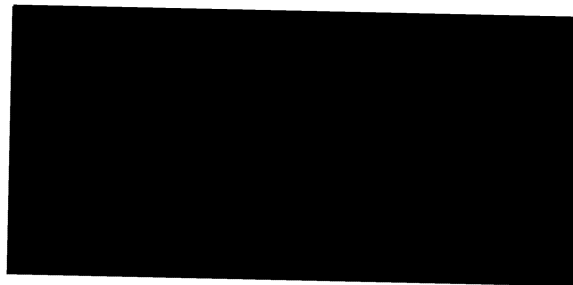


Dated 30 June 2010 as amended and restated on 19 December 2013 and
on 28 February 2018

(1) The Secretary of State for Justice

(2) 

Contract
for the design, construction, management
and financing of a custodial
service at Belmarsh West



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THIS CONTRACT is made on 30 June 2010 as amended and restated on 19 December 2013 and on 28 February 2018

BETWEEN:

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

(2) [REDACTED] (the "Contractor"),

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

BACKGROUND

- (A) The Authority wished to develop the Site to provide a new prison which could accommodate a certified normal accommodation of six hundred (600) Prisoners and an operational capacity of nine hundred (900) Prisoners and to provide a custodial service to the new prison.
- (B) Accordingly, the Authority invited tenders from interested persons for the design, construction, management and financing of a prison and custodial service.
- (C) Proposals were submitted on behalf of the Contractor in response to the Authority's invitation. The Authority wishes to enter into this Contract for the purpose of, or in connection with, the discharge of its functions.
- (D) The Project has been approved by HM Treasury and NOMS on behalf of the Authority.
- (E) This Contract is entered into under the Government's Private Finance Initiative.
- (F) In order that a further houseblock be constructed and operated within the remit of the original Project, the original Contract has been amended and restated and the Authority and the Contractor have agreed to the terms on which the Contractor will carry out the Houseblock Works and provide the Custodial Services to the Prison.
- (G) As a consequence of the refinancing of the Senior Debt by way of a Qualifying Refinancing (the "**Bond Refinancing**"), the original Contract, as amended and restated in relation to the Houseblock Works, has been further amended and restated by terms agreed between the Authority and the Contractor.

PART I - PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"2005 Regulations" has the meaning given to it in **clause 46.2.1 (Construction Industry Scheme)**;

"Abandon" means not to carry out any Works contemplated by the Construction Programme for twenty (20) consecutive Business Days or during sixty (60) Business Days (whether consecutive or not) in any Year;

"ACSDP Approval Certificate" has the meaning given to it in **clause 31.2.1.1 (Approval of Annual Custodial Service Delivery Plan)**;

"ACSDP Notice of Non-Compliance" has the meaning given to it in **clause 31.2.1.2 (Approval of Annual Custodial Service Delivery Plan)**;

"Actual Full Operation Date" means the date upon which the Contractor first provides six hundred (600) Available Prisoner Places;

"Actual Houseblock Opening Date" means the date on which the Contractor first provides no less than ten (10) Houseblock Available Prisoner Places at the Houseblock;

"Actual Houseblock Full Operation Date" means the date on which the Contractor first provides three hundred and thirty-two (332) Houseblock Available Prisoner Places at the Houseblock;

"Actual Opening Date" or "AOD" means the date upon which the Contractor first provides no less than one hundred (100) Available Prisoner Places;

"Additional Eastern Ditch Connection Route" means the route from within the Expansion Site connecting with the Western Ditch Drain and shown by the broken light blue line on Houseblock Lease Site Plan B;

"Additional Permitted" means on any date, the amount equal to any amount of principal outstanding under the Senior Financing Agreements (as the same may from time to time be

Borrowing"

amended, whether or not with the approval of the Authority) in excess of the amount of principal scheduled under the Senior Financing Agreements at Financial Close to be outstanding at that date, but only to the extent that:

- (a) this amount is less than or equal to the Additional Permitted Borrowings Limit; and
- (b) in respect of any Additional Permitted Borrowing the Security Trustee is not in material breach of its obligations under clause 11.4.3 of the Direct Agreement as it applies to such Additional Permitted Borrowing,

and provided further that any such excess amount of principal which is:

- (i) invested as part of any Qualifying Variation; or
- (ii) outstanding from time to time as a result of any drawing under the Senior Financing Agreements as entered into at Financial Close, disregarding any subsequent amendment; or
- (iii) outstanding from time to time as a result of any amendment to the Senior Financing Agreements in respect of which the Authority has agreed that its liabilities on a termination may be increased pursuant to **clause 61.1.1 (No Increase in Liability)** shall not be counted as Additional Permitted Borrowing;

"Additional Permitted Borrowings Limit"

means an amount equal to:

- (a) [REDACTED] of the Original Senior Commitment for any Additional Permitted Borrowing subsisting in the period from the date of Financial Close to the date on which the amount outstanding under the Senior Financing Agreements is [REDACTED]
[REDACTED] of the Original Senior

Commitment; and thereafter

(b) the higher of:

- (i) [REDACTED] of the Original Senior Commitment; and
- (ii) the amount of any Additional Permitted Borrowing outstanding on the last Day of the period referred to in paragraph (a) of this definition;

"Adjoining Property"

means any land and/or property adjoining or in the neighbourhood of the Original Site, and from the date of the Amending Agreement the Expansion Site, and each and every part of such land and/or property including all conduits, roads, footpaths, walls, fences, buildings and other erections and all service media and other apparatus on, under or within such land and/or property;

"Adjudicator"

means the adjudicator appointed in accordance with **clause 80.4 (Identity of Adjudicator)**;

"Adjusted Estimated Fair Value of the Contract"

means the Estimated Fair Value of the Contract, less an amount equal to the aggregate of:

- (a) where relevant any Post Termination Service Amounts paid to the Contractor (if a positive number);
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under **clause 47 (Set Off)**,

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the Estimated Fair Value of the Contract is calculated;
- (ii) any insurance proceeds and other amounts owing to the Contractor, (and which the Contractor is entitled

to retain), to the extent not included in paragraph (i) of this definition; and

- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) (i), (ii) and (iii) have not been directly taken into account in calculating the Estimated Fair Value of the Contract; and
- (B) the Authority has received such amounts in accordance with this Contract or such amounts are standing to the credit of the Joint Insurance Account;

**"Adjusted
Highest
Compliant
Tender Price"**

means the Highest Compliant Tender Price less the aggregate of:

- (a) any Post Termination Service Amounts paid to the Contractor to date;
- (b) the Tender Costs; and
- (c) amounts that the Authority is entitled to set off or deduct under **clause 47 (Set Off)**,

plus an amount equal to the aggregate of:

- (i) all credit balances on any bank accounts held by or on behalf of the Contractor on the date that the highest priced Compliant Tender is received;
- (ii) any insurance proceeds and other amounts owing to the Contractor, to the extent not included in paragraph (i) of this definition; and
- (iii) the Post Termination Service Amounts (if a negative number),

to the extent that:

- (A) (i), (ii) and (iii) have not been directly taken into account in that Compliant Tender; and
- (B) the Authority has received such amounts in accordance with this Contract;

"Affected Party" has the meaning given to it in paragraph (c) of the definition of Force Majeure Event;

"Affiliate" means in relation to any person, any holding company or subsidiary of that person or any subsidiary of such holding company and "holding company" and "subsidiary" shall have the meaning given to them in section 1159 of the Companies Act 2006;

"Amending Agreement" means the amending agreement entered into between the Authority and the Contractor dated 19 December 2013 and to which an amended and restated version of this Contract relating to the Houseblock forms an appendix;

"Ancillary Rights" means:

- (a) a non-exclusive licence to enter and remain upon those parts of the Site that the Contractor and/or any Contractor Related Party requires access to in order to carry out the Works or (pending the grant of the Lease pursuant to **clause 7.2 (Grant of Lease)**) provide the Custodial Service;
- (b) such rights of access to and egress from the Site as are necessary for the Contractor and any Contractor Related Party to perform their obligations and exercise their rights under this Contract and in particular to carry out the Works or (pending the grant of the Lease pursuant to **clause 7.2 (Grant of Lease)**) provide the Custodial Service, provided that such rights may be varied by the Authority and such variation will be deemed to be an Authority Change;
- (c) the rights set out in (and in accordance with) paragraph 1 of Schedule 1 to the Lease;

- (d) the right (where necessary) to inspect, repair, maintain or renew the Services Media (including the Surface Water Sewer, but not including the Foul Water Sewer) and the right (at the cost of the Contractor) to connect into the Services Media and to construct such new Services Media as may from time to time be necessary to serve the Site, provided that the prior written consent of the Authority is obtained (such consent not to be unreasonably withheld or delayed) and the person or persons exercising such right on land outside the Site owned by the Authority making good in a reasonable manner any damage caused to the land in question as soon as reasonably practicable to the reasonable satisfaction of the Authority;
- (e) the right for the Contractor and/or Contractor Related Party to enter and remain upon so much as is necessary of the land owned by the Authority which is adjacent to or near to the Site (but excluding any areas within the outside walls of the adjacent Belmarsh Prison) on not less than 48 hours' prior notice to and upon receipt of written approval from the Authority (except in case of emergency when written approval is not required and as much notice as is practicable in the circumstances shall be given) with or without workmen, plant and equipment to inspect, repair, maintain, renew and make further connections into the Western Ditch Drain (such further connection only to be made in through on or under the Eastern Ditch Area) where the Contractor and/or Contractor Related Party is not reasonably able to carry out those works from within the Site, subject to:
 - (i) the Contractor and/or Contractor Related Party complying with such rules and regulations as may be stipulated from time to time by the Authority; and

- (ii) the Contractor and/or Contractor Related Party complying with the terms of any agreed protocol relating to such access, which the Authority and the Contractor shall each use all reasonable endeavours to agree as soon as reasonably practicable;
- (f) the right to enter and remain upon so much as is necessary of the Foul Drain Connection Land on not less than forty eight (48) hours' prior notice (except in case of emergency when as much notice as is practicable in the circumstances shall be given) with or without workmen, plant and equipment to inspect, repair, maintain, renew and install Conduits and to connect to public utilities:

provided that (in each case):

- (i) any rights are granted insofar as the Authority is capable of granting them and such rights are subject to any restrictions or other provisions referred to in the Title Matters or otherwise disclosed in writing to the Contractor before the date of this Contract;
- (ii) such rights shall not in any circumstance entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Site (save as may be required by the Contractor and approved by the Authority) (such approval not to be unreasonably withheld or delayed) in order to comply with relevant health and safety legislation on a temporary basis); and
- (iii) such rights are granted subject to the Reserved Rights applicable to the Original Site which are reserved out

of the Ancillary Rights in favour of the Authority;

