to perform the Houseblock Works (and all consequential obligations relating to the Houseblock) by giving thirty (30) Business Days' written notice to the other Party.
- 53A.1.6 If the obligations under this Contract in respect of the Houseblock are terminated under **clauses 53A.1.5 (Termination)** or **53A.1.7 (Termination)**:
- 53A.1.6.1 compensation shall be payable by the Authority in accordance with **clause 53A.2 (Compensation on Termination on Force Majeure)**; and
- 53A.1.6.2 the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets contained on the Houseblock Works Site to the Authority or as directed by the Authority.
- 53A.1.7 If the Contractor gives notice to the Authority under **clause 53A.1.5 (Termination)** that it wishes to terminate the obligations under this Contract to perform the Houseblock Works, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling ten (10) Business Days after the date of its receipt stating that it requires those obligation under this Contract to continue. If the Authority gives the Contractor such notice:
- 53A.1.7.1 before the Actual Houseblock Opening Date, then the Authority shall pay to the Contractor such amount as the Contractor reasonably requires to enable the Contractor to retain the necessary staff and equipment required to recommence the Houseblock Works upon expiry of the relevant Force Majeure Event; or
- 53A.1.7.2 after the Actual Houseblock Opening Date, then the Authority shall pay to the Contractor such amount as the Contractor reasonably requires to enable the Contractor to retain the necessary staff and equipment required to re-

commence the Houseblock Works upon expiry of the relevant Force Majeure Event; and

53A.1.7.3 then the obligations under this Contract with respect to the Houseblock Works will not terminate until expiry of written notice (of at least twenty (20) Business Days) from the Authority to the Contractor that it wishes the Houseblock Works obligations under this Contract to terminate and this Contract shall be construed and applied to remove all of the Contractor's obligations with respect to the Houseblock.

53A.1.8 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event. This obligation to prevent and mitigate shall include the Contractor taking reasonable steps to minimise the amount that the Authority is required to pay pursuant to **clause 53A.1.7.1 (Termination)**.

53A.1.9 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract with respect to the Houseblock Works. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

#### **53A.2 Compensation on Termination on Force Majeure - Houseblock**

53A.2.1 On termination of the obligations under this Contract in respect of the Houseblock Works under **clauses 53A.1.5 (Termination) or 53A.1.7 (Termination)**, the Authority shall pay to the Contractor the Houseblock Force Majeure Termination Sum within twenty (20) Business Days of the date of determination of the Houseblock Force Majeure Termination Sum. The Houseblock Force Majeure Termination Sum shall be the aggregate of:

53A.2.1.1 the amounts as set out in Part 1 of Schedule 42 (Payments on Houseblock Termination); and

53A.2.1.2 the amount determined pursuant to **Clauses 53A.2.2 and 53A.2.3**.

53A.2.2 Where the obligations under this Contract in respect of the Houseblock Works terminates under **clauses 53A.1.5 (Termination) or 53A.1.7 (Termination)** the Authority will notify the Independent Engineer of such election and will request that the Independent Engineer provides to the Authority and the Contractor (at the Authority's cost):

53A.2.2.1 a schedule of the activities required (the "Houseblock Force Majeure Required Actions") to ensure that those parts of the Site upon which any part or parts of the Houseblock Works have been commenced and/or completed are left in a safe and secure condition, including the removal of any temporary buildings, tools, goods, plant, equipment and/or materials remaining on the Site in relation which the Authority has not made payments and/or is not liable to make payment to the Contractor pursuant to this Contract; and

53A.2.2.2 an estimate of the costs likely to be incurred in carrying out the Houseblock Force Majeure Required Actions.

53A.2.3 The Contractor shall carry out the Houseblock Force Majeure Required Actions in compliance with all instructions of the Authority, including where required by the Authority to seek the prior written agreement of the Authority to the proposed cost to be incurred in carrying out any Houseblock Force Majeure Required Action. 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 53A.2 (Compensation on Termination on Force Majeure)**. Subject to compliance with the terms of this **clause 53A.2 (Compensation on Termination on Force Majeure)** the Authority shall reimburse, pursuant to **clause 53A.2.1.2** the Contractor's and any sub-contractor's costs incurred in carrying out any Houseblock Force Majeure Required Actions.

53A.2.4 On termination under this **clause 53A (Termination for Force Majeure)**, the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets relating to the Houseblock Works to the Authority or as directed by the Authority.

## 54. **TERMINATION FOR CORRUPT GIFTS AND FRAUD AND PROHIBITED EQUALITY AND DIVERSITY ACT**

### 54.1 **Corrupt Gifts and Fraud**

The Contractor warrants that in entering into this Contract and as at the date of entering in to the Amending Agreement it has not committed any Prohibited Act.

## 54.2 Termination for Corrupt Gifts and Fraud

- 54.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then the Authority shall be entitled to act in accordance with **clauses 54.2.2 (Termination for Corrupt Gifts and Fraud) to 54.2.7 (Termination for Corrupt Gifts and Fraud)**.
- 54.2.2 If a Prohibited Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) by giving notice to the Contractor.
- 54.2.3 If the Prohibited Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Custodial Service by another person.
- 54.2.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the relevant Project Document and procures the performance of such part of the Works and/or Custodial Service by another person.
- 54.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate, unless within twenty (20) Business Days after receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Custodial Service by another person.

54.2.6 If the Prohibited Act is committed by any other person not specified in **clauses 54.2.2 (Termination for Corrupt Gifts and Fraud) to 54.2.5 (Termination for Corrupt Gifts and Fraud)**, then the Authority may give notice to the Contractor of termination and this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate unless within twenty (20) Business Days after receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Works and/or Custodial Service by another person.

54.2.7 Any Termination Notice under this clause 54.2 (Termination for Corrupt Gifts and Fraud) shall specify:

- (i) the nature of the Prohibited Act;
- (ii) the identity of the party whom the Authority believes has committed the Prohibited Act;
- (iii) the date on which this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate, in accordance with the applicable provision of this **clause 54.2 (Termination for Corrupt Gifts and Fraud)**; and
- (iv) the Authority's chosen option under **clause 54.4.3 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**.

#### 54.3 **Termination for Prohibited Equality and Diversity Act**

54.3.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Equality and Diversity Act, then the Authority shall be entitled to act in accordance with **clauses 54.3.2 (Termination for Prohibited Equality and Diversity Act) to 54.3.6 (Termination for Prohibited Equality and Diversity Act)**.



- 54.3.2 If a Prohibited Equality and Diversity Act is committed by the Contractor or by an employee not acting independently of the Contractor, then the Authority may terminate this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) by giving notice to the Contractor.
- 54.3.3 If the Prohibited Equality and Diversity Act is committed by an employee of the Contractor acting independently of the Contractor, then the Authority may give notice to the Contractor of termination and this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Custodial Service by another person.
- 54.3.4 If the Prohibited Equality and Diversity Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the relevant Project Document and procures the performance of such part of the Works and/or Custodial Service by another person.
- 54.3.5 If the Prohibited Equality and Diversity Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate, unless within twenty (20) Business Days after receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Custodial Service by another person.
- 54.3.6 If the Prohibited Equality and Diversity Act is committed by any other person not specified in **clauses 54.3.2 (Termination for Prohibited Equality and Diversity Act) to 54.3.5 (Termination for Prohibited Equality and Diversity Act)**, then the Authority may give notice to the Contractor of termination and this Contract (including, for

the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate unless within twenty (20) Business Days after receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Works and/or Custodial Service by another person.

54.3.7 Any Termination Notice under this **clause 54.3 (Termination for Prohibited Equality and Diversity Act)** shall specify:

- (i) the nature of the Prohibited Equality and Diversity Act;
- (ii) the identity of the party whom the Authority believes has committed the Prohibited Equality and Diversity Act;
- (iii) the date on which this Contract will terminate, in accordance with the applicable provision of this **clause 54.3 (Termination for Prohibited Equality and Diversity Act)**; and
- (iv) the Authority's chosen option under **clause 54.4.3 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**.

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

54.4.1 On termination of this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) in accordance with **clauses 54.2 (Termination for Corrupt Gifts and Fraud)** or **54.3 (Termination for Prohibited Equality and Diversity Act)**, the Authority shall pay the Contractor, in addition to the amount (if any) payable by the Authority pursuant to clause 54.5, an amount equal to the Revised Senior Debt Termination Amount.

54.4.2 Such amount shall be determined and paid in accordance with **clauses 58 (Gross Up of Termination Payments) to 60 (Method of Payment)** (inclusive).

- 54.4.3 If termination occurs under this **clause 54 (Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**, the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets to the Authority or as directed by the Authority.
- 54.5 Where termination of the Contract occurs pursuant to this **clause 54 (Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)** during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date, in relation to the Houseblock Works the Authority shall pay to the Contractor the amounts as set out in **Part 2 of Schedule 42 (Payments on Houseblock Termination)** on or before the date such amounts would have become payable in accordance with **Schedule 41 (Houseblock Works Fee)** but for termination of this Contract.
- 54.6 **Interpretation**
- In this **clause 54 (Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**, the expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting with the authority or knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be).
55. **VOLUNTARY TERMINATION BY THE AUTHORITY**
- 55.1 **Voluntary Termination by the Authority**
- 55.1.1 The Authority may terminate this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) at any time on or before the Expiry Date by complying with its obligations under **clauses 55.1.2 (Voluntary Termination by the Authority) to 55.1.3 (Voluntary Termination by the Authority)**.
- 55.1.2 If the Authority wishes to terminate this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) under this **clause 55.1 (Voluntary Termination by the Authority)**, it must give a Termination Notice to the Contractor stating:
- 55.1.2.1 that the Authority is terminating this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date)

under this **clause 55.1 (Voluntary Termination by the Authority)**;

55.1.2.2 that this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate on the date specified in the Termination Notice, which must be a minimum of twenty (20) Business Days after the date of receipt of the Termination Notice; and

55.1.2.3 whether the Authority has chosen to exercise its option under **clause 55.2.2 (Voluntary Termination by the Authority)**.