"Annual Custodial Service Delivery Plan" or "ACSDP" has the meaning given to it in **clause 31.1.1 (Delivery of Annual Custodial Service Delivery Plan)**;

"APB Distribution" means, for the period during which the Additional Permitted Borrowing subsists, an amount equal to the aggregate of all Distributions made during that period up to an amount equal to the principal of the Additional Permitted Borrowing on the first Day of that period;

"Approved Purposes" has the meaning given to it in **clause 81.1 (Project Data)**;

"Architect"



"Asbestos" has the meaning given to it in the Control of Asbestos Regulations 2006;

"ASBO" means anti-social behaviour order (as defined in the Crime and Disorder Act 1998);

"Assets" means all assets and rights to enable the Authority or a successor contractor to own, operate and maintain the Project in accordance with this Contract, including:

- (a) any land or buildings including the Prison and the Houseblock;
- (b) any equipment;
- (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know how);
- (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred);
- (e) any revenues and any other contractual rights;

and

- (f) any intellectual property rights, subject to and in accordance with **clause 81 (Intellectual Property Rights)**,

but excluding any assets and rights in respect of which the Authority is full legal and beneficial owner;

"Assigned Employees"

has the meaning given to it in **clause 43.1.1.1 (Retendering)**;

"Associated Company"

means in respect of a relevant company, a company which is a subsidiary, a Holding Company or a company that is a subsidiary of the ultimate Holding Company of that relevant company, and in the case of the Contractor shall include [REDACTED]
[REDACTED]

"Authority Break Point Date"

means the tenth (10th) and each subsequent five (5) Year anniversary of the Contractual Full Opening Date;

"Authority Change"

means a change to the Works and/or Houseblock Works and/or the Custodial Service (which may increase or decrease the scope of the Works and/or Houseblock Works and/or the Custodial Service) initiated by the Authority by issuing a Change Notice to the Contractor in accordance with **Schedule 9 (Change Protocol)**, and which is not required by a Change in Law;

"Authority Change Confirmation"

means a confirmation given by the Authority in respect of any Change pursuant to **Schedule 9 (Change Protocol)**;

"Authority Damage"

means any damage to the Prison the cost of which is the responsibility of the Authority pursuant to **clause 79.1 (Responsibility for Damage)**;

"Authority Default"

means one of the following events:

- (a) an expropriation, sequestration or requisition of a material part of the Assets and/or shares of the Contractor or [REDACTED] or [REDACTED] by the Authority or other Relevant Authority;

[REDACTED]

- (c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of two (2) Months; or
- (d) a breach by the Authority of **clause 82.1 (Restrictions on Transfer of this Contract by the Authority)** occurs;

"Authority Default Termination Sum"

has the meaning given to it in **clause 51.2.1 (Compensation on Termination for Authority Default)**;

"Authority Houseblock Default"

means, in relation to the payment of the Houseblock Works Fee by the Authority, a failure by the Authority to make payment of three (3) or more amounts due pursuant to **paragraph 4.4 of Schedule 41 (Houseblock Works Fee)** within thirty (30) Days after service of a formal written demand by the Contractor, where that amount fell due and payable two (2) (or more) Months prior to the date of service of the written demand;

"Authority Houseblock Planning Conditions"

means those conditions set out in Part 2 of **Schedule 21 (Authority Planning Conditions)**;

"Authority Planning Conditions"

means those conditions set out in Part 1 of **Schedule 21 (Authority Planning Conditions)**;

"Authority Related Party"	<p>means:</p> <ul style="list-style-type: none"> (a) an officer, agent, contractor, employee or sub-contractor (of any tier) of the Authority acting in the course of his office or employment or appointment (as appropriate); (b) the Education Provider; and (c) the Healthcare Provider, <p>but excluding in each case the Contractor and any Contractor Related Party;</p>
"Authority Risk Contamination"	<p>means contamination of: petroleum hydrocarbons; polycyclic aromatic hydrocarbons; radiation material; metals that are toxic; and asbestos;</p>
"Authority's Houseblock Requirements"	<p>means the requirements of the Authority in respect of the Houseblock set out in Part 1A of Schedule 1 (Authority's Requirements);</p>
"Authority's Houseblock Site Risk"	<p>means:</p> <ul style="list-style-type: none"> (a) any Contamination or ecological issue in relation to or at the Houseblock Works Site; and (b) the Site Conditions arising in relation to or at the Houseblock Works Site.
"Authority's ICT System"	<p>means:</p> <ul style="list-style-type: none"> (a) OASys; (b) ViSOR; (c) P-NOMIS; (d) the Authority's intranet pages; (e) Quantum; (f) SMART; and (g) Healthcare Provider's and Education Provider's systems;

"Authority's Representative"	means the representative appointed by the Authority pursuant to clause 89.1 (Representatives of the Authority) ;
"Authority's Representative's Approval"	means the prior written approval of the Authority's Representative;
"Authority's Requirements"	means the requirements of the Authority in respect of the Project set out in Schedule 1 (Authority's Requirements) ;
"Availability Criteria"	means the requirements set out in paragraph 3 of Part 2 of Schedule 5 (Payment Mechanism) ;
"Available Prisoner Place"	means a Prisoner Place that meets the Availability Criteria or the Houseblock Availability Criteria (as the case may be);
"Base Case"	means the financial model agreed between the Parties on or before Financial Close and as referred to clause 2.6 of the Second Amending Agreement (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other things, calculating the Contract Price;
"Base Senior Debt Termination Amount"	<p>means, subject to clause 61 (Changes to Financing Agreements and Project Documents):</p> <p>(a) all amounts outstanding at the Termination Date, including interest and Default Interest accrued as at that date, from the Contractor, [REDACTED] or the Issuer to the Senior Creditors in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing); and</p> <p>(b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including for the avoidance of doubt any Make-Whole Payment), payable by the Contractor, [REDACTED] or the Issuer to the Senior Creditors as a result of a prepayment in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or,</p>

in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract, subject to the Contractor, [REDACTED] or the Issuer and the Senior Creditors mitigating all such costs to the extent reasonably possible (unless the amount, or the formula for determining the amount, of such costs is fixed in advance under the terms of the Senior Financing Agreements),

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Base Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account and the Distribution Account) held by or on behalf of the Contractor, and/or [REDACTED] and/or the Issuer on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Creditors to the Contractor, and/or [REDACTED] and/or the Issuer as a result of prepayment of amounts outstanding in respect of Permitted Borrowing (other than in respect of Additional Permitted Borrowing), or, in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract; and
- (iv) all other amounts received by the Senior Creditors on or after the

Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing any other rights they may have;

"Benchmarking Exercise"

means an exercise carried out under **clause 35.1 (Benchmarking of the Tested Custodial Service)** and pursuant to the "Operational Taskforce Note 1: Benchmarking and market testing guidance" dated October 2006 and published by HM Treasury (which, for the avoidance of doubt, shall not include any update to or replacement of such note);

"Benchmarking Review Date"

means the seventh (7th), fourteenth (14th) and the twenty first (21st) Year anniversary of the Contractual Full Operation Date;

"Bonds"

means the guaranteed secured bonds due 2036 of the Issuer, issued at Financial Close, in the aggregate principal amount of [REDACTED]

"Bronze Age Platform Requirements"

means the requirements in respect of the timber structure at the Site, set out in Part 5 of **Schedule 1 (Authority's Requirements)**;

"Building"

means any building or other erection at the Original Site, Expansion Site, or Houseblock Works Site (as appropriate);

"Building Manual"

means the manual for the Works containing:

Part 1

a copy of the health and safety file pursuant to the CDM Regulations (excluding those aspects of the same as fall within Part 2); and

Part 2

- (a) all As-built Drawings;
- (b) copies of all guarantees, warranties and maintenance agreements relating to the Works;
- (c) copies of all test certificates relating to the

Works;

(d) copies of all manufacturers' technical literature relating to the Works; and

(e) copies of all operating and maintenance manuals relating to the Works,

as updated by the Contractor in accordance with **clause 13.3.1A (Duties under CDM Regulations)** to apply to the Houseblock Works;

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

"Capital Expenditure" means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time;

"Care and Separation Unit" means the areas identified and labelled on the Site Plans as the "Care and Separation Unit";

"Category A Prisoner" means a prisoner who in accordance with the security classifications set out in PSI 2011-040, is classified by the Authority as a category A prisoner;

"Category A Prisoner Day" means a 24 hour period during which a Category A Prisoner is accommodated at the Prison pursuant to **clause 25.5 (Category A Prisoner)**;

"Category C Prisoner" means a prisoner who in accordance with the security classifications set out in PSI 2011 – 040 is classified by the Authority as a category C prisoner;

"CDM Regulations" means the Construction (Design & Management) Regulations 2007;

"Cell Certificate" means a certificate issued in accordance with **clause 18.2 (Issue of Cell Certificate)** or paragraph 10.2 of **Schedule 5 (Payment Mechanism)**;

"Cell Certificate Requirements" means the requirements which must be met in order for a Cell Certificate to be issued in respect of any Prison Cell, as set out in Part 4 of **Schedule 1**

(Authority's Requirements);

"Cessation of Suspension Notice"

has the meaning given to it in **clause 42.7.4 (Suspension of Staff)**;

"Change"

has the meaning given to it in **Schedule 9 (Change Protocol)**;

"Change in Costs"

in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor and/or any Sub-Contractor (without double counting), including, as relevant, the following:

- (a) the reasonable costs of complying with the requirements of **clauses 15 (Compensation Events), 15A (Compensation Events (Houseblock Works)), 68 (Changes in Law), 69 (Financial Adjustments), and/or 70.4 (Step-In without Contractor Breach)**, including the reasonable costs of preparation of design and estimates;
- (b) the costs of continued employment of, or making redundant, staff who are no longer required;
- (c) the costs of employing additional staff;
- (d) reasonable professional fees;
- (e) the costs to the Contractor of financing any Relevant Event (and the consequences of it) including commitment fees and capital costs, interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Contract Price;
- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical

damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;

- (g) operating costs, or life cycle, maintenance or replacement costs;
- (h) Capital Expenditure (or, in the case of a Relevant Event which is a Qualifying Change in Law, Capital Expenditure for which the Authority is responsible);
- (i) the costs required to ensure continued compliance with the Financing Agreements;
- (j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (k) Losses, including reasonable legal expenses on an indemnity basis;