55.1.3 This Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate on the date specified in the Termination Notice referred to in **clause 55.1.2 (Voluntary Termination by the Authority)**.

## 55.2 **Compensation on Voluntary Termination**

55.2.1 On termination under **clause 55.1.3 (Voluntary Termination by the Authority)**, the Authority shall pay the Contractor, in addition to the amount (if any) payable by the Authority pursuant to clause 55.2.3, an amount equal to the amount payable under **clause 51.2 (Compensation on Termination for Authority Default)** in accordance with **clauses 58 (Gross Up of Termination Payments)** to **60 (Method of Payment)** (Inclusive).

55.2.2 On termination under this **clause 55 (Voluntary Termination by the Authority)**, the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

55.2.3 Where termination of the Contract occurs pursuant to this **clause 55 (Voluntary Termination by the Authority)** during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date, in relation to the termination of Houseblock Works the Authority shall pay to the Contractor the amounts as set out in **Part 1 of Schedule 42 (Payments on Houseblock Termination)** on or before the date of payment of the amount pursuant to clause **55.2.1 (Compensation on Voluntary Termination)**.

## 56. **AUTHORITY BREAK POINTS**

## 56.1 Termination on Authority Break Point

56.1.1 Without prejudice to its rights under **clause 55 (Voluntary Termination by the Authority)**, the Authority may terminate this Contract on any of the Authority Break Point Dates by complying with its obligations under **clauses 56.1.2 (Termination on Authority Break Point)** to **56.1.3 (Termination on Authority Break Point)**.

56.1.2 If the Authority wishes to terminate this Contract under this **clause 56 (Authority Break Points)**, it must give a Termination Notice to the Contractor stating:

56.1.2.1 that the Authority is terminating this Contract under this **clause 56 (Authority Break Points)**;

56.1.2.2 that this Contract will terminate on the specified Authority Break Point Date which must be a minimum of twenty (20) Business Days after the date of receipt of the Termination Notice; and

56.1.2.3 whether the Authority has chosen to exercise its option under **clause 56.2.2 (Compensation on Termination on Authority Break Point Date)**.

56.1.3 If the Termination Notice has been provided in accordance with **clause 56.1.2 (Termination on Authority Break Point)** this Contract will terminate on the specified Authority Break Point Date.

## 56.2 Compensation on Termination on Authority Break Point Date

56.2.1 [REDACTED]

56.2.1.1 [REDACTED]

56.2.1.2 [REDACTED]

56.2.1.3

[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

56.2.2

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## 57. **TERMINATION FOR BREACH OF THE REFINANCING PROVISIONS**

### 57.1 **Termination for Breach of the Refinancing Provisions**

57.1.1 If the Contractor wilfully breaches **clause 48.1 (Requirement for Authority Consent)** then the Authority may terminate this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) at any time on or before the Expiry Date by complying with its obligations under **clauses 57.1.2 (Termination for Breach of the Refinancing Provisions)** to **57.1.3 (Termination for Breach of the Refinancing Provisions)**.

57.1.2 If the Authority wishes to terminate this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) under this **clause 57.1 (Termination for Breach of the Refinancing Provisions)**, it must give a Termination Notice to the Contractor stating:

57.1.2.1 that the Authority is terminating this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) under this **clause 57 (Termination for Breach of the Refinancing provisions)**;

57.1.2.2 that this Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) will terminate on the date falling twenty (20) Business Days after the date of receipt of the notice; and

57.1.2.3 whether the Authority has chosen to exercise its option under **clause 57.2.2 (Compensation on Termination for Breach of the Refinancing Provisions)**.

57.1.3 This Contract (including, for the avoidance of doubt, the Houseblock Works during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date) shall terminate on the date falling twenty (20) Business Days after the date of receipt of the Termination Notice referred to in **clause 57.1.2 (Termination for Breach of the Refinancing Provisions)**.

## 57.2 **Compensation on Termination for Breach of the Refinancing Provisions**

57.2.1 On termination under **clause 57.1.3 (Termination for Breach of the Refinancing Provisions)**, the Authority shall pay the Contractor, in addition to the amount (if any) payable by the Authority pursuant to clause 57.3, an amount equal to the amount payable under **clause 54.4 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)** in accordance with **clauses 58 (Gross up of termination payments) to 60 (Method of Payment)** (inclusive).

57.2.2 On termination under this **clause 57 (Termination for Breach of the Refinancing Provisions)**, the Authority shall have the option to require the Contractor to transfer all of its right, title and interest in and to the Assets to the Authority or as directed by the Authority.

57.3 Where termination of the Contract occurs pursuant to this **clause 57 (Termination for Breach of the Refinancing Provision)** during the period from the date of the Amending Agreement up to and including the Actual Houseblock Opening Date, in relation to the termination of Houseblock Works the Authority shall pay to the Contractor the amounts as set out in **Part 2 of Schedule 42 (Payments on Houseblock Termination)** on or before the date of payment of the amount payable pursuant to **clause 57.2.1 (Compensation on Termination for Breach of the Refinancing Provisions)**.

## **PART XI - ARRANGEMENTS ON TERMINATION OR EXPIRY**

### **58. GROSS UP OF TERMINATION PAYMENTS**

If any amount of compensation payable by the Authority under **clauses 51.2 (Compensation on Termination for Authority Default), 52.5.19 or 52.6.8 (Compensation on Termination for Contractor Default), 52B.6 (Houseblock Works Termination), 53.2 (Compensation on Termination on Force Majeure), 53A.2 (Termination of Houseblock Works for Force Majeure), 54.4 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act), 55.2 (Compensation on Voluntary Termination), 56.2 (Compensation on Termination on Authority Break Point Date) and/or 57.2 (Compensation on Termination for Breach of the Refinancing Provisions)** is subject to Tax payable to a Relevant Authority in the United Kingdom, then the Authority shall pay to the Contractor such additional amount as will put the Contractor in the same after Tax position as it would have been in had the payment not been subject to Tax taking account of any relief, allowances deduction, setting off or credit in respect of Tax (whether available by choice or not) which may be available to the Contractor to reduce the Tax to which the payment is subject.

### **59. SET OFF ON TERMINATION**

Except where expressly stated otherwise, the Authority is not entitled to set off any amount against any payment of termination compensation under **clauses 51.2 (Compensation on Termination for Authority Default), 52.5.19 or 52.6.8 (Compensation on Termination for Contractor Default), 53.2 (Compensation on Termination on Force Majeure), 53A.2 (Termination of Houseblock Works for Force Majeure), 54.4 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act), 55.2 (Compensation on Voluntary Termination), 56.2 (Compensation on Termination on Authority Break Point Date) and/or 57.2 (Compensation on Termination for Breach of the Refinancing Provisions)**, save to the extent that after such an amount has been set off, the termination payment made would be an amount greater than or equal to the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount, as the case may be, at that time.

### **60. METHOD OF PAYMENT**

#### **60.1 Date for Payment**

The Authority shall pay to the Contractor the Termination Sum, together with any interest on any Base Senior Debt Termination Amount or Revised Senior Debt Termination Amount element of the Termination Sum at the Senior Debt



Rate, on or before the date falling forty (40) Business Days after the Notice Date.

**60.2 Late Payment of Termination Sum**

If the Authority:

60.2.1 fails to make a payment to the Contractor in accordance with **clause 60.1 (Date for Payment)**; or

60.2.2 breaches **clause 82.1 (Restrictions on Transfer of this Contract by the Authority)**,

the Contractor may issue a notice to the Authority declaring any unpaid and outstanding element of (as applicable) the Adjusted Estimated Fair Value of the Contract, the Base Senior Debt Termination Amount or the Revised Senior Debt Termination Amount (as relevant) together with any accrued but unpaid interest to be immediately due and payable.

**61. CHANGES TO FINANCING AGREEMENTS AND PROJECT DOCUMENTS**

**61.1 No Increase in Liability**

No amendment, waiver or exercise of a right under any Financing Agreement or Project Document shall have the effect of increasing the Authority's liabilities on early termination of this Contract unless:

61.1.1 the Contractor has obtained the prior written consent of the Authority to such increased liability for the purposes of this **clause 61 (Changes to Financing Agreements and Project Documents)**; or

61.1.2 it is Permitted Borrowing.

**61.2 Conflict**

In the event of any conflict between the provisions of this **clause 61 (Changes to Financing Agreements and Project Documents)** and any other provision of this Contract, the provisions of this **clause 61 (Changes to Financing Agreements and Project Documents)** shall prevail.

**62. EXCLUSIVITY OF REMEDY**

Any and all sums irrevocably paid to the Contractor under **clauses 51.2 (Compensation on Termination for Authority Default), 52.5.19 or 52.6.8 (Compensation on Termination for Contractor Default), 53.2 (Compensation on Termination on Force Majeure), 53A.2 (Termination of Houseblock Works for Force Majeure), 54.4 (Compensation on**

**Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act), 55.2 (Compensation on Voluntary Termination), 56.2 (Compensation on Termination on Authority Break Point Date) and/or 57.2 (Compensation on Termination for Breach of the Refinancing Provisions)** shall be in full and final settlement of each Party's rights and claims against the other for breaches and/or termination of this Contract (or, in the case of **clause 53A.2 (Termination of Houseblock Works for Force Majeure)**, part thereof) or any Project Document whether under contract, tort, restitution or otherwise, but without prejudice to:

- 62.1.1 any antecedent liability of the Contractor to the Authority which the Authority has been unable to set off pursuant to **clause 59 (Set Off on Termination)**;
- 62.1.2 any antecedent liability of either Party to the other that arose prior to the Termination Date (but not from the termination itself) to the extent such liability has not already been taken into account in determining or agreeing the Authority Default Termination Sum, any amount payable pursuant to **clause 51.3 (Compensation on Termination for Authority Default)**, Adjusted Highest Compliant Tender Price or Termination Sum (as the case may be); and
- 62.1.3 any liabilities arising in respect of any breach by either Party of their obligations under **clause 63 (Continuing Obligations)** which arises or continues after the Termination Date to the extent not taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract.

### **63. CONTINUING OBLIGATIONS**

Except as otherwise expressly provided in this Contract or as already taken into account in the calculation of any Termination Sum or other payment of compensation on termination pursuant to this Contract, and notwithstanding the provisions of **clause 62 (Exclusivity of Remedy)**:

- 63.1 termination of this Contract shall be without prejudice to any accrued rights or obligations under this Contract as at the Termination Date; and
- 63.2 termination of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under **clauses 1 (Definitions and Interpretation), 4.2 (Changes to Project Documents), 7 (Nature of Land Interests) 22 (Delay and Liquidated Damages), 22A (Delay and Liquidated Damages – Houseblock), 42.13 (Offers of Employment), 43 (TUPE and Employees), 45 (Payment Provisions), 46 (Taxation), 47 (Set Off), 49 (Direct Agreement), 51.2 (Compensation on Termination for Authority Default), 52.4 (Compensation on Termination for Contractor**

Default), 52.5.19 or 52.6.8 (Compensation on Termination for Contractor Default), 52.7 (Transfer of Assets on Contractor Default), 52B.6 (Houseblock Works Termination), 53.2 (Compensation on Termination on Force Majeure), 53A.2 (Compensation on Termination on Force Majeure - Houseblock) 54.4 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act), 55.2 (Compensation on Voluntary Termination), 56.2 (Compensation on Termination on Authority Break Point Date), 57.2 (Compensation on Termination for Breach of the Refinancing Provisions), 58 (Gross Up of Termination Payments), 59 (Set Off on Termination) 62 (Exclusivity of Remedy), 63 (Continuing Obligations), 65 (Transition to Another Contractor), 71 (Information and Confidentiality), 72 (Public Relations and Publicity), 74 (Contractor's Records and Provision of Information), 75 (Data Protection), 76 (Indemnities), 78 (Insurance), 80 (Dispute Resolution Procedure), 81 (Intellectual Property Rights), 82.1 (Restrictions on Transfer of this Contract by the Authority), 90 (Notices), 91 (Severability), 92 (Waiver), 93 (Governing Law and Jurisdiction), 95 (No Double Recovery), 97 (Capacity) and 98 (Houseblock Works Cap) or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

#### 64. **SURVEYS ON EXPIRY AND RETENTION FUND**

##### 64.1 **Final Survey**

64.1.1 No later than the date eighteen (18) Months prior to the Expiry Date, the Authority shall be entitled to carry out or procure the carrying out of a final survey of the Prison to assess whether it has been and is being maintained by the Contractor in accordance with its obligations under **clause 26 (Maintenance of Prison)**.

64.1.2 The Authority shall notify the Contractor in writing a minimum of five (5) Business Days before the date it wishes to carry out or procure the carrying out of the final survey. The Authority shall consider in good faith any reasonable request by the Contractor for the final survey to be carried out on a different date if such request is made at least two (2) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Contractor's ability to provide the Custodial Service.

##### 64.2 **Minimisation of Disruption**

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

#### **64.3 Results of Survey**

If the final survey shows that the Contractor has not complied with or is not complying with its obligations under **clause 26.6 (Maintenance of Prison)**, the Authority shall:

- 64.3.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the Prison to the standard it would have been in if the Contractor had complied or was complying with its obligations under **clause 26.6 (Maintenance of Prison) (the "Required Standard")**;
- 64.3.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
- 64.3.3 recover the cost of the survey from the Contractor by means of a deduction from the next payment of the Contract Price.

#### **64.4 Maintenance Work**

The Contractor shall carry out such rectification and/or maintenance work notified pursuant to **clause 64.3.1 (Results of Survey)** (the "Outstanding Work"), in order to reach the Required Standard within the period specified and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

#### **64.5 Retention Fund**

If the Contractor has been notified under **clause 64.3.1 (Results of Survey)** that rectification and/or maintenance work is required, then twelve (12) Months prior to the Expiry Date the Authority shall (to the extent that the Outstanding Works have not been carried out in the interim) deduct the costs of that work as quantified by the survey referred to in **clause 64.1 (Final Survey)** from the next following instalment (or, if the amount of such instalment is insufficient, the next instalments as necessary) of the Contract Price and pay such amount into an interest bearing account (the "Retention Fund Account") until this Contract has expired or terminated (subject to **clause 64.6 (Costs)**).

#### **64.6 Costs**

If and to the extent that the Contractor carries out the Outstanding Work, the Authority, to the extent that then or subsequently there are funds standing to the credit of the Retention Fund Account, shall reimburse the Contractor's costs of so doing by withdrawing amounts from the Retention Fund Account and paying these to the Contractor. If the aggregate of the amounts from time to time paid into the Retention Fund Account are insufficient to cover the Contractor's costs, the Contractor shall bear the balance of such costs itself.

**64.7 Failure to Carry Out Work**

If and to the extent that the Contractor fails to carry out the Outstanding Work to the Required Standard within the period specified in **clause 64.3.2 (Results of Survey)**, the Authority shall be entitled to carry out itself, or procure, such rectification and/or maintenance work at the Contractor's expense and shall make withdrawals from the Retention Fund Account or, where there are insufficient funds in the Retention Fund Account, make subject to **clause 47 (Set Off)** deductions from any subsequent payment of the Contract Price to pay for such rectification and/or maintenance work or recover such amounts from the Contractor as a debt payable on demand.

**64.8 Balance of Fund**

If:

64.8.1 all the Outstanding Work identified by the Authority or the person the Authority procures to carry out the final survey has been carried out to the Required Standard;

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

64.8.3 no Termination Notice is outstanding,

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

**65. TRANSITION TO ANOTHER CONTRACTOR**

**65.1 Duty to Co-operate**

During the eighteen (18) Months immediately preceding the Expiry Date or during the period of any Termination Notice, and in either case for a reasonable period subsequently, the Contractor shall co-operate fully with the transfer of responsibility for the Works and/or the Custodial Service (or any of the Works and/or the Custodial Service) to the Authority or any New Contractor of such works and/or services the same or similar to the Works and/or the Custodial Service, and for the purposes of this **clause 65 (Transition to Another Contractor)** the meaning of the term "co-operate" shall include:

- 65.1.1 liaising with the Authority and/or any New Contractor, and providing reasonable assistance and advice concerning the Works and/or Custodial Service and their transfer to the Authority or to such New Contractor;
- 65.1.2 allowing any New Contractor access (at reasonable times and on reasonable notice) to the Prison but not so as to interfere with or impede the provision of the Works and/or the Custodial Service;
- 65.1.3 without prejudice to the obligations of the Contractor pursuant to **clause 32 (Operating Manual)**, providing to the Authority and/or to any New Contractor all and any information concerning the Site, the Prison, the Works and/or the Custodial Service which is reasonably required for the efficient transfer of responsibility for their performance but information which is Commercially Sensitive to the Contractor shall not be provided (and for the purpose of this **clause 65.1.3 (Duty to Co-operate)**, "Commercially Sensitive" shall mean information which would, if disclosed to a competitor of the Contractor give that competitor a competitive advantage over the Contractor and so prejudice the business of the Contractor but shall not include any information referred to in **clause 43 (TUPE and Employees)**); and
- 65.1.4 transferring its rights, title and interest in and to the Assets to the New Contractor with effect on and from the Expiry Date.

## 65.2 **Transfer of Responsibility**

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

## **PART XII - RELIEF EVENTS**

### **66. RELIEF EVENTS**

#### **66.1 Occurrence**

If and to the extent that a Relief Event:

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

66.1.1.1 the Actual Opening Date on or before the Contractual Opening Date or (following the Contractual Opening Date but before the Longstop Date) is a direct cause of a delay in the achievement of the Actual Opening Date;

66.1.1.2 the provision of an Available Prisoner Place on or before the date specified in the Phase-In Timetable by that date or (following the relevant date in the Phase-In Timetable but before the Longstop Date) the provision of an Available Prisoner Place, in either case for any period;

66.1.1.3 the Actual Full Operation Date on or before the Contractual Full Operation Date or (following the Contractual Full Operation Date but before the Longstop Date) is a direct cause of a delay in the achievement of the Actual Full Operation Date;

66.1.1.4 completion of the Post Completion Works on or before the Contractual Post Completion Works Acceptance Date or (following the Contractual Post Completion Works Acceptance Date but before the Post Completion Works Longstop Date) is the direct cause of a delay in completion of the Post Completion Works; and/or

66.1.1.5 the provision of an Available Prisoner Place on or before the date specified in the JEAPP Provision Timetable or (following the relevant date in the JEAPP Provision Timetable) the provision of an Available Prisoner Place, in either case for any period; and/or

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

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under **clause 52 (Termination on Contractor Default)** and its obligations under this Contract.