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

- (a) Legislation, other than any Legislation which on the date of this Contract has been published:
 - (i) in a draft Bill as part of a Government Departmental Consultation Paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union;
- (b) any Guidance; or
- (c) any applicable judgment of a relevant court of law which changes a binding precedent;

"Change of Ownership"

means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Contractor and/or [REDACTED] and/or the Issuer and/or [REDACTED] and/or the Construction Sub-Contractor and/or the Operating Sub-Contractor (including the control over the exercise of voting rights conferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) of this definition;

"Change Notice"

has the meaning given to it in **Schedule 9 (Change Protocol)**;

"Collateral Deed"

has the meaning given in the Senior Financing Agreements;

"Collateral Warranty"

means a collateral warranty executed as a deed between the Authority and (as the case may be) the Construction Sub-Contractor (but excluding, for the avoidance of doubt, the Houseblock Construction Sub-Contractor), a Principal Construction Sub-Sub-Contractor, a member of the Professional Team or the Operating Sub-Contractor in the relevant agreed form;

"Commercial Conditions"

means the Standard Commercial Property Conditions (Second Edition);

"Commercial Insurer"

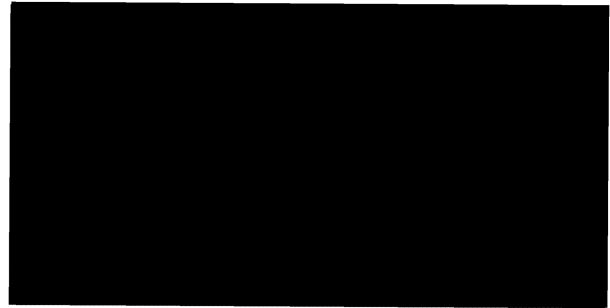
has the meaning given to it in **clause 78.18.2.2 (Riot (Damages) Act 1886)**;

"Commercially Sensitive"

has the meaning given to it in **clause 65.1.3 (Duty to Co-operate)**;

"Commercially Sensitive Information"	means the sub-set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 15 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 15 (Commercially Sensitive Information) ;
"Committed Standby Facility"	means a standby facility committed to by the Senior Creditors at Financial Close or, without prejudice to clause 61 (Changes to Finance Agreements and the Project Documents) as the same may be amended as allowed by clause 61 (Changes to Finance Agreements and the Project Documents) for the purpose of funding any unforeseen cost overruns, increased expenses or loss of revenues to be incurred by the Contractor;
"Compensation Date"	<p>means either:</p> <ul style="list-style-type: none"> (a) if clause 52.5 (Retendering Procedure) applies, the earlier of: <ul style="list-style-type: none"> (i) the date that the New Contract is entered into; and (ii) the date on which the Authority pays the Adjusted Highest Compliant Tender Price to the Contractor; or (b) if clause 52.6 (No Retendering Procedure) applies, the date on which the Adjusted Estimated Fair Value of the Contract has been agreed or determined;
"Compensation Event"	<p>means:</p> <ul style="list-style-type: none"> (a) a breach by the Authority of any of its obligations under this Contract; and (b) any matter referred to as such in clauses 8.2.4.1, 8.2.5.1, 8.2.6.1 and 8.2A.1 (Site Matters), 14.2.3 and 14A.2.3 (Right to Open Up) and 14.9 and 14A.9 (Damage);
"Compliant"	means any tender submitted by a Compliant Tenderer

"Tender"	that meets the Qualification Criteria;
"Compliant Tenderer"	means a tenderer who is a Suitable Substitute Contractor;
"Comptroller and Auditor General"	means the head of the National Audit Office;
"Confidential Information"	means: <ul style="list-style-type: none"> (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and sensitive personal data within the meaning of the DPA; and (b) Commercially Sensitive Information;
"Construction Indexation Adjustment Payment"	means: <ul style="list-style-type: none"> (a) [REDACTED] (i) [REDACTED] (ii) [REDACTED]



- (b) where **clause 45.9.1(b)** applies the amount calculated in accordance with (a) reduced pro rata to the value of the Works remaining to be carried out and completed;

"Construction Programme"

means the programme for the carrying out of the Works as contained in Part 3 of **Schedule 2 (Contractor's Proposals)** as updated from time to time in accordance with **Schedule 10 (Review Procedure)**;

"Construction Proposals"

means the proposals for the provision of the Prison to satisfy the Design and Construction Requirements as set out in Part 1 of **Schedule 2 (Contractor's Proposals)** and as amended pursuant to the provisions of this Contract;

"Construction Staff"

means an individual who is required to work or perform duties which are connected with the design and construction of the Prison, the Houseblock, the Works or the Houseblock Works who is an employee of the Contractor or any Construction Sub-Contractor (or any sub-contractor or supplier of the Construction Sub-Contractor);


"Construction Sub-Contract"

means the agreement dated on or about the date of this Contract between the Contractor and the Construction Sub-Contractor to design, execute and complete the Works;

"Construction Sub-Contract Dispute"

has the meaning given to it in **clause 80.16.1 (Similar Disputes)**;

"Construction Sub-Contractor"

 or such other sub-contractor as the Contractor may, subject to **clause 82 (Sub-Contracting and Assignment)**, appoint to provide the Works;

"Construction Sub-Contractor's Site Manager"	means the manager appointed by the Construction Sub-Contractor for the purposes of supervision of all day to day activities on the Site;
"Construction Sub-Contractor's Site Rules"	means the Construction Sub-Contractor's rules, applicable on the Site to the Authority, the Contractor, the Construction Sub-Contractor and their respective sub-contractors and suppliers of any tier during the Works;
"Contamination"	means any and all pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour);
"Contingent Funding Liabilities"	<p>means the contingent or future funding liabilities to subscribe for equity or subordinated debt (if any) at the relevant time of:</p> <ul style="list-style-type: none"> (a) the Shareholders; and/or (b) the Subordinated Lenders; and/or (c) any other parties providing equity or subordinated debt, <p>owed under any of the of the Financing Agreements to the Contractor, [REDACTED] the Issuer, [REDACTED] and/or the Senior Creditors together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;</p>
"Continued Suspension Notice"	has the meaning given to it in clause 42.7.5 (Suspension of Staff) ;
"Contract"	means this contract (including its Schedules) for the avoidance of doubt as amended in accordance with the Amending Agreement and the Second Amending Agreement;
"Contract Delivery Indicator"	has the meaning given to it in paragraph 1 of Schedule 6 (Contract Delivery Indicators) ;
"Contract Price"	means the fee payable by the Authority in consideration of the obligations performed by the

Contractor under this Contract, save for the carrying out of the Houseblock Works in respect of which the provisions of **Schedule 41 (Houseblock Works Fee)** shall apply, calculated in accordance with **Schedule 5 (Payment Mechanism)**;

"Contract Review Meeting" means the meetings described in paragraph 4.11.1 of the Custodial Service Specification;

"Contract Year" means a period of twelve (12) Months commencing on 1 April, provided that:

- (a) the first Contract Year shall be the period commencing on the Actual Opening Date and ending on the immediately following 31 March; and
- (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the last Day of the Custodial Service Period and ending on the last Day of the Custodial Service Period;

"Contractor Change" means a change to the Works and/or the Houseblock Works and/or the Custodial Service proposed by the Contractor in accordance with **Schedule 9 (Change Protocol)** which is not required by a Change in Law;

"Contractor Default" means any one or more of the following:

- (a) a breach by the Contractor after the Actual Opening Date of any of its obligations under this Contract (other than any obligation relating to the carrying out of the Houseblock Works) which materially and adversely affects the performance of the Custodial Service;
- (b) a Persistent Breach occurs, but excluding any breach with respect to the Houseblock Works;
- (c) a court makes an order that the Contractor or [REDACTED] or the Issuer or [REDACTED] be wound up or a resolution for a voluntary winding-up of the Contractor or [REDACTED] is passed;
- (d) any receiver or receiver manager in respect of

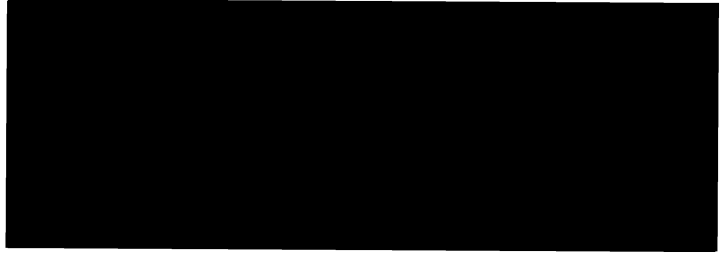
the Contractor or [REDACTED] or the Issuer or [REDACTED] is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;

- (e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Contractor or [REDACTED] or the Issuer or [REDACTED];
- (f) an administration order is made, or an administrator is appointed in respect of the Contractor or [REDACTED] or the Issuer or [REDACTED];
- (g) failure to comply with **clause 82.2 (Restrictions on Transfer of this Contract by the Contractor)** or a breach of **clause 83.1 (Restriction on Change of Ownership)** occurs;
- (h) the Contractor Abandons the Works;
- (i) the Independent Engineer's Declaration has not been issued on or before the Longstop Date;
- (j) a failure to provide any one (1) or more Available Prisoner Place (provided that such Prisoner Place has previously satisfied the Availability Criteria) for a continuous period exceeding thirty (30) Days either (i) at any time after the Actual Opening Date and before the Actual Full Operation Date, except in respect of any Available Prisoner Place for which the Contractor is liable to pay liquidated damages pursuant to **clause 22.1 (Liability for Liquidated Damages)** or (ii) at any time after the Actual Houseblock Opening Date and before the Actual Houseblock Full Operation Date, except in respect of any Houseblock Available Prisoner Place for which the Contractor is liable to pay liquidated damages pursuant to **clause 22A.1 (Liability for**

Liquidated Damages);

(k) Not used;

(l)



(m)

[Redacted]

[Redacted]
[Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
[Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
[Redacted] [Redacted] [Redacted] [Redacted] [Redacted]
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(n) subject to **clause 78.15 (Uninsurable Risks)**, a breach of **clause 78.1.1 (Obligation to Maintain)** or **clause 78.1.2 (Obligation to Maintain)** occurs;

(o) failure to pay any liquidated damages in accordance with **clause 22 (Delay and Liquidated Damages)** on or before the date falling twenty (20) Business Days after the due date (except where such failure results from a technical failure in the banking system); or

(p) the Contractor committing a material breach of its obligations under this Contract (save in relation to the carrying out of the Houseblock Works and other than as a consequence of a breach by the Authority of its obligations under this Contract) which results in the criminal investigation, prosecution and conviction of the Contractor or any Contractor Related Party or the Authority under the Health and Safety Regime (for the purposes of this paragraph (p) an "H&S Conviction") provided that an H&S Conviction of a Contractor Related Party or the

Authority shall not constitute a Contractor Default if, within ninety (90) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project of each relevant Contractor Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Contractor Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Contractor in accordance with **clause 82 (Sub-Contracting and Assignment)** provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of a Contractor Related Party under this paragraph (p), the Authority shall:

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Contract; or
- (q) the Post Completion Works Acceptance Certificate has not been issued on or before the Post Completion Works Longstop Date except where the Authority has exercised its rights pursuant to clause 16.2 (Post Completion Works) to employ an alternative contractor to carry out such Post Completion Works;

"Contractor Notice of Change"

has the meaning given to it in Part 1 of **Schedule 9 (Change Protocol)**;

"Contractor Prisoner Escorts"

means the escorts provided by the Contractor pursuant to paragraphs 4.5.8.8 and/or 4.7.11 of the Custodial Service Specification, but excluding those Prisoner

Escort Services provided by the PECS Contractor and/or the IPT Contractor;

"Contractor Related Party"

means:

- (a) an officer, servant or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant or agent of such a person;
- (b) any Sub-Contractor or sub-contractor of the Contractor of any tier and any of their officers, servants or agents; and
- (c) any person on or at the Prison or the Expansion Site during the carrying out of the Houseblock Works at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party);

"Contractor Termination Notice"

has the meaning given to it in **clause 51.1.1 (Termination on Authority Default)**;

"Contractor Warranted Data"

means the information relating to the Contractor and its Affiliates contained in **Schedule 16 (Contractor Warranted Data)**;

"Contractor Warranted Updated Data"

means the information relating to the Contractor and its Affiliates contained in **Schedule 16A (Contractor Warranted Updated Data)**;

"Contractor Warranted Second Updated Data"

means the information relating to the Contractor and its Affiliates contained in **Schedule 16B (Contractor Warranted Second Updated Data)**;

"Contractor's ICT System"

means the ICT systems installed and/or utilised by the Contractor in the provision of the Custodial Service, but excluding the Authority's ICT Systems;

"Contractor's Operational Documents"

means:

- (a) the Custodial Service Delivery Proposals;
- (b) the Initial Custodial Service Delivery Plan, once approved pursuant to **clause 17.2 (Approval of Initial Custodial Service Delivery Plan)**;

(c) the Operating Procedures, once approved pursuant to **clause 17.5 (Approval of Operating Procedures)**; and

(d) the Annual Custodial Service Delivery Plan.

"Contractor's Proposals"

means the proposals of the Contractor to deliver the Project to satisfy the Authority's Requirements, as set out in **Schedule 2 (Contractor's Proposals)** and as amended pursuant to the provisions of this Contract;

"Contractor's Representative"

means a representative appointed by the Contractor pursuant to **clause 89.2 (Representatives of the Contractor)**;

"Contractor's Share"

[REDACTED]

[REDACTED]

"Contractor's Staff"

means all persons used by the Contractor, including its employees, agents, any sub-contractors, or anyone acting on its or their behalf to carry out the Works

and/or the Houseblock Works and/or provide the Custodial Service;

"Contractual Full Operation Date" means 1 June 2012 or as such date may be altered pursuant to **clauses 15 (Compensation Events) or 66 (Relief Events);**

"Contractual Houseblock Opening Date" means 30 April 2015, as such date same may be altered pursuant to **clauses 15A (Compensation Events (Houseblock Works)) or 66A (Relief Events)** or as amended from time to time in accordance with the terms of this Contract;

"Contractual Houseblock Full Operation Date" means 16 July 2015 or as such date may be altered pursuant to **clauses 15A (Compensation Events (Houseblock Works)) or 66A (Relief Events);**

"Contractual Opening Date" or "COD" means 30 March 2012, as such date may be altered pursuant to **clauses 15 (Compensation Events) or 66 (Relief Events)** or as amended from time to time in accordance with the terms of this Contract;

"Contractual Post Completion Works Acceptance Date" means in relation to the Site the date that is thirty-five (35) Days after the Actual Opening Date or such other date as may be allowed in accordance with this Contract;

"Contractual Post Completion Houseblock Works Acceptance Date" means in relation to the Houseblock Works Site the date that is forty nine (49) Days after the Actual Houseblock Full Operation Date or such other date as may be allowed in accordance with this Contract;

"Controller" means the person or persons from time to time appointed in respect of the Prison by the Authority under section 85(1)(b) of the Criminal Justice Act 1991;

"Conviction" means, other than in relation to any minor road traffic offences, any prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI

1975/1023);

"co-operate"	has the meaning given to it in clause 65.1 (Duty to Co-operate) ;
"Core Available Prisoner Place" or "CAPP"	means those Prisoner Places that are Available Prisoner Places up to (and including) the first six hundred (600) Available Prisoner Places on any Day, which are not located in the Houseblock;
"COSHH"	means the Control of Substances Hazardous to Health Regulations 2002;
"Criminal Records Bureau"	means the bureau established pursuant to Part V of the Police Act 1997;
"Crown"	means Her Majesty's Government and shall include any government department, office or agency and any Secretary of State;
"Cumulative Capital Expenditure"	<p>means the aggregate of:</p> <p>(a) all Capital Expenditure that has been incurred as a result of each General Change in Law that has come into effect on or after the date of the Independent Engineer's Declaration; and</p> <p>(b) the amount of Capital Expenditure that is agreed, or determined to be required, as a result of a General Change in Law under clause 68.2 (Qualifying Change in Law);</p>
"Custodial Duties"	means "custodial duties" at the Prison as defined in section 86(3) of the Criminal Justice Act 1991;
"Custodial Service"	means the custodial service required to satisfy the Custodial Service Specification;
"Custodial Service Delivery Proposals"	means the proposals for the method of providing the Custodial Service to satisfy the Custodial Service Specification as set out in Part 2 of Schedule 2 (Contractor's Proposals) as amended by Part 2A of Schedule 2 (Contractor's Proposals) , as the same may be amended from time to time;
"Custodial"	means an event listed in the second column of the table set out in paragraph 6 of Schedule 6 (Contract

Service Failure"	Delivery Indicators);
"Custodial Service Period"	means the period from the date on which the first Prisoner Place becomes an Available Prisoner Place until and including the earlier to occur of the Termination Date and the Expiry Date;
"Custodial Service Provider"	means a person providing custodial services to the Authority, including (as the context so requires) the Contractor;
"Custodial Service Specification"	means the specification contained in Part 2 of Schedule 1 (Authority's Requirements) and, on and from the Actual Houseblock Opening Date, as amended by Part 2A of Schedule 1 (Authority's Requirements) ;
"Custodial Service Transfer Date"	has the meaning given to it in clause 43.2.1 (Termination of Contract) ;
"Daily Report"	means the daily report which shall be substantially in the form set out in Schedule 17 (Daily Report) ;
"Damage Funding"	has the meaning given to it in clause 79.7.1 (Programmed Maintenance Costs) ;
"Day"	means a calendar day, unless otherwise specified;
"Deductions"	means any or all (as the case may be) of Unavailability Deductions or Performance Point Deductions;
"Deed of Variation"	means the deed of variation to the Lease between the Authority (1) and the Contractor (2) to be entered into in accordance with the provisions of clause 7.2B of this Contract the agreed form of which is attached at Schedule 51 (Deed of Variation to Lease) ;
"Deemed New Contract"	means an agreement on the same terms and conditions as this Contract, as at the Termination Date, but with the following amendments: <ul style="list-style-type: none"> (a) if this Contract is terminated prior to the Contractual Opening Date, any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place, the Contractual Full Operation Date or (following the

Contractual Full Operation Date) 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 or any date specified in the JEAPP Provision Timetable for the provision of any Available Prisoner Place (as the case may be), then the Contractual Opening Date, any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place, the Contractual Full Operation Date or (following the Contractual Full Operation Date) 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 or any date specified in the JEAPP Provision Timetable for the provision of any Available Prisoner Place shall be extended by a period to allow a New Contractor to:

- (i) achieve the Actual Opening Date on or before the Contractual Opening Date;
- (ii) provide any Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the Phase-In Timetable;
- (iii) achieve the Actual Full Operation Date on or before the Contractual Full Operation Date or following the Contractual Full Operation Date, before the Longstop Date;
- (iv) complete the Post Completion Works on or before the Contractual Post Completion Works Acceptance Date or following the Contractual Post Completion Works Acceptance Date, before the Post Completion Works Longstop Date; and

- (v) provide any Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the JEAPP Provision Timetable;
- (b) if this Contract is terminated after the Contractual Opening Date, any date specified in the Houseblock Phase-In Period Timetable for the provision of any Houseblock Available Prisoner Place, the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date) 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 or any date specified in the Houseblock Phase-In Period Timetable for the provision of any Houseblock Available Prisoner Place (as the case may be), then the Contractual Houseblock Opening Date, any date specified in the Houseblock Phase-In Period Timetable for the provision of any Houseblock Available Prisoner Place, the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date) 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 or any date specified in the Houseblock Phase-In Period Timetable for the provision of any Houseblock Available Prisoner Place shall be extended by a period to allow a New Contractor to:
 - (i) achieve the Actual Houseblock Opening Date on or before the Contractual Houseblock Opening Date;

- (ii) 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;
 - (iii) achieve the Actual Houseblock Full Operation Date on or before the Contractual Houseblock Full Operation Date or following the Contractual Houseblock Full Operation Date, before the Houseblock Longstop Date;
 - (iv) 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, before the Post Completion Houseblock Works Longstop Date; and
 - (v) provide any Houseblock Available Prisoner Place on or before the date for provision of such specified in the Houseblock Phase-In Period Timetable;
- (c) any accrued warning notices issued pursuant to **clause 52.1 (Persistent Breach)**, Performance Points and/or Deductions shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be cancelled and any period for which there has been a failure to provide any one (1) or more Available Prisoner Place including (from the Actual Houseblock Full Operation Date) a Houseblock Available Prisoner Place shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial

deductions, be disregarded; and

- (d) the term of such agreement shall be for a period equal to the term from the Termination Date to the Expiry Date;

"Deemed Lease Premium" means the amount by which the value of the estate(s) and/or interest(s) in the Site held by the Authority (in its capacity as landlord in respect of the Lease) immediately after the commencement of the Lease exceeds what their value would have been at that time if the Contractor was not, and had never been, under an obligation to carry out or procure the carrying out of the Works;