## 66.2 Relief

Subject to **clause 66.5 (Information)**, to obtain relief, the Contractor must:

- 66.2.1 as soon as practicable, and in any event within twenty (20) Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Authority a notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;
- 66.2.2 within five (5) Business Days after receipt by the Authority of the notice referred to in **clause 66.2.1 (Relief)**, give full details of the relief claimed; and
- 66.2.3 demonstrate to the reasonable satisfaction of the Authority that:
  - 66.2.3.1 the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
  - 66.2.3.2 the Relief Event directly caused:
    - (a) the delay in the achievement of the Actual Opening Date on or before the Contractual Opening Date or (following the Contractual Opening Date but before the Longstop Date) any delay in the achievement of the Actual Opening Date;
    - (b) the delay in achievement of the provision of any Available Prisoner Places on or before the date specified in the Phase-In Timetable or (following the relevant date in the Phase-In Timetable but before the Longstop Date) any delay in the provision of an Available Prisoner Place, in either case for any period;
    - (c) the delay in the achievement of the Actual Full Operation Date on or before the Contractual Full Operation Date or (following the Contractual Full Operation Date but before the Longstop Date) any delay in the achievement of the Actual Full Operation Date;



- (d) the delay in the completion of the Post Completion Works on or before the Contractual Post Completion Works Acceptance Date or (following the Contractual Post Completion Works Acceptance Date but before the Post Completion Works Longstop Date) any delay in completing the Post Completion Works;
- (e) the delay in the provision of any Available Prisoner Place on or before the date specified in the JEAPP Provision Timetable or (following the relevant date in the JEAPP Provision Timetable) any delay in the provision of any Available Prisoner Place, in either case for any period; and/or
- (f) the need for relief from other obligations under this Contract;

66.2.3.3 the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and

66.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under this Contract.

### 66.3 Consequences

In the event that the Contractor has complied with its obligations under **clause 66.2 (Relief)**:

66.3.1 then:

66.3.1.1 the Contractual Opening Date or (following the Contractual Opening Date) the Longstop Date;

66.3.1.2 any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place or (following any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place) the Longstop Date;

66.3.1.3 the Contractual Full Operation Date or (following the Contractual Full Operation Date) the Longstop Date;

66.3.1.4 the Contractual Post Completion Works Acceptance Date or (following the Contractual Post Completion Works

Acceptance Date) the Post Completion Works Longstop Date; and/or

66.3.1.5 any date specified in the JEAPP Provision Timetable for the provision of any Available Prisoner Place,

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

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

66.3.1.7 the Authority shall not be entitled to exercise its right to terminate this Contract under **clause 52 (Termination on Contractor Default)** and, subject to **clause 66.4 (Deductions)**, shall give such other relief as has been requested by the Contractor.

#### 66.4 **Deductions**

Nothing in **clause 66.3 (Consequences)** shall affect any entitlement to make Deductions under **clause 45 (Payment Provisions)** and **Schedule 5 (Payment Mechanism)** during the period in which the Relief Event is subsisting provided that any such Deductions shall be disregarded for the purposes of the Authority's right to terminate this Contract for Contractor Default.

#### 66.5 **Information**

In the event that information required by **clause 66.2 (Relief)** is provided after the dates referred to in that clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

#### 66.6 **Notice**

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

#### 66.7 **Disputes**

If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to the Contractual Opening Date or (following the Contractual Opening Date) to the Longstop Date, any date specified in the Phase-In

Timetable for the provision of Available Prisoner Places and/or (following any date specified in the Phase-In Timetable for the provision of Available Prisoner Places) the Longstop Date, the Contractual Full Operation Date or (following the Contractual Full Operation Date) to the Longstop Date, the Contractual Post Completion Works Acceptance Date or (following the Contractual Post Completion Works Acceptance Date) the Post Completion Works Longstop Date, any date specified in the JEAPP Provision Timetable for the provision of Available Prisoner Places and/or the period referred to in paragraphs (i) and (q) of the definition of Contractor Default and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

## **66A HOUSEBLOCK RELIEF EVENTS**

### **66A.1 Occurrence**

If and to the extent that a Relief Event:

66A.1.1 is the direct cause of either a failure by the Contractor to achieve:

- 66A.1.1.1 the Actual Houseblock Opening Date on or before the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date but before the Houseblock Longstop Date) is a direct cause of a delay in the achievement of the Actual Houseblock Opening Date;
- 66A.1.1.2 the provision of a Houseblock Available Prisoner Place on or before the date specified in the Houseblock Phase-in Period Timetable by that date or (following the relevant date in the Houseblock Phase-in Period Timetable but before the Houseblock Longstop Date) the provision of a Houseblock Available Prisoner Place, in either case for any period;
- 66A.1.1.3 the Actual Houseblock Full Operation Date on or before the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date but before the Houseblock Longstop Date) is a direct cause of a delay in the achievement of the Actual Houseblock Full Operation Date;
- 66A.1.1.4 completion of the Post Completion Houseblock Works on or before the Contractual Post Completion Houseblock Works Acceptance Date or (following the Contractual Post Completion Houseblock Works Acceptance Date but before the Post Completion Houseblock Works Longstop Date) is

the direct cause of a delay in completion of the Post Completion Houseblock Works; and/or

66A.1.2 adversely affects the ability of the Contractor to perform any of its obligations under this Contract,

then the Contractor shall be entitled to apply for relief from any rights of the Authority arising under **clause 52 (Termination on Contractor Default)**, **Clause 52A (Termination of Houseblock Construction Sub-Contract)** and **Clause 52B (Houseblock Works Termination)** and its obligations under this Contract.

## **66A.2 Relief**

Subject to **clause 66.5 (Information)**, to obtain relief, the Contractor must:

66A.2.1 as soon as practicable, and in any event within twenty one (21) Business Days after it becomes aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Contractor to perform its other obligations give to the Authority a notice of its claim for relief from its obligations under this Contract, including full details of the nature of the Relief Event, the date of occurrence and its likely duration;

66A.2.2 within five (5) Business Days after receipt by the Authority of the notice referred to in **clause 66.2.1 (Relief)**, give full details of the relief claimed; and

66A.2.3 demonstrate to the reasonable satisfaction of the Authority that:

66A.2.3.1 the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

66A.2.3.2 the Relief Event directly caused:

(a) the delay in the achievement of the Actual Houseblock Opening Date on or before the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date but before the Houseblock Longstop Date) any delay in the achievement of the Actual Houseblock Opening Date;

- (b) the delay in achievement of the provision of any Houseblock Available Prisoner Places on or before the date specified in the Houseblock Phase-in Period Timetable or (following the relevant date in the Houseblock Phase-in Period Timetable but before the Houseblock Longstop Date) any delay in the provision of a Houseblock Available Prisoner Place, in either case for any period;
  - (c) the delay in the achievement of the Actual Houseblock Full Operation Date on or before the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date but before the Houseblock Longstop Date) any delay in the achievement of the Actual Houseblock Full Operation Date;
  - (d) the delay in the completion of the Post Completion Houseblock Works on or before the Contractual Post Completion Houseblock Works Acceptance Date or (following the Contractual Post Completion Houseblock Works Acceptance Date but before the Post Completion Houseblock Works Longstop Date) any delay in completing the Post Completion Houseblock Works; and/or
  - (e) the need for relief from other obligations under this Contract;
- 66A.2.3.3 the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and
- 66A.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under this Contract.

### **66A.3 Consequences**

In the event that the Contractor has complied with its obligations under **clause 66A.2 (Relief)**:

66A.3.1 then:

- 66A.3.1.1 the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date) the Houseblock Longstop Date;

66A.3.1.2 any date specified in the Houseblock Phase-In Period Timetable for the provision of any Houseblock Available Prisoner Place or (following any date specified in the Phase-In Timetable for the provision of any Houseblock Available Prisoner Place) the Houseblock Longstop Date;

66A.3.1.3 the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date) the Houseblock Longstop Date;

66A.3.1.4 the Contractual Post Completion Houseblock Works Acceptance Date or (following the Contractual Post Completion Houseblock Works Acceptance Date) the Post Completion Houseblock Works Longstop Date,

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

66A.3.2 NOT USED;

66A.3.3 the Authority shall not be entitled to exercise its right to terminate the Houseblock Works under **clause 52B (Houseblock Works Termination)** and, subject to **clause 66A.4 (Deductions)**, shall give such other relief as has been requested by the Contractor.

#### **66A.4 Deductions**

Nothing in **clause 66A.3 (Consequences)** shall affect any entitlement to make Deductions under **clause 45 (Payment Provisions)** and **Schedule 5 (Payment Mechanism)** during the period in which the Relief Event is subsisting provided that any such Deductions shall be disregarded for the purposes of the Authority's right to terminate this Contract for a Houseblock Event of Default.

#### **66A.5 Information**

In the event that information required by **clause 66A.2 (Relief)** is provided after the dates referred to in that clause, then the Contractor shall not be entitled to any relief during the period for which the information is delayed.

#### **66A.6 Notice**

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

## **66A.7 Disputes**

If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date) to the Houseblock Longstop Date, any date specified in the Houseblock Phase-in Period Timetable for the provision of Houseblock Available Prisoner Places and/or (following any date specified in the Houseblock Phase-in Period Timetable for the provision of Houseblock Available Prisoner Places) the Houseblock Longstop Date, the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date) to the Houseblock Longstop Date, the Contractual Post Completion Houseblock Works Acceptance Date or (following the Contractual Post Completion Houseblock Works Acceptance Date) the Post Completion Houseblock Works Longstop Date and/or the period referred to in paragraph (b) of the definition of Houseblock Event of Default and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

## **PART XIII - VARIATIONS**

### **67. CHANGE TO CUSTODIAL SERVICE, WORKS OR HOUSEBLOCK WORKS**

The provisions of **Schedule 9 (Change Protocol)** shall have effect in respect of any Change except as otherwise expressly provided in this Contract.

### **68. CHANGES IN LAW**

#### **68.1 Occurrence**

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

#### **68.2 Qualifying Change in Law**

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

68.2.1 any necessary change to the Works, Houseblock Works and/or Custodial Service;

68.2.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;

68.2.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to:

68.2.3.1 achieve the Actual Opening Date on or before the Contractual Opening Date or (following the Contractual Opening Date but before the Longstop Date) the Actual Opening Date;

68.2.3.2 provide any Available Prisoner Place on or before the date specified for the provision of such Available Prisoner Place in the Phase-In Timetable by that date or (following the relevant date in the Phase-In Timetable but before the Longstop Date) to provide an Available Prisoner Place, in either case for any period;

68.2.3.3 achieve the Actual Full Operation Date on or before the Contractual Full Operation Date or (following the Contractual Full Operation Date but before the Longstop Date) to achieve the Actual Full Operation Date;



- 68.2.3.4 complete the Post Completion Works on or before the Contractual Post Completion Works Acceptance Date or (following the Contractual Post Completion Works Acceptance Date but before the Post Completion Works Longstop Date) to complete the Post Completion Works;
- 68.2.3.5 provide any Available Prisoner Places on or before the date specified for the provision of such Available Prisoner Places in the JEAPP Provision Timetable by that date or (following the relevant date in the JEAPP Provision Timetable) to provide any Available Prisoner Place, in either case for any period;
- 68.2.3.6 meet the Authority's Requirements and/or the Contractor's Proposals and/or the Contractor's Operational Documents during the Implementation of any relevant Qualifying Change in Law;
- 68.2.3.7 achieve the Actual Houseblock Opening Date on or before the Contractual Houseblock Opening Date or (following the Contractual Houseblock Opening Date but before the Houseblock Longstop Date) the Actual Houseblock Opening Date;
- 68.2.3.8 provide any Houseblock Available Prisoner Place on or before the date specified for the provision of such Houseblock Available Prisoner Place in the Houseblock Phase-in Period Timetable by that date or (following the relevant date in the Houseblock Phase-in Period Timetable but before the Houseblock Longstop Date) to provide a Houseblock Available Prisoner Place, in either case for any period;
- 68.2.3.9 achieve the Actual Houseblock Full Operation Date on or before the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date but before the Houseblock Longstop Date) to achieve the Actual Houseblock Full Operation Date;
- 68.2.3.10 complete the Post Completion Houseblock Works on or before the Contractual Post Completion Houseblock Works Acceptance Date or (following the Contractual Post Completion Houseblock Works Acceptance Date but before the Post Completion Houseblock Works Longstop Date) to complete the Post Completion Houseblock Works;

- (a) any loss of or increase in revenue that will result from the relevant Qualifying Change in Law;
- (b) any Estimated Change in Project Costs that directly result from the Qualifying Change in Law; and
- (c) any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect after the Actual Full Operation Date,

in each case giving in full detail the procedure for implementing the change in the Works, in the Houseblock Works or in the Custodial Service. Responsibility for the costs of implementation (and any resulting variation to the Contract Price or the Houseblock Works Fee) shall be dealt with in accordance with **clauses 68.3 (Parties to Discuss) to 68.6 (Financing)**.

### **68.3 Parties to Discuss**

As soon as practicable after receipt of any notice from either Party under **clause 68.2 (Qualifying Change In Law)**, the Parties shall discuss and agree the issues referred to in **clause 68.2 (Qualifying Change In Law)** and any ways in which the Contractor can mitigate the effect of the Qualifying Change in Law, including:

- 68.3.1 providing evidence that the Contractor has used reasonable endeavours (including (where practicable) the use of competitive quotes) to oblige its sub-contractors to minimise any increase in costs and maximise any reduction in costs;
- 68.3.2 demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;
- 68.3.3 giving evidence as to how the Qualifying Change in Law has affected prices charged by any similar businesses to the Project, including similar businesses in which the Shareholders or their Affiliates carry on business; and
- 68.3.4 demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is

required under **68.2.3.10(b) (Qualifying Change In Law)** or **68.2.3.10(c) (Qualifying Change In Law)**.

**68.4 Change Agreed**

If the Parties agree or it is determined under the Dispute Resolution Procedure that the Contractor is required to incur additional Capital Expenditure due to a Qualifying Change in Law (excluding the Contractor's Share of any Capital Expenditure agreed or determined to be required as a result of a General Change in Law under this **clause 68 (Changes In Law)**), then the Contractor shall use its reasonable endeavours to obtain funding for such Capital Expenditure on terms reasonably satisfactory to it and to the Senior Creditors, provided that this Clause 68.4 shall not apply in relation to any additional Capital Expenditure required in respect of the Houseblock Works.

**68.5 Contractor's Share**

The Contractor's Share of any Cumulative Capital Expenditure agreed or determined to be required as a result of a General Change in Law shall be solely for the account of the Contractor, provided that this Clause 68.5 shall not apply in relation to any additional Capital Expenditure required in respect of the Houseblock Works.

**68.6 Financing**

If the Contractor has used reasonable endeavours to obtain funding for Capital Expenditure referred to in **clause 68.4 (Change Agreed)**, but has been unable to do so within forty (40) Business Days after the date that the agreement or determination referred to in **clause 68.4 (Change Agreed)** occurred, or where the Capital Expenditure relates to the Houseblock Works, then the Authority shall pay to the Contractor an amount equal to that Capital Expenditure on or before the date falling thirty (30) Days after the Capital Expenditure has been incurred.

**68.7 Compensation**

Any compensation payable under this **clause 68 (Changes in Law)** by means of an adjustment to or reduction in the Contract Price and/or the Houseblock Works Fee (as applicable) shall be determined and made in accordance with **clause 69 (Financial Adjustments)**.

**68.8 Payment of Irrecoverable VAT**

The Authority shall pay to the Contractor from time to time as they are incurred by the Contractor sums equal to any Irrecoverable VAT but only to the extent that it arises as a result of a Change in Law. Any such payment shall be made within thirty (30) Days of the delivery by the Contractor to the Authority of

written details of the amount involved accompanied by details as to the grounds for and computation of the amount claimed. For the purposes of this **clause 68.8 (Payment of Irrecoverable VAT)**, "Irrecoverable VAT" means input VAT incurred by the Contractor on any supply which is made to it which is used or to be used exclusively in carrying out the Works or the Houseblock Works or providing the Custodial Service or any of the obligations or provisions under this Contract (together with input VAT incurred as part of its overhead in relation to such activities) to the extent that the Contractor is not entitled to repayment or credit from HM Revenue & Customs in respect of such input VAT.

## **68.9 General Change in Law**

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

68.9.2 The Parties shall, within fifteen (15) Business Days of a notice referred to in **clause 68.9.1 (General Change in Law)**, meet and discuss the effect of any such General Change in Law and any Change required as a consequence of it.

68.9.3 The Authority shall, within ten (10) Business Days of the meeting referred to in **clause 68.9.2 (General Change in Law)**, if a Change is required in order to comply with the General Change in Law (other than a Qualifying Change in Law), issue a Change Notice and the relevant provisions of **Schedule 9 (Change Protocol)** shall apply except that:

68.9.3.1 the Contractor may give notice to the Authority that it objects to such Change Notice only on the grounds that the implementation of the Change would not implement the relevant General Change in Law;

68.9.3.2 the Authority shall issue a Change Notice in respect of the Change in accordance with the relevant provisions of Schedule 9 (Change Protocol);

68.9.3.3 the provisions of **clause 8.3 (Necessary Consents)** shall apply;

68.9.3.4 the Authority shall not be entitled to withdraw any Change Notice or Authority Change Confirmation issued in accordance with this **clause 68.9 (General Change in Law)**; and

68.9.3.5 the Contractor shall not be entitled to payment or other compensation or relief from performance of its obligations under this Contract in respect of any such General Change in Law or associated Change (or the consequences of either of them).

## 69. **FINANCIAL ADJUSTMENTS**

### 69.1 **Updating the Base Case**

Whenever a Relevant Event occurs (save where and to the extent that the effects of a Compensation Event relate to the carrying out of the Houseblock Works in which case the provisions of **Schedule 41 (Houseblock Works Fee)** shall apply) the financial consequence shall (save where otherwise provided in this Contract or where the Parties mutually agree otherwise) be determined in accordance with this **clause 69 (Financial Adjustments)**. Where for the purposes of this **clause 69 (Financial Adjustments)** the Base Case is to be adjusted by reference to a Relevant Event, this shall be carried out by the Contractor, in consultation with the Authority, to reflect the cumulative impact of any prior Relevant Event on the version of the Base Case applicable immediately prior to the relevant adjustment and to reflect the impact of the Relevant Event in respect of which such adjustment is being undertaken. In calculating the Estimated Change in Project Costs and in assessing other adjustments to be made to the Base Case arising from the Relevant Event, the Contractor shall be entitled to take into account, inter alia:

69.1.1 any Change in Costs;

69.1.2 reasonable economic assumptions prevailing at the time; and

69.1.3 changes in the prospective technical performance of the Project arising as a result of the Relevant Event,

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

### 69.2 **Application to the Base Case**

Where, pursuant to this Contract, either Party is entitled to payment of any sum the assessment of which properly requires reference to the Base Case (with the exception of payment of the Authority's Refinancing Share to which **clause 48 (Refinancing)** shall apply), the adjustment to the Contract Price due shall be

that required to ensure that, by reference to the Base Case adjusted under this **clause 69 (Financial Adjustments)**, the Contractor is left in a no better and no worse position than under the version of the Base Case applicable immediately prior to the relevant adjustment, and shall be ascertained by determining the adjustment to the Contract Price required to maintain the financial position of the Contractor with that in which it would have been under the version of the Base Case applicable immediately prior to the relevant adjustment.