"Deemed Lease Premium Relief" means the quantum and timing of the expenses of a revenue nature in respect of the Site which the Contractor is treated as incurring by virtue of section 63 or 232 of the Corporation Tax Act 2009;

"Default Interest" means any increased margin that is payable to the Senior Creditors or which accrues as a result of any payment due to the Senior Creditors not being made on the date on which it is due;

"Defects" means any defect in any of the Buildings, or any part of them, or anything installed in the Buildings attributable to:

- (a) defective design;
- (b) defective workmanship or defective materials (excluding asbestos), plant or machinery used in such construction having regard to Good Industry Practice and to appropriate British standards and codes of practice current at the date of construction of the Building;
- (c) the use of materials in the construction of any Building which (whether or not defective in themselves) prove to be defective in the use to which they are put in the construction of any such Building;
- (d) defective installation of anything in or on the

Buildings;

- (e) defective preparation of the site on which the Building is constructed; or
- (f) defects brought about by adverse ground conditions or by reason of subsidence, water table change or any other change to ground conditions;

"Design and Construction Requirements"

means the requirements of the Authority in relation to the provision of the Prison set out in Part 1 of **Schedule 1 (Authority's Requirements)**;

"Design Data"

means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the design, construction, testing or operation of the Prison in each case that is used by or on behalf of the Contractor and/or its sub-contractors in connection with the provision of the Works, the Houseblock Works or the Custodial Service or the performance of the Contractor's obligations under this Contract;

"Direct Agreement"

means the direct agreement dated on or about the date of Financial Close and made between the Authority, the Contractor and the Security Trustee;

"Directive"

means EC Council Directive 2001/23/EC;

"Direct Losses"

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

"Director"

means the person appointed and employed by the Contractor to carry out such functions as are conferred on him by the Criminal Justice Act 1991 or as may be conferred on him by the Prison Rules in respect of the Prison, and approved by the Authority under **clause 40 (The Director)** and section 85(1)(a) of the Criminal Justice Act 1991;

"Disclosed Data"

means information relating to the Project disclosed to the Contractor and its Shareholders and advisers

before the date of this Contract, including:

- (a) the ITPD Stage 1;
- (b) the ITPD Stage 2;
- (c) the data room located at the Authority's online document management system at www.4projects.co.uk and the Authority's e-sourcing portal at homeoffice.bvavosolutions.co.uk; and
- (d) the results of any investigations and surveys carried out at the Site or any Buildings, whether carried out by or on behalf of the Contractor or the Authority.

"Discriminatory Change in Law"

means a Change in Law, the terms of which apply expressly to:

- (a) the Project and not to similar projects procured under the PFI;
- (b) the Contractor and not to other persons; and/or
- (c) persons who have contracted with the Government, a Local Authority or other public or statutory body to provide services under the PFI and not to other persons;

"Disputed Amount"

has the meaning given to it in **clause 45.5.2 (Disputed Amounts)**;

"Dispute Resolution Procedure"

means the procedure for the resolution of disputes set out in **clause 80 (Dispute Resolution)**;

"Distribution"

means:

- (a) whether in cash or in kind, any:
 - (i) dividend or other distribution in respect of share capital;
 - (ii) reduction of capital, redemption or purchase of shares or any other reorganisation or variation to share

capital;

(iii) payments under the Subordinated Financing Agreements (whether of principal, interest, breakage costs or otherwise);

(iv) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or

(v) the receipt of any other benefit which is not received in the ordinary course of business and on reasonable commercial terms; or

(b) the early release of any Contingent Funding Liabilities, the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain;

"DLPR Expert" means the Deemed Lease Premium Relief expert appointed pursuant to **clause 46.3 (Adjustment to Deemed Lease Premium Relief)**

"DLPR Valuation" means the valuation of the Deemed Lease Premium obtained by the DLPR Expert;

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

"Double Prison Cell" means a Prison Cell designed for double occupancy with a floor area in excess of nine point eight square metres (9.8m²) or, if a shower area is to be incorporated within the Prison Cell, a floor area in excess of eleven square metres (11m²), such areas to include a toilet compartment or suitable modesty screening around a toilet;

"DPA" means the Data Protection Act 1998;

"Eastern Ditch Area"	means the area shown coloured green on Site Plan B and that part of the Western Ditch Drain which abuts the area coloured green on Site Plan B;
"Education Provider"	means Kensington and Chelsea College whose registered address is at Hortensia Road, London SW10 0QS or such other person appointed by the SFA from time to time to provide the Education Services at the Prison;
"Education Services"	means the learning and skills services commissioned by the SFA and provided by the Education Provider;
"EEA"	means from time to time the European Economic Area as created by The Agreement on the European Economic Area 1992 or any successor or replacement body, association, entity or organisation which has assumed either or both the function and responsibilities of the European Economic Area;
"EMAS"	has the meaning given to it in the Design and Construction Requirements;
"Emergency Services"	has the meaning given to it in clause 23.2 (Conduct of Operation) ;
"Employee Liability Information"	means the employee liability information to be provided pursuant to Regulation 11 of TUPE;
"Enabling Activities Agreement"	means the agreement entered into between the Contractor and the Authority dated 11 September 2013 under Notice of Change Number THA-CN-06-12 as amended from time to time in accordance with its terms;
"Enabling Activities"	means all of the works, design and other activities undertaken in relation to the Enabling Activities Agreement;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;

"Equality Duties"	has the meaning given to it in clause 36.4 (Equality Duties) ;
"Equipment Register"	means the register of equipment used by the Contractor to provide the Custodial Service, in the form set out in Schedule 4 (Equipment Register) ;
"Equity IRR"	means the projected blended rate of return to the Relevant Persons over the full term of this Contract, having regard to Distributions made and projected to be made;
"Escape"	means: <ul style="list-style-type: none"> (a) a Prisoner unlawfully gains his liberty by breaching the secure perimeter of the Prison (including the outside wall or boundary of the Prison); or (b) a Prisoner unlawfully gains his liberty while being escorted outside the Prison by the Contractor by passing beyond the control of the accompanying Prisoner Custody Officer;
"Estimated Change in Project Costs"	means in respect of any Relevant Event, the aggregate of any Change in Costs and/or (without double counting) change in revenue (as relevant);
"Estimated Fair Value of the Contract"	means the amount determined in accordance with clause 52.6 (No Retendering Procedure) that a third party would pay to the Authority as the market value of the Deemed New Contract;
"Excusing Cause"	means those things referred to in the second column of Schedule 40 (Excusing Causes) headed "Excusing Causes";
"Exempt Refinancing"	means: <ul style="list-style-type: none"> (a) any Refinancing that was fully taken into account in the calculation of the Contract Price; (b) a change in taxation or change in accounting treatment;

- (c) the exercise of rights, waivers, consents and similar actions which relate to day to day administrative and supervisory matters, and which are in respect of:
- (i) breach of representations and warranties or undertakings;
 - (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority);
 - (iii) late or non-provision of information, consents or licences;
 - (iv) amendments to Sub-Contracts;
 - (v) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority));
 - (vi) restrictions imposed by the Senior Creditors on the dates at which the Senior Debt can be advanced to the Contractor under the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority) and which are given as a result of any failure by the Contractor to ensure that the construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Creditors to the Authority prior to being given;
 - (vii) changes to milestones for drawdown set out in the Senior Financing

Agreements as at Financial Close (or as amended with the prior written approval of the Authority) and which are given as a result of any failure by the Contractor to ensure that construction work is performed in accordance with the agreed construction programme and which are notified in writing by the Contractor or the Senior Creditors to the Authority prior to being given;

- (viii) failure by the Contractor to obtain any consent by statutory bodies required by the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority); or
 - (ix) voting by the Senior Creditors and the voting arrangements between the Senior Creditors in respect of the levels of approval required by them under the Senior Financing Agreements as at Financial Close (or as amended with the prior written approval of the Authority);
- (d) any amendment, variation or supplement of any agreement approved by the Authority as part of any Qualifying Variation under this Contract;
- (e) any sale of shares in the Contractor or [REDACTED] or the Issuer or [REDACTED] by the Shareholders or securitisation of the existing rights and/or interests attaching to shares in the Contractor or [REDACTED] or the Issuer or [REDACTED], provided that this paragraph (e) shall:
 - (i) in respect of shares in [REDACTED], only apply for so long as [REDACTED] holds one hundred per cent (100%) of the issued share capital of the Contractor

or the Issuer; and

- (ii) in respect of shares in [REDACTED], only apply for so long as [REDACTED] holds one hundred per cent (100%) of the issued share capital of [REDACTED];
- (f) any sale or transfer of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements or securitisation of the Subordinated Lenders' existing rights and/or interests under the Subordinated Financing Agreements;
- (g) any Qualifying Bank Transaction; or
- (h) any reinsurance of, or creation of any rights of participation in respect of, the Financial Guarantees (as defined in the Senior Financing Agreements);

"Expansion Site" means the area edged blue on the Houseblock Lease Site Plan A together with the Buildings and the Services Media for all utilities and services serving the Buildings;

"Expansion Site Ancillary Rights" means:

- (a) a non-exclusive licence to enter and remain upon those parts of the Expansion Site that the Contractor and/or any Contractor Related Party requires access to in order to carry out the Houseblock Works or (pending the grant of the Houseblock Lease pursuant to **clause 7.2A (Grant of Houseblock Lease)** provide the Custodial Service;
- (b) such rights of access to and egress from the Expansion Site as are necessary for the Contractor and any Contractor Related Party to perform their obligations and exercise their rights under this Contract (including without limitation over the Original Site over such route as the Contractor determines with or without vehicles, plant and/or equipment) and in particular to carry out the Houseblock Works

or (pending the grant of the Houseblock Lease pursuant to **clause 7.2A (Grant of Houseblock Lease)**) provide the Custodial Service, provided (other than in respect of access over the Original Site) that such rights may be varied by the Authority and such variation will be deemed to be an Authority Change;