### 69.3 **No Better and no Worse**

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

69.3.1 rights, duties and liabilities under or arising pursuant to performance of this Contract, the Financing Agreements, the Construction Sub-Contract and the Operating Sub-Contract; and

69.3.2 ability to perform its obligations and exercise its rights under this Contract, the Financing Agreements, the Construction Sub-Contract and the Operating Sub-Contract,

so as to ensure that:

69.3.3 the Contractor is left in a position which is no better and no worse in relation to: (i) the minimum Bond Life Cover Ratio; and (ii) the minimum and average Annual Debt Service Cover Ratio for the Historic Test Period and the Annual Debt Service Cover Ratio for the Forward Test Period; and (iii) the Threshold Equity IRR, in each case for the remaining period of the Project (each as defined in the Senior Financing Agreements) and/or (iv) such other test as the Parties may, acting reasonably, agree is appropriate at that time taking into account the high operational gearing of the Project; and

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

### 69.4 **Replacement of Base Case**

Any Base Case produced following adjustments in accordance with this **clause 69 (Financial Adjustments)** shall, when it is approved by the Authority (such approval not to be unreasonably withheld), become the Base Case for the purposes of this Contract until its further amendment in accordance with this Contract.

**69.5 Amendments to Logic and/or Formulae**

- 69.5.1 Where it is necessary to amend the logic or formulae incorporated in the Base Case to permit adjustments to be made, this shall be done to the extent necessary and in accordance with generally accepted accounting principles.
- 69.5.2 Where any amendment is made to the logic or formulae incorporated in the Base Case, the Base Case shall first be run as at the date immediately prior to amendment to ensure that the Bond Life Cover Ratio and Annual Debt Service Cover Ratio for the Forward Test Period (each as defined in the Senior Credit Agreement) from the Base Case are maintained, immediately post the amendment, at no lower or no higher levels than the Bond Life Cover Ratio and Annual Debt Service Cover Ratio for the Forward Test Period (each as defined in the Senior Credit Agreement) immediately prior to the amendment.

**69.6 Copies of the Revised Base Case**

Following any change to the Base Case under the provisions of this **clause 69 (Financial Adjustments)**, the Contractor shall promptly deliver a copy of the revised Base Case to the Authority in the same form as is established at Financial Close or in such other form as may be agreed between the Parties.

## **PART XIV - STEP-IN AND SECTION 88**

### **70. AUTHORITY STEP-IN**

#### **70.1 Right to Step-In**

Without prejudice to **clause 70.6 (Intervention under Section 88)**, if the Authority reasonably believes that it needs to take action in connection with the Custodial Service:

70.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or

70.1.2 to discharge a statutory duty,

then the Authority shall be entitled to take action in accordance with **clauses 70.2 (Notice to the Contractor) to 70.5 (Step-In on Contractor Breach)**.

#### **70.2 Notice to the Contractor**

If **clause 70.1 (Right to Step-In)** applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:

70.2.1 the action it wishes to take;

70.2.2 the reason for such action;

70.2.3 the date it wishes to commence such action;

70.2.4 the time period which it believes will be necessary for such action; and

70.2.5 to the extent practicable, the effect on the Contractor and its obligation to carry out the Works and/or the Houseblock Works and/or provide the Custodial Service during the period such action is being taken.

#### **70.3 Action by Authority**

70.3.1 Following service of such notice, the Authority shall take such action as notified under **clause 70.2 (Notice to the Contractor)** and any consequential additional action as it reasonably believes is necessary (together, the "Required Action") and the Contractor shall give all reasonable assistance to the Authority while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.



- 70.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify and keep indemnified in full the Contractor against all Direct Losses where it fails to do so.

#### **70.4 Step-In without Contractor Breach**

If the Contractor is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from carrying out any part of the Post Completion Works and/or the Houseblock Works and/or the Post Completion Houseblock Works and/or providing any part of the Custodial Service:

- 70.4.1 the Contractor shall be relieved from its obligations to carry out the Post Completion Works and/or the Houseblock Works and/or the Post Completion Houseblock Works and/or provide such part of the Custodial Service; and
- 70.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Contract Price and the Houseblock Works Fee due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and carrying out the Post Completion Works and/or the Houseblock Works and/or the Post Completion Houseblock Works and/or providing the Custodial Service affected by the Required Action in full over that period.

#### **70.5 Step-In on Contractor Breach**

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from carrying out the Post Completion Works and/or the Houseblock Works and/or the Post Completion Houseblock Works and/or providing any part of the Custodial Service:

- 70.5.1 the Contractor shall be relieved of its obligations to carry out the Post Completion Works and/or the Houseblock Works and/or the Post Completion Houseblock Works and/or provide such part of the Custodial Service; and
- 70.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price and the Houseblock Works Fee due from the Authority to the Contractor shall equal the amount the Contractor

would receive if it were satisfying all its obligations and carrying out the Post Completion Works and/or the Houseblock Works and/or the Post Completion Houseblock Works and/or providing the Custodial Service affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

**70.6 Intervention under Section 88**

70.6.1 Without prejudice to any other provision of this Contract, the Contractor shall note and comply with the provisions of Section 88.

70.6.2 If the Secretary of State for Justice shall appoint a Governor of the Prison by virtue of his powers under Section 88, then:

70.6.2.1 this Contract shall continue in force;

70.6.2.2 all provisions of this Contract shall, without prejudice to the Authority's rights under **Part X (Expiry and Termination)** of this Contract, continue to operate except that the functions that would otherwise be exercisable by the Director and the Controller shall be exercised by the Governor; and

70.6.2.3 for the period during which a Governor is appointed the Contract Price and the Houseblock Works Fee due from the Authority to the Contractor shall continue to be paid in accordance with **clauses 45 (Payment Provisions) and 45A (Houseblock Works Fee)**, less an amount equal to all the Authority's costs of operation in respect of any action taken under this **clause 70.6.2 (Intervention under Section 88)**.

## **PART XV - INFORMATION AND PUBLICITY**

### **71. INFORMATION AND CONFIDENTIALITY**

#### **71.1 Section 91 of the Criminal Justice Act 1991**

Without prejudice to any other provisions of this Contract, the Contractor shall note and shall ensure that all of its employees and its sub-contractors' employees comply with the provisions of section 91 of the Criminal Justice Act 1991 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).

#### **71.2 Notice of Statutory Provisions**

The Contractor shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all persons including all Contractor's Staff or sub-contractors employed on any work in connection with this Contract have notice that these statutory provisions apply to them and shall continue to apply to them after the Expiry Date or Termination Date and after termination of their employment.

#### **71.3 Confidentiality**

71.3.1 The Parties agree that the provisions of this Contract and each Project Document shall, subject to **clause 71.3.2 (Confidentiality)**, not be treated as Confidential Information and may be disclosed without restriction.

71.3.2 **Clause 71.3.1 (Confidentiality)** shall not apply to the provisions of this Contract or a Project Document designated as Commercially Sensitive Information and listed in **Part 1 of Schedule 15 (Commercially Sensitive Information)** which shall, subject to **clause 71.4 (Permitted Disclosure)**, be kept confidential for the periods specified in that Part.

71.3.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and the Project Documents 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.

#### **71.4 Permitted Disclosure**

**Clauses 71.3.2 (Confidentiality)** and **71.3.3 (Confidentiality)** shall not apply to:

- 71.4.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Contract for the performance of those obligations;
- 71.4.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this **clause 71 (Information and Confidentiality)**;
- 71.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its sub-contractors;
- 71.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 71.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 71.4.6 any provision of information to the Parties' own professional advisers or insurance advisers or to the Senior Creditors or the Senior Creditors' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor and/or [REDACTED] and/or the Issuer and/or [REDACTED] in connection with the carrying out of its obligations under this Contract, or may wish to acquire shares in the Contractor and/or [REDACTED] and/or the Issuer and/or [REDACTED] 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;
- 71.4.7 any disclosure by the Authority of information relating to the design, construction, operation and maintenance of the Project and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to:
  - 71.4.7.1 any proposed new contractor, its advisers and lenders, should the Authority decide to retender this Contract; or

- 71.4.7.2 any person in connection with **clause 35 (Market Testing and Value Testing)**;
- 71.4.8 any application for registration or recording of the Necessary Consents and property registration required;
- 71.4.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract; or
- 71.4.10 any disclosure for the purpose of:
  - 71.4.10.1 the examination and certification of the Authority's or the Contractor's accounts;
  - 71.4.10.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - 71.4.10.3 complying with a proper request from either Party's insurance advisers or insurers on placing or renewing any insurance policies; or
  - 71.4.10.4 (without prejudice to the generality of **clause 71.4.4 (Permitted Disclosure)**) compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither **clauses 71.4.10.4 (Permitted Disclosure)** nor **71.4.4 (Permitted Disclosure)** shall permit disclosure of Confidential Information otherwise prohibited by **clause 71.3.3 (Confidentiality)** where that information is exempt from disclosure under section 41 of the FOIA.

## **71.5 Obligations Preserved**

Where disclosure is permitted under **clause 71.4 (Permitted Disclosure)**, other than **clauses 71.4.2 (Permitted Disclosure), 71.4.4 (Permitted Disclosure), 71.4.5 (Permitted Disclosure), 71.4.8 (Permitted Disclosure)** and **71.4.10 (Permitted Disclosure)** the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

## **71.6 Audit**

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. It is declared that the carrying out of an examination under section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.

**71.7 Exploitation of Information**

The Contractor shall not make use of this Contract or any information issued or provided by or on behalf of the Authority in connection with this Contract otherwise than for the purposes of this Contract, except with the written consent of the Authority.

**71.8 Information about Prisoners**

Where the Contractor, in carrying out its obligations under this Contract, is provided with information relating to prisoners, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that prisoner and has obtained the Authority's Representative's Approval.

**71.9 Expiry**

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all Documents (including computer records) in its possession, custody or control, which contain information relating to prisoners who are or will on the Expiry Date or the Termination Date be accommodated within the Prison, including any Documents in the possession, custody or control of a sub-contractor, are delivered up to the Authority or as the Authority so directs.