- (c) the rights set out in (and in accordance with) paragraph 1 of Schedule 1 to the Houseblock Lease;
- (d) the right (with associated rights of entry and access to do the same) (where necessary) to inspect, repair, maintain or renew the Services Media (within the Expansion Site, Original Site, Adjoining Property and the Foul Drain Connection Land) (including the Foul Water Sewer) and the right (at the cost of the Contractor) to connect into the same Services Media and to construct such new Services Media and re-direct the Foul Water Sewer within the Original Site and the Expansion Site along the route shown turquoise blue on the Houseblock Lease Site Plan A as may from time to time be necessary to serve the Expansion Site, without restriction in respect of the Original Site and otherwise on the following terms provided that the prior written consent of the Authority is obtained (such consent not to be unreasonably withheld or delayed) and the person or persons exercising such right on land outside the Expansion Site owned by the Authority making good in a reasonable manner any damage caused to the land in question as soon as reasonably practicable to the reasonable satisfaction of the Authority;
- (e) the right for the Contractor and/or Contractor Related Party to enter and remain upon so much as is necessary of the land owned by the Authority which is adjacent to or near to the Expansion Site without restriction in respect of

the Original Site and otherwise on the following terms (excluding any areas within the outside walls of the adjacent Belmarsh Prison) on not less than 48 hours' prior notice to and upon receipt of written approval from the Authority (except in case of emergency when written approval is not required and as much notice as is practicable in the circumstances shall be given) with or without workmen, plant and equipment to (and further a right to) inspect, repair, maintain, renew and make further connections into the Western Ditch Drain (such further connection only to be made in through on or under the Eastern Ditch Area and/or the Additional Eastern Ditch Connection Route) where the Contractor and/or Contractor Related Party is not reasonably able to carry out those works from within the Expansion Site, subject to (other than in respect of those matters on the Original Site):

- (i) the Contractor and/or Contractor Related Party complying with such rules and regulations as may be stipulated from time to time by the Authority; and
 - (ii) the Contractor and/or Contractor Related Party complying with the terms of any agreed protocol relating to such access, which the Authority and the Contractor shall each use all reasonable endeavours to agree as soon as reasonably practicable;
- (f) the right to enter and remain upon so much as is necessary of the Foul Drain Connection Land on not less than forty eight (48) hours' prior notice (except in case of emergency when as much notice as is practicable in the circumstances shall be given) with or without workmen, plant and equipment to inspect, repair, maintain, renew and install Conduits and to connect to public utilities, and further to

construct, repair, maintain, renew and install a road with associated amenities and to exercise a right of access over the Foul Drain Connection Land for the purposes of access to and egress from the Original Site and/or the Expansion Site as are necessary for the Contractor and any Contractor Related Party to perform their obligations and exercise their rights under this Contract

provided that (in each case):

- (i) any rights are granted insofar as the Authority is capable of granting them and such rights are subject to any restrictions or other provisions referred to in the Expansion Site Title Matters or otherwise disclosed in writing to the Contractor before the date of this Contract;
- (ii) such rights shall not in any circumstance entitle the Contractor or any Contractor Related Party to exclusive occupancy or exclusive possession of any part of the Expansion Site (save as may be required by the Contractor and approved by the Authority) (such approval not to be unreasonably withheld or delayed) in order to comply with relevant health and safety legislation on a temporary basis); and
- (iii) such rights are granted subject to the Houseblock Reserved Rights applicable to the Expansion Site which are reserved out of the Expansion Site Ancillary Rights in favour of the Authority;

"Expansion Site Title Matters"

means the matters relating to the title to the Expansion Site referred to in Part 2 of **Schedule 20 (Title**

Matters);

"Expiry Date"	means 31 December 2036;
"Fair Value"	means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale;
"Fees Regulations"	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;
"Final JEAPP Provision Date"	means the date specified in the JEAPP Provision Timetable for provision of all three hundred (300) Available Prisoner Places that are to be paid for as JEAPPs;
"Final Warning Notice"	has the meaning given to in clause 52.1.2 (Persistent Breach) ;
"Financial Close"	has the meaning given to it in the Master Definitions Schedule (being one of the Senior Financing Agreements);
"Financial Guarantee Fee Letters"	has the meaning given in the Senior Financing Agreements;
"Financial Guarantors"	has the meaning given in the Senior Financing Agreements;
"Financing Agreements"	means all or any of the agreements or instruments entered into or to be entered into by the Contractor or [REDACTED] or the Issuer or any of its/their Associated Companies relating to the financing of the Project (including any agreements or instruments to be entered into by the Contractor or [REDACTED] or the Issuer or any of its/their Associated Companies relating to the re-scheduling of their indebtedness or any Refinancing);
"Financing Default"	[REDACTED] [REDACTED]
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the

Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act;

"FOIA Code" has the meaning given to it in **clause 71.12.8 (Freedom of Information)**;

"Force Majeure Event" means the occurrence after the date of this Contract of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the actions of or breach by the Contractor or its sub-contractors; or
- (c) pressure waves caused by devices travelling at supersonic speeds,

which directly causes either Party (the "Affected Party") to be unable to comply with all or a material part of its obligations under this Contract;

"Force Majeure Termination Sum" has the meaning given to it in **clause 53.2.1 (Compensation on Termination for Force Majeure)**;

"Foul Drain Connection Land" means the land comprised in registered title TGL64446 as at the date of this Contract and shown coloured orange on Site Plan B;

"Foul Water Sewer" means the foul water sewer shown coloured turquoise blue on the Site Plan A and as such route is to be varied pursuant to the carrying out of the Houseblock Works to the route shown coloured turquoise blue on the Houseblock Lease Site Plan A;

"Future Service Provider" means any service provider who shall provide any service equivalent to the Custodial Service immediately after expiry or earlier termination of this Contract;

"General Change in Law" means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

"Good Industry Practice"

means the exercise of that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced operator (engaged in the same type of undertaking as that of the Contractor) or construction contractor or provider of custodial services or any sub-contractor under the same or similar circumstances;

"Government Sustainable Development and Waste Management Policies"

means:

- (a) SOGE; and
- (b) the Authority's sustainability policies as set out in Guidance;

"Governor"

means a Crown servant appointed by the Authority under Section 88;

"Gross Negligence"

means a wilful or wanton negligent act or omission by direct employees of the Contractor;

[REDACTED]

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

"Guidance"

means any applicable guidance or directions with which the Contractor is bound to comply including any mandatory instructions issued by the Authority, from time to time, which are applicable to operators of contracted out prisons;

"Health and Safety File"

has the meaning given to it in the CDM Regulations;

"Health and Safety Regime"

means the Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc Act 1974 (and associated regulations), the Regulatory Reform (Fire Safety) Order 2005, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time;

"Healthcare Provider"

means Harmoni For Health located at 1-3 Trinity Court, Brunel Road, Totton, Southampton, Hampshire, SO40 3WX or such other person appointed by the PCT from

	time to time to provide the Healthcare Services at the Prison;
"Healthcare Services"	means the healthcare services commissioned by the Primary Care Trust and provided by the Healthcare Provider;
"Healthcare Unit"	means the area on the Site Plans identified and labelled as "Health and Education";
"Highest Compliant Tender Price"	means the price offered by the Compliant Tenderer (if any) with the highest tender price and, if no Compliant Tenders are received, zero;
"High Value Change Notice"	has the meaning given to it in Part 1 of Schedule 9 (Change Protocol) ;
"HMRC"	means HM Revenue & Customs;
[REDACTED]	means [REDACTED] [REDACTED] [REDACTED]
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"Houseblock"	means the new (332) Prisoner Place houseblock building at the Prison and its associated infrastructure and facilities;
"Houseblock Available Prisoner Place"	means a Prisoner Place that meets the Houseblock Availability Criteria;
"Houseblock Availability Criteria"	means the requirements set out in paragraph 3 of Part 2 of Schedule 5 (Payment Mechanism) ;
"Houseblock Cell Certification Phase"	means that part of the Houseblock Works identified in paragraph 2.5.1.9 of Part 2A of Schedule 2 (Houseblock Custodial Service Delivery Proposal);
"Houseblock Collateral Warranties"	means: (a) a collateral warranty executed as a deed between the Authority, the Contractor, the Operating Sub-contractor and the Houseblock Construction Sub-

Contractor; and

(b) the duty of care deed executed by the Operating Sub-Contractor on 30 June 2010, as restated and amended by a letter dated on or around the date of the Amending Agreement and executed as a deed by the Operating Sub-Contractor;

"Houseblock Construction Programme"

means the programme (together with the phased handover of the Houseblock Works as set out in **paragraph 5.4 of Part 1A of Schedule 2 (Houseblock Construction Proposals)**) for the carrying out of the Houseblock Works as contained in Part 3B of **Schedule 2 (Contractor's Proposals)** as updated from time to time in accordance with **Schedule 10 (Review Procedure)**;

"Houseblock Construction Proposals"

means the proposals for the provision of the Houseblock to satisfy the Houseblock Design and Construction Requirements as set out in Part 1A of **Schedule 2 (Contractor's Proposals)** and as amended pursuant to the provisions of this Contract;

"Houseblock Construction Sub-contract"

means the agreement dated on or about the date of the Amending Agreement between the Operating Sub-Contractor and the Houseblock Construction Sub-contractor to design, execute and complete the Houseblock Works;

"Houseblock Construction Sub-contract Default Notice"

has the meaning given to it in **clause 52A.1 (Termination of Houseblock Construction Sub-Contract)**;

"Houseblock Construction Sub-contractor"

means Skanska J.V Projects Limited or such other sub-contractor as the Operating Sub-Contractor may appoint to provide the Houseblock Works;

"Houseblock Construction Sub-contractor Event of Default"

means a default of the Houseblock Construction Sub-contractor under the terms of the Houseblock Construction Sub-contract;

"Houseblock Construction Sub-Contractor's Site Manager"

means the manager appointed by the Houseblock Construction Sub-Contractor for the purposes of supervision of all day to day activities on the Houseblock Works Site;

"Houseblock Construction Sub-Contractor's Site Rules"

means the Houseblock Construction Sub-Contractor's rules, applicable on the Houseblock Works Site to the Authority, the Contractor, the Operating Contractor, the Houseblock Construction Sub-Contractor and their respective sub-contractors and suppliers of any tier during the Houseblock Works;

"Houseblock Documents"

means the agreements entered into by the Contractor for the performance of the obligations under this Contract in relation to the Houseblock in the agreed form which are listed in Parts 3 and 4 of **Schedule 12 (Project Documents)**;

"Houseblock Events of Default"

(a) the Contractor does not perform the Houseblock Works for a continuous period of twenty one (21) consecutive Business Days or during sixty five (65) Business Days (whether consecutive or not) in any Year at any time after the date of the Amending Agreement;

(b) failure to obtain the Independent Engineer's Houseblock Declaration in respect of all Houseblock IEPD Phases on or before the Houseblock Longstop Date;