**71.10 Disclosure by the National Audit Office**

The Parties acknowledge that the National Audit Office has the right to publish details of this Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

**71.11 Official Secrets Acts**

The provisions of this **clause 71 (Information and Confidentiality)** are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

**71.12 Freedom of Information**

- 71.12.1 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 FOIA and the Environmental Information Regulations in the manner provided for in **clauses 71.12.2 (Freedom of Information) to 71.12.7 (Freedom of Information)** (inclusive).
- 71.12.2 Where the Authority receives a Request for Information in relation to Information that the Contractor is holding on its behalf, the Authority shall have the option to refer to the Contractor such Request for Information, and if the Authority exercises that option it shall refer to the Contractor such Request for Information as soon as practicable and in any event within five (5) Business Days after receiving a Request for Information and the Contractor shall:
- 71.12.2.1 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) Business Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
  - 71.12.2.2 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.
- 71.12.3 Following notification under **clause 71.12.2 (Freedom of Information)**, and up until such time as the Contractor has provided the Authority with all the Information specified in clause **71.12.2.1 (Freedom of Information)**, 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:
- 71.12.3.1 whether the Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
  - 71.12.3.2 whether the 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.

- 71.12.4 The Contractor shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least six (6) Years from the date it is acquired and shall permit the Authority to inspect such Information as requested from time to time.
- 71.12.5 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) Business Days after receiving it.
- 71.12.6 The Contractor acknowledges that any lists provided by it 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.
- 71.12.7 In the event of a request from the Authority pursuant to **clause 71.12.2 (Freedom of Information)**, the Contractor shall as soon as practicable, and in any event within five (5) Business Days after 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 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) Business Days period for compliance shall be extended by such number of additional 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 the Authority is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 71.12.8 The Contractor acknowledges that (notwithstanding the provisions of **clause 71 (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 I of the FOIA (the "FOIA Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Contractor or the Project:

71.12.8.1 in certain circumstances without consulting with the Contractor; or

71.12.8.2 following consultation with the Contractor and having taken its views into account,

provided always that where **clause 71.12.8.1 (Freedom of Information)** applies, the Authority shall, in accordance with the recommendations of the FOIA Code, draw this to the attention of the Contractor prior to any disclosure.

## **72. PUBLIC RELATIONS AND PUBLICITY**

### **72.1 Restriction**

The Contractor shall not by itself, its employees or agents and shall procure that its sub-contractors shall not communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Project without the prior written approval of the Authority.

### **72.2 Photographs**

No facilities to photograph or film in or upon any property used in relation to the Project shall be given or permitted by the Contractor without the prior written approval of the Authority.

## **73. ADVERTISEMENTS**

The Contractor shall not exhibit or attach to any part of the Site any notice or advertisement without the Authority's Representative's Approval, except where otherwise required to comply with Legislation.

## **74. CONTRACTOR'S RECORDS AND PROVISION OF INFORMATION**

### **74.1 Records and Open Book Accounting**

Without prejudice to the provisions of **Schedule 41 (Houseblock Works Fee)**, the Contractor shall (and shall procure that each Sub-Contractor shall) at all times:

74.1.1 maintain a full record of particulars of the costs of carrying out the Works and the Houseblock Works and providing the Custodial Service (such cost detail shall be broken down into the actual cost of providing

each element of the Custodial Service), including those relating to the design, construction, maintenance, operation and finance of the Project;

- 74.1.2 upon request by the Authority, provide a written summary of any of the costs referred to in **clause 74.1.1 (Records and Open Book Accounting)**, including details of any funds held by the Contractor specifically to cover such costs, in such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract;
- 74.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this clause 74 (Contractor's Records and Provision of Information); and
- 74.1.4 not store any records outside of the United Kingdom without the prior written consent of the Authority.

#### **74.2 Books of Account**

Compliance with **clause 74.1 (Records and Open Book Accounting)** shall require the Contractor to keep (and where appropriate to procure that each sub-contractor shall keep) books of account in accordance with best accountancy practices with respect to this Contract showing in detail:

- 74.2.1 administrative overheads;
- 74.2.2 payments to Sub-Contractors and by Sub-Contractors to sub-contractors;
- 74.2.3 capital and revenue expenditure; and
- 74.2.4 such other items as the Authority may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Contract,

and the Contractor shall have (and procure that its sub-contractors shall have) the books of account evidencing the items listed in **clauses 74.2.1 (Books of Account) to 74.2.4 (Books of Account)** (inclusive) available for inspection by the Authority (and its advisers) upon reasonable notice, and shall promptly present a written report of these to the Authority as and when requested from time to time.

#### **74.3 Maintenance of Records**

74.3.1 The Contractor shall maintain or procure the maintenance of detailed records relating to the carrying out of the Works and the Houseblock Works and the provision of the Custodial Service, in each case in accordance with Good Industry Practice and any applicable Legislation.

74.3.2 Without prejudice to **clause 74.3.1 (Maintenance of Records)**, the Contractor shall procure that the following are maintained:

74.3.2.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract; and

74.3.2.2 full records of all maintenance procedures carried out during the term of this Contract,

and the Contractor shall have the items referred to in **clauses 74.3.2.1 (Maintenance of Records)** and **74.3.2.2 (Maintenance of Records)** available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a report of them to the Authority as and when requested from time to time.

#### 74.4 **Auditor**

The Contractor shall permit all records referred to in this **clause 74 (Contractor's Records and Provision of Information)** to be examined and copied by the Controller and other representatives of the Authority, and by the Comptroller and Auditor General and his representatives.

#### 74.5 **Retention**

The records referred to in this **clause 74 (Contractor's Records and Provision of Information)** shall be retained in accordance with and for the periods specified in **clause 74.12 (Retention of Records)**, or if not so specified for a period of at least six (6) Years after the Contractor's obligations under this Contract have come to an end.

#### 74.6 **Termination or Expiry**

Upon termination or expiry of this Contract, and in the event that the Authority wishes to enter into another agreement for the operation and management of a project the same as or similar to the Project, the Contractor shall (and shall ensure that any Sub-Contractors shall and shall use reasonable endeavours to ensure that any sub-contractors shall) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Project.

#### 74.7 **Financing Information**

The Contractor shall:

- 74.7.1 provide to the Authority on 31 March, 30 June, 30 September and 31 December each Year a document listing all information provided by it to the Senior Creditors during the preceding three (3) Month period and, at the request of the Authority, provide to the Authority any information provided by it to the Senior Creditors during the term of this Contract and any other information relating to the Project that the Authority may reasonably require;
- 74.7.2 provide to the Authority copies of its annual report and accounts within twenty (20) Business Days after publication;
- 74.7.3 provide to the Authority a copy of the Senior Creditors' Financial Model at Financial Close and (as such Senior Creditors' Financial Model may be amended) within twenty (20) Business Days after any amendment to it;
- 74.7.4 promptly upon the occurrence of a Financing Default notify the Authority of such Financing Default; and
- 74.7.5 use all reasonable endeavours to assist the Authority in its preparation of any report required by the Ministry of Justice or HM Treasury from time to time.

#### **74.8 Interim Project Report**

The Authority may, in the circumstances referred to in **clause 74.7.4 (Financing Information)** (regardless of whether the Senior Creditors have exercised any enforcement or similar rights under the Senior Financing Agreements) require the Contractor to provide an Interim Project Report and to attend, and use all reasonable endeavours to ensure that the Senior Creditors attend, such meetings as the Authority may convene to discuss such Interim Project Report and the circumstances giving rise to it.

#### **74.9 Confidentiality**

All information referred to in this **clause 74 (Contractor's Records and Provision of Information)** is subject to the obligations set out in **clause 71 (Information and Confidentiality)**.

#### **74.10 Prescribed Documentation**

During the term of this Contract, certain Documents shall be produced by or for the Contractor. Prescribed documents shall be defined as any item or document which relates to the performance of the Works, the Houseblock Works or the Custodial Service (the "Prescribed Documentation") and shall include all plans of

the Site, the Expansion Site and such other Documents which relate to the carrying out of the Works, the Houseblock Works or the provision of the Custodial Service, including, whether as hard copy or electronic data:

74.10.1 drawings (including of all Buildings, premises and vehicles);

74.10.2 reports and records;

74.10.3 data sheets;

74.10.4 schedules;

74.10.5 presentation brochures;

74.10.6 Prisoners' records;

74.10.7 photographs; and

74.10.8 other information, including models and samples.

#### **74.11 Security and Confidentiality of Prescribed Documentation**

74.11.1 The Contractor shall be responsible for the security and confidentiality of all Prescribed Documentation. The Contractor shall control and monitor the issue, use and return of the Prescribed Documentation issued by the Contractor to its sub-contractors, suppliers and third parties and the security and safe storage of such Prescribed Documentation.

74.11.2 The Contractor shall procure that the Prescribed Documentation is managed and controlled by its sub-contractors, suppliers and third parties in the manner set out in this **clause 74.11 (Security and Confidentiality of Prescribed Documentation)**.

74.11.3 The Contractor shall use its best endeavours to ensure that the Prescribed Documentation shall only be issued for review outside the following organisations:

74.11.3.1 the Authority (including any contractors contracted to operate prisons);

74.11.3.2 any Authority Related Party;

74.11.3.3 any coroner (as defined in section 1 of the Coroners Act 1988);

74.11.3.4 any organisation referred to in paragraph 4.1.8 of the Custodial Service Specification,

where it is necessary.