(c) either a failure to pay any liquidated damages in accordance with **clause 22A (Delay and Liquidated Damages – Houseblock)** on or before the date falling twenty (20) Business Days after the due date (except where such failure results from a technical failure in the banking system) or the liquidated damages cap as set out in **clause 22A.2.2 (Delay and Liquidated Damages – Houseblock)** being exceeded; or

(d) the Contractor committing a material breach of its obligations under this Contract in relation to the carrying out of the Houseblock Works (other than as a consequence of a breach by the Authority of its obligations under this Contract) which results in the criminal investigation, prosecution and conviction of the Contractor or any Contractor Related Party or the Authority under the Health and Safety Regime (for the purposes of this paragraph (d) an "H&S Conviction") provided that an H&S Conviction of a Contractor Related Party or the Authority shall not constitute a

Houseblock Event of Default if, within one hundred (100) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in relation to the carrying out of the Houseblock Works of each relevant Contractor Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Contractor Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Contractor in accordance with **clause 82 (Sub-Contracting and Assignment)** provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of a Contractor Related Party under this paragraph (d)(p), the Authority shall:

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
- (ii) give all due consideration, where appropriate, to action other than termination of the Houseblock Works.;

"Houseblock Force Majeure Termination Sum"

has the meaning given to it in **clause 53A.2.1 (Compensation on Termination for Force Majeure – Houseblock)**;

"Houseblock IEPD Phase"

means that part of the Houseblock Works identified in **paragraph 5.4 of Part 1A of Schedule 2 (Houseblock Construction Proposals)**;

"Houseblock IEPD Phase Notice of Non Completion"

has the meaning given in **clause 16A.4.2 (Issue of Independent Engineer's Houseblock Declaration or Houseblock Notice of Non Completion)**;

"Houseblock Initial Availability Requirements"

means that in respect of each Prisoner Place at the Houseblock:

- (a) the Independent Engineer's Houseblock

Declaration has been issued in accordance with **clause 16A.4 (Issue of Independent Engineer's Houseblock Declaration or Houseblock Notice of Non Completion);**

- (b) the Authority's Representative has issued a Cell Certificate in accordance with **clause 18.2 (Issue of Cell Certificate);**
- (c) all the conditions required to be satisfied before the holding of prisoners (for any period, whether overnight or otherwise) at the Houseblock in accordance with the Houseblock Planning Approval which are not Authority Houseblock Planning Conditions are complied with in full; and
- (d) the Contractor has provided a draft copy of Part 1 of the Building Manual (excluding the elements of Part 1 of the Building Manual which are duplicated in Part 2 of the Building Manual) updated to reflect the relevant Houseblock IEPD Phase to the Authority, the contents of such draft to be to the reasonable satisfaction of the Independent Engineer and the Contractor has confirmed that it will be able to provide a final and complete version of the Building Manual updated to reflect the Houseblock within thirty (30) Business Days of the Actual Houseblock Full Operation Date, the contents of any such version of the Building Manual updated to reflect the Houseblock to be to the reasonable satisfaction of the Independent Engineer;

"Houseblock LD Disputed Amount"

has the meaning given to it in **clause 22A.3.2.2 (Houseblock Liquidated Damages Report);**

"Houseblock LD Report"

has the meaning given to it in **clause 22A.3.1 (Houseblock Liquidated Damages Report);**

"Houseblock Lease"

means the lease relating to the Expansion Site to be granted by the Authority to the Contractor in the agreed form attached at **Schedule 50 (Houseblock**

Lease);

"Houseblock Lease Declaration"	has the meaning given to it in clause 7.4A.1 (Exclusion of Security) ;
"Houseblock Lease Notice"	has the meaning given to it in clause 7.4A.1 (Exclusion of Security) ;
"Houseblock Lease Site Plan A"	means the plan of the Expansion Site set out in the Houseblock Lease and labelled Houseblock Lease Site Plan A;
"Houseblock Lease Site Plan B"	means the plan set out in the Houseblock Lease and labelled Houseblock Lease Site Plan B;
"Houseblock Longstop Date"	means the date falling nine (9) Months after the Contractual Houseblock Full Operation Date, or such later date as may be allowed in accordance with the provisions of this Contract;
"Houseblock Phase-in Period Timetable"	means the timetable set out in Part 15 of Schedule 5 (Payment Mechanism) ;
"Houseblock Planning Approval"	means such planning clearance or permission as is necessary for the Contractor to discharge lawfully its obligations under this Contract in relation to the Houseblock Works;
"Houseblock Rectification Notice"	has the meaning given to it in clause 52B.1 (Houseblock Works Termination) ;
"Houseblock Reserved Rights"	means: (a) the right to use any Service Media (including the Foul Water Sewer) within or passing through the Expansion Site for the free and uninterrupted passage of water, soil, gas, electricity, telephone and other services to and from any Adjoining Property owned by the Authority PROVIDED that (without limitation) such right in respect of the Foul Water Sewer may be suspended during the relocation of the Foul Water Sewer as part of the Houseblock Works;

- (b) the rights to enter and remain upon so much as is necessary of the Expansion Site on not less than 48 hours prior notice (except in the case of emergency when as much notice as is practicable in the circumstances shall be given) with or without workmen, plant and equipment to carry out or to permit the repair, maintenance, replacement, renewal, cleaning connection to and capping of the Foul Water Sewer the person or persons exercising such rights making good in a reasonable manner any damage caused to the Site as soon as reasonably practicable and to the reasonable satisfaction of the Contractor; and
- (c) an uninterrupted right of way in favour of the Authority and any other person having express or implied authority from the Authority (and which shall include both the Police and the Court Service) with vehicles (including heavy vehicles) over and along the road and/or access way between the points marked "C" and "D" on the Houseblock Lease Site Plan A (such road and/or access way to follow such reasonably convenient route as from time to time designated by the Contractor (acting reasonably) and to be sufficiently commodious to accommodate such rights of access with vehicles including heavy vehicles, as reasonably required by or on behalf of the Authority) for all purposes in connection with access to and from the Adjoining Property and the Contractor shall permit the exercise of these rights of way and shall not obstruct or prevent these rights being exercised, provided that the Authority shall take responsibility for closing the gate situated in the position marked "D" on the Houseblock Lease Site Plan A after each occasion that it uses this right of way;

"Houseblock

means minor defects, deficiencies or omissions which do not prevent the relevant Independent Engineer's

"Snagging Items"	Houseblock Declaration or the relevant Post Completion Houseblock Works Acceptance Certificate (as the case may be) from being issued;
"Houseblock Snagging List"	means the list to be prepared by the Independent Engineer in accordance with clause 16A.6.1 (Houseblock Snagging Items) containing Houseblock Snagging Items;
"Houseblock Snagging Programme"	has the meaning given to it in clause 16A.6.4 (Houseblock Snagging Items) ;
"Houseblock Termination Date"	means the date specified in a Houseblock Works Termination Notice;
"Houseblock Works"	means all of the works (including design and works necessary for obtaining access to the Houseblock Works Site) to be undertaken in accordance with this Contract to satisfy the Houseblock Design and Construction Requirements including the works involved in the Post Completion Houseblock Works;
"Houseblock Works Fee"	<div style="background-color: black; height: 1.2em; width: 100%;"></div> <div style="background-color: black; height: 1.2em; width: 15%;"></div>
"Houseblock Works Site"	means the area edged green on Site Plan C together with the Buildings and the Services Media for all utilities and services serving the Buildings;
"Houseblock Works Termination Notice"	has the meaning given to it in clause 52B.6 (Houseblock Works Termination) ;
"ICSDP Approval Certificate"	has the meaning given to it in clause 17.2.1.1 (Approval of the Initial Custodial Service Delivery Plan) ;
"ICSDP Report"	has the meaning given to it in clause 17.3.1.1 (Approval of the Initial Custodial Service Delivery Plan) ;
"ICSDP Notice of Non-Compliance"	has the meaning given to it in clause 17.2.1.2 (Approval of the Initial Custodial Service Delivery Plan) ;
"Indemnified"	has the meaning given to it in clause 76.4

Party"	(Notification of Claims);
"Indemnifying Party"	has the meaning given to it in clause 76.4 (Notification of Claims);
"Independent Engineer"	means the person appointed jointly by the Authority and the Contractor to act as an independent engineer to the Project in accordance with the Independent Engineer's Deed of Appointment or the Independent Engineer's Houseblock Deed of Appointment (as the case may be);
"Independent Engineer's Declaration"	means a declaration issued by the Independent Engineer in accordance with clause 16 (Independent Engineer's Declaration) confirming that the Independent Engineer's Declaration Requirements have been met;
"Independent Engineer's Houseblock Declaration"	means a declaration issued by the Independent Engineer in accordance with clause 16A (Independent Engineer's Declaration) confirming that the Independent Engineer's Houseblock Declaration Requirements have been met;
"Independent Engineer's Declaration Requirements"	means the satisfaction of the relevant tests set out in Part 1 of Schedule 3 (Initial Availability Requirements);
"Independent Engineer's Houseblock Declaration Requirements"	means the satisfaction of the relevant tests set out in Part 1A of Schedule 3 (Initial Availability Requirements);
"Independent Engineer's Deed of Appointment"	means the deed of appointment of the Independent Engineer applicable to the Works in the agreed form;
"Independent Engineer's Houseblock Deed of Appointment"	means the deed of appointment of the Independent Engineer between the Contractor, the Authority and the Independent Engineer and dated 11 September 2013;
"Independent Monitoring Board"	means a group of independent members of the public appointed by any Relevant Authority to monitor the day to day life in the Prison and ensure that proper standards of care and decency are maintained;

"Indexation Base Month"	means June 2010;
"Indexation Review Date"	means 1 April immediately following the Indexation Base Month, and every 1 April thereafter;
"Indexed"	has the meaning given to it in clause 1.5 (Indexation) ;
"Indirect Losses"	means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature, but excluding any of the same that relate to loss of revenue under this Contract or loss of revenue or other income committed from third parties;
"Information"	has the meaning given to it under section 84 of the FOIA;
"Initial Availability Requirements"	<p>means that in respect of each Prisoner Place:</p> <ul style="list-style-type: none"> (a) the Independent Engineer's Declaration has been issued in accordance with clause 16.4 (Issue of Independent Engineer's Declaration or Notice of Non Completion); (b) the ICSDP Approval Certificate has been issued in accordance with clause 17.2 (Approval of Initial Custodial Service Delivery Plan); (c) an Operating Procedure Approval Certificate has been issued in respect of each Operating Procedure in accordance with clause 17.5 (Approval of Operating Procedures); (d) the Authority's Representative has issued a Cell Certificate in accordance with clause 18.2 (Issue of Cell Certificate); (e) all of the plans listed in Section 7 of the Custodial Service Specification have been delivered to the Authority; (f) the Authority's Representative has issued an Operational Staffing Certificate in accordance with clause 17.7 (Operational Staff