- 74.11.4 The Contractor shall at all times comply with any instructions of the Authority or the Authority's Representative relating to security of the Prescribed Documentation.
- 74.11.5 The Prescribed Documentation that is issued to the Contractor by the Authority or the Authority's Representative remains at all times the property of the Authority and on termination or expiry of this Contract shall either be returned to the Authority in accordance with this Contract, or be certified by the Contractor as having been destroyed in a secure manner or shall be retained by the Contractor pursuant to **clauses 74.11 (Security and Confidentiality of Prescribed Documentation) to 74.13 (Alternative Methods of Documentation Storage)** (inclusive).
- 74.11.6 The Contractor shall notify the Authority in writing of its nominated Prescribed Documentation officer (the "Prescribed Documentation Security Officer"), who shall promptly respond to any enquiries by or on behalf of the Authority or the Authority's Representative that relate to the Prescribed Documentation.
- 74.11.7 The Contractor shall prevent information detrimental to the security of the Authority coming into the possession of unauthorised persons and shall establish an audit trail to track the movement and location of the Prescribed Documentation at all times.
- 74.11.8 The Contractor shall be responsible at all times for the security of all Prescribed Documentation in the keeping of the Contractor, whether issued by the Authority or the Authority's Representative or copied or produced by the Contractor, its sub-contractors or agents.
- 74.11.9 The Contractor shall notify all Contractor's Staff handling Prescribed Documentation of the requirements imposed by the Authority pursuant to **clauses 74.11 (Security and Confidentiality of Prescribed Documentation) to 74.13 (Alternative Methods of Documentation Storage)** (inclusive) and of the procedures for maintaining security. The Contractor shall notify all others (including its sub-contractors) having an interest in this Contract of the particular requirements imposed regarding the security of Prescribed Documentation.
- 74.11.10 The Contractor shall include in all contracts with its sub-contractors similar but no less strict conditions of security for the Prescribed Documentation and shall be responsible for their compliance.

74.11.11 The Contractor shall arrange for the secure destruction and recording of any Prescribed Documentation which are no longer required, have been superseded or are additional to the requirements of the Authority.

74.11.12 The Contractor shall:

74.11.12.1 report immediately to the Controller and the Authority's Representative the loss of any Prescribed Documentation stating details of the loss and the actions the Contractor is taking to secure the recovery of such Prescribed Documentation;

74.11.12.2 use its best endeavours to recover such lost Prescribed Documentation; and

74.11.12.3 record the loss, the action taken by the Contractor and outcome in the Daily Report.

#### 74.12 Retention of Records

74.12.1 Notwithstanding **clause 74.12.2 (Retention of Records)**, the Contractor shall retain all Documents held by it upon the Expiry Date or Termination Date for a period of six (6) Years after the Expiry Date or Termination Date (as the case may be).

74.12.2 From the date of this Contract, the Contractor shall retain all Custodial Services Documents of the type set out below for the minimum periods specified opposite such Documents from the creation of the relevant Document:

Document Type	Retention Period
Prisoner records	To comply with PSO 9020
Financial records	6 Years
Incident records	6 Years
Complaint records	6 Years
Court records	6 Years
Personnel records	6 Years
Record of visitors	2 Years
Staffing details	2 Years
Administrative records	2 Years
Prisoner journey details	2 Years

74.12.3 The Contractor shall determine (and shall promptly notify the Authority) if there are any requirements of Legislation, Relevant Authorities or otherwise, that would necessitate the retention of any

Documents for longer retention periods than those specified in **clause 74.12.2 (Retention of Records)**.

- 74.12.4 The retention periods specified in **clause 74.12.2 (Retention of Records)** apply to the primary source Documents and any electronic or other types of Documents for such records produced.

#### 74.13 **Alternative Methods Of Documentation Storage**

- 74.13.1 The Contractor may propose alternative means of storing the records, Prescribed Documentation and Documents referred to in this **clause 74 (Contractor's Records and Provision of Information)** storage for the Authority's Representative's Approval. The Contractor shall ensure that any such proposals:

74.13.1.1 comply with Legislation, including the Public Records Acts 1958 and 1967, the Taxes Management Act 1970, the Value Added Tax Act 1994, the Companies Act 2006, EU Regulations and the Statute of Limitations;

74.13.1.2 state methods of minimising any potential risks of such alternative means of storage that may arise; and

74.13.1.3 offer no opportunity for the records, Prescribed Documentation and Documents referred to in this **clause 74 (Contractor's Records and Provision of Information)** to be amended.

- 74.13.2 Without prejudice to **clause 71.10 (Disclosure by National Audit Office)**, the Contractor shall promptly provide the National Audit Office with such Documents including this Contract, the Project Documents, the Financing Agreements and such other contracts, agreements, guarantees and titles to property that the National Audit Office may request from time to time.

#### 74.14 **Interpretation**

**Clauses 74.10 (Prescribed Documentation) to 74.13 (Alternative Methods of Documentation Storage)** (inclusive) shall be without prejudice to any other provisions of this Contract.

#### 74.15 **Data Loss**

The Contractor acknowledges that:

- 74.15.1 the security of data, including Personal Data is of paramount importance to the Authority; and



74.15.2 loss of such data may have a significant impact on the operation and reputation of the Authority, the Contractor and the Project.

## **75. DATA PROTECTION**

### **75.1 General**

75.1.1 In relation to all Personal Data, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Project.

75.1.2 The Contractor and any sub-contractor shall only undertake processing of Personal Data reasonably required in connection with the Project and shall not transfer any Personal Data to any country or territory outside the European Economic Area.

### **75.2 No Disclosure**

The Contractor shall not disclose Personal Data to any third parties other than:

75.2.1 to employees and sub-contractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out the Works, the Houseblock Works and/or the Custodial Service; or

75.2.2 to the extent required under a court order,

provided that disclosure under **clause 75.2.1 (No Disclosure)** is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this **clause 75 (Data Protection)** and that the Contractor shall give notice in writing to the Authority's Representative of any disclosure of Personal Data which either the Contractor or a sub-contractor is required to make under this **clause 75.2.2 (No Disclosure)** immediately upon becoming aware of such a requirement.

### **75.3 Measures**

The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to Personal Data, including to take reasonable steps to ensure the reliability of staff having access to the Personal Data.

### **75.4 Authority Requests**

The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor and/or the

sub-contractors referred to in **clause 75.3 (Measures)**. Within twenty (20) Business Days after such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA.

#### **75.5 Indemnity**

The Contractor shall indemnify and keep indemnified in full the Authority, its employees, agents and contractors against all Direct Losses incurred by it in respect of any breach of this **clause 75 (Data Protection)** by the Contractor and/or any act or omission of any sub-contractor which causes the Contractor to be in breach of this **clause 75 (Data Protection)**.

## **PART XVI - INDEMNITIES AND INSURANCE**

### **76. INDEMNITIES**

#### **76.1 Contractor's Indemnity**

The Contractor shall, subject to **clause 76.2 (Contractor not Responsible)**, be responsible for, and shall indemnify and keep indemnified in full and on demand the Authority or any Authority Related Party from and against all liability for:

- 76.1.1 death or personal injury;
- 76.1.2 loss of or damage to property (including property belonging to the Authority or for which it is responsible but excluding the land, buildings, plant, equipment and other assets which are the responsibility of the Contractor to provide under this Contract and which form part of the Prison);
- 76.1.3 breach of statutory duty;
- 76.1.4 third party actions, claims and/or demands; and
- 76.1.5 subject to **clause 76.8 (Limit of Liability)**, and notwithstanding any Unavailability Deductions, any Losses suffered or incurred by the Authority in connection with its accommodating prisoners who should have been accommodated at the Prison outside the Prison (including the costs of transferring Prisoners to and from alternative accommodation) due to any failure by the Contractor to fulfil its obligations under this Contract to provide Available Prisoner Places and Houseblock Available Prisoner Places,

which may arise out of, or in consequence of, the design, construction, operation or maintenance of the Assets or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Authority's property of the Contractor or any Contractor Related Party.

#### **76.2 Contractor not Responsible**

[REDACTED]

- 76.2.1 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

76.2.2 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

76.2.3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

76.2.3.1 [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

76.2.3.2 [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

**76.3 Limitation of Indemnity**

An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

**76.4 Notification of Claims**

Where either Party (the "Indemnified Party") wishes to make a claim under this Contract against the other (the "Indemnifying Party") in relation to a claim made against it by a third party (a "Third Party Claim"), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

**76.5 Conduct of Claims**

76.5.1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

76.5.2

[REDACTED]

76.5.3

[REDACTED]

76.5.4

[REDACTED]

76.5.4.1

[REDACTED]

76.5.4.2

[REDACTED]

76.5.4.3

[REDACTED]

76.5.5

[REDACTED]

[REDACTED]

#### 76.6 **Mitigation**

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Contract.

#### 76.7 **Sub-Contractor Losses**

Where:

76.7.1 a Sub-Contractor is entitled to claim any compensation and/or relief from the Contractor under the Sub-Contracts; and

76.7.2 the Contractor subsequently makes a claim against the Authority under this Contract in relation to such compensation and/or relief,

the Authority waives any right to defend the Contractor's claim on the ground that the Contractor is only required to pay compensation or grant relief to the Sub-Contractor under the Sub-Contracts to the extent that such compensation or relief is recoverable from the Authority.

#### 76.8 **Limit of Liability**

76.8.1 The provisions of this **clause 76.8 (Limit of Liability)** shall apply to claims made by the Authority under **clause 76.1.5 (Contractor's Indemnity)**.

76.8.2 Losses shall not be recoverable under **clause 76.1.5 (Contractor's Indemnity)** in respect of a failure by the Contractor to provide Available Prisoner Places in accordance with the Phase-In Timetable, during the period up to and ending on the Actual Full Operation Date or Houseblock Available Prisoner Places in accordance with the Houseblock Phase-In Period Timetable during the period up to and ending on the Actual Houseblock Full Operation Date, and the Contractor shall not otherwise be liable for damages as a result of a breach of **clauses 20 (Phase-in Period)** and/or **20.2 (Contractual Full Operation Date)** where the Contractor has fully complied with its obligations under **clause 22.1 (Liability for Liquidated Damages)** or **Clause 22A.1 (Liability for Liquidated Damages – Houseblock)** as the case may be.

76.8.3 If the Authority has to house prisoners who should have been accommodated at the Prison outside the Prison due to any failure by