Information);

- (g) all the conditions required to be satisfied before the holding of Prisoners (for any period, whether overnight or otherwise) at the Prison in accordance with the Planning Approval which are not Authority Planning Conditions are complied with in full; and
- (h) the Contractor has provided a draft copy of Part 1 of the Building Manual (excluding the elements of Part 1 of the Building Manual which are duplicated in Part 2 of the Building Manual) to the Authority, the contents of such draft to be to the reasonable satisfaction of the Independent Engineer and the Contractor has confirmed that it will be able to provide a final and complete version of the Building Manual within thirty (30) Business Days of the Actual Opening Date the contents of any such version of the Building Manual to be to the reasonable satisfaction of the Independent Engineer;

"Initial Custodial Service Delivery Plan" or "ICSDP" has the meaning given to it in **clause 17.1.1 (Initial Custodial Service Delivery Plan);**

"Insufficient Operational Staffing Notice" has the meaning given to it in **clause 17.7.2.2 (Operational Staff Information);**

"Insurance Term" means any terms and/or conditions required to be included in a policy of insurance by **clause 78 (Insurance)** and/or **Schedule 7 (Required Insurances)** but excluding any risk;

"Insurance Undertaking" has the meaning given to it in the rules from time to time of the Financial Services Authority;

"Intellectual Property Rights" means any and all patents, trade marks, service marks, copyright, database rights, moral rights, rights in a design, know-how, confidential information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought

into existence, acquired, used or intended to be used by the Contractor or any Contractor Related Party for the purposes of carrying out the Works and/or the Houseblock Works and/or providing the Custodial Service and/or otherwise for the purposes of this Contract;

"Interim Project Report" means a report in the form set out in **Schedule 18 (Interim Project Report)**;

"IPT Contractor" means the contractor appointed by the Authority to transfer prisoners between prisons;

"Irrecoverable VAT" has the meaning given to it in **clause 68.8 (Payment of Irrecoverable VAT)**;

"Issuer" means [REDACTED]
[REDACTED]

"JEAPP Provision Timetable" means the timetable for the provision of the Available Prisoner Places set out in Part 14 of **Schedule 5 (Payment Mechanism)**;

"Joint Insurance Account" means the joint bank account (in accordance with **clause 78.14.2 (Reinstatement)**) in the names of both the Authority and the Contractor, having account [REDACTED]
[REDACTED]

"Junior Debt" means all amounts outstanding at the Termination Date under the Subordinated Financing Agreements;

"Justice Extra Available Prisoner Place" or "JEAPP" means those Prisoner Places that are Available Prisoner Places that are in excess of the first six hundred (600) Available Prisoner Places on any Day, which are not located in the Houseblock;

"Latest Custodial Service Element" means the element within the Base Case as the costs of providing the Tested Custodial Service (as such element may have been adjusted as a result of being Indexed or as a result of previous adjustments made pursuant to **clauses 35 (Market Testing and Value Testing)** and/or **67 (Change to Custodial Service or Works)**;

"LD Disputed Amount"	has the meaning given to it in clause 22.3.2.2 (Liquidated Damages Report) ;
"LD Report"	has the meaning given to it in clause 22.3.1 (Liquidated Damages Report) ;
"Lease"	means the lease relating to the Original Site to be granted by the Authority to the Contractor in the agreed form;
"Lease Declaration"	has the meaning given to it in clause 7.4.2 (Exclusion of Security) ;
"Lease Notice"	has the meaning given to it in clause 7.4.1 (Exclusion of Security) ;
"Legal Proceedings"	has the meaning given to it in clause 5.2.1.1 (Contractor Undertakings) ;
"Legislation"	<p>means any one or more of the following:</p> <ul style="list-style-type: none"> (a) any Act of Parliament, including the Offender Management Act 2007; (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978; (c) any exercise of the Royal Prerogative; and (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972, <p>in each case in the United Kingdom;</p>
"Liquid Market"	means that there are sufficient willing parties (being at least two (2) parties, each of whom is capable of being a Suitable Substitute Contractor) in the market for PFI contracts or similar contracts for the provision of services (in each case the same as or similar to this Contract) for the price that is likely to be achieved through a tender to be a reliable indicator of Fair Value, provided always that any vehicle controlled and established by the Senior Creditors specifically for the purposes of this Project and to which this Contract may be novated shall be discounted in assessing whether

there are sufficient willing parties in the market for such purposes;

"Lock In Period" means the period commencing on the date of this Contract and expiring on the date that is twelve (12) Months after the Actual Full Operation Date;

"Longstop Date" means the date falling nine (9) Months after the Contractual Opening Date, or such later date as may be allowed in accordance with the provisions of this Contract;

"Losses" means Direct Losses and Indirect Losses together;

"Malicious Software" means any software program or code intended to destroy, interfere with, corrupt or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

"Make-Whole Payment" means:

- (a) in relation to termination of the Contract under **clause 51 (Termination on Authority Default)**, the Make-Whole Payment to be made pursuant to and in accordance with Condition 6 of the Terms and Conditions of the Bonds;
- (b) in relation to termination of the Contract under **clause 55 (Voluntary Termination by the Authority)** or **clause 56 (Authority Break Points)**, the modified Make-Whole Payment to be made pursuant to and in accordance with Condition 6 of the Terms and Conditions of the Bonds; and
- (c) in relation to termination of the Contract in any other circumstances, zero;

"Market Costs" means the average charge made for delivering services substantially similar to the Tested Custodial Service by reputable organisations possessing an appropriate degree of skill, resources, reputation and financial

standing relative to the provision of such services;

"Market Testing" means market testing in accordance with **clause 35.1 (Market Testing of Tested Custodial Service)**;

"Market Testing Proposal" means the document prepared by the Contractor and delivered to the Authority in accordance with **clause 35.2.1.2 (Market Testing of Tested Custodial Service)**;

"Market Value Availability Deduction Amount" means for any Month or part of a Month, an amount equal to the Unavailability Deductions in the Month immediately preceding the Termination Date, less an amount equal to any Unavailability Deductions that were made as a result of any Prisoner Place not being either an Available Prisoner Place or a Houseblock Available Prisoner Place in either case pursuant to **Schedule 5 (Payment Mechanism)** at the Termination Date but which Prisoner Place has subsequently become an Available Prisoner Place or a Houseblock Available Prisoner Place (as applicable), whether as a result of the Authority incurring Rectification Costs or otherwise;

"Maximum Contract Price" means, in respect of a Month, the Contract Price payable during that Month assuming that the Contractor had provided all of the Prisoner Places required in that Month and such Prisoner Places were Available Prisoner Places or Houseblock Available Prisoner Places (as applicable) during that Month, before deductions but allowing for Indexation under **clause 1.5 (Indexation)**;

"Medium Value Change" has the meaning given to it in Part 1 of **Schedule 9 (Change Protocol)**;

"Minimum Requirements" means, in relation to a Prisoner Place, the requirements set out in Part 3 of **Schedule 1 (Authority's Requirements)**;

"Month" means a calendar month;

"Multi Agency Public Protection Arrangements" or "MAPPA" means those arrangements as established under the Criminal Justice Act 2000 and as subsequently amended by the Criminal Justice Act 2003, which require the police, prison and probation services to

establish, review and monitor arrangements for assessing and managing the risks posed by serious and violent offenders;

"Mutual Aid"

means a national plan for providing support arrangements between all prisons in England and Wales, including in the event of a serious incident requiring a reinforcement of staff trained to use control and restraint techniques;

"National Commissioning Framework"

means the document published by NOMS titled 'The Commissioning Plans 2008 - 2009: The National Commissioning and Partnerships Framework';

"Necessary Consents"

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

"Net Present Value"

means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Threshold Equity IRR;

"New Contract"

means an agreement on the same terms and conditions as this Contract at the Termination Date, but with the following amendments:

- (a) if this Contract is terminated prior to the Contractual Opening Date, any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place, the Contractual Full Operation Date or (following the Contractual Full Operation Date) 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 or any date specified in the JEAPP Provision Timetable for the provision of any Available Prisoner Place (as the case may be), then the

Contractual Opening Date, any date specified in the Phase-In Timetable for the provision of any Available Prisoner Place, the Contractual Full Operation Date or (following the Contractual Full Operation Date) 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 or any date specified in the JEAPP Provision Timetable for the provision of any Available Prisoner Place shall be extended by a period to allow a New Contractor to:

- (i) achieve the Actual Opening Date on or before the Contractual Opening Date;
 - (ii) provide any Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the Phase-In Timetable;
 - (iii) achieve the Actual Full Operation Date on or before the Contractual Full Operation Date or following the Contractual Full Operation Date, before the Longstop Date;
 - (iv) complete the Post Completion Works on or before the Contractual Post Completion Works Acceptance Date or following the Contractual Post Completion Works Acceptance Date, before the Post Completion Works Longstop Date; and/or
 - (v) provide any Available Prisoner Place on or before the date for provision of such Available Prisoner Place specified in the JEAPP Provision Timetable;
- (b) if this Contract is terminated prior to the Contractual Houseblock Opening Date, any

date specified in the Houseblock Phase-In Period Timetable for the provision of any Houseblock Available Prisoner Place, the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date) the Houseblock Longstop Date, the Contractual Houseblock Post Completion Works Acceptance Date or (following the Contractual Post Completion Houseblock Works Acceptance Date) the Post Completion Houseblock Works Longstop Date or any date specified in the Houseblock Provision Timetable for the provision of any Houseblock Available Prisoner Place (as the case may be), then the Contractual Houseblock Opening Date, any date specified in the Houseblock Phase-In Period Timetable for the provision of any Houseblock Available Prisoner Place, the Contractual Houseblock Full Operation Date or (following the Contractual Houseblock Full Operation Date) 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 or any date specified in the Houseblock Phase-In Period Timetable for the provision of any Houseblock Available Prisoner Place shall be extended by a period to allow a New Contractor to:

- (i) achieve the Actual Houseblock Opening Date on or before the Contractual Houseblock Opening Date;
- (ii) 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;
- (iii) achieve the Actual Houseblock Full

- Operation Date on or before the Contractual Houseblock Full Operation Date or following the Contractual Houseblock Full Operation Date, before the Houseblock Longstop Date;
- (iv) 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, before the Post Completion Houseblock Works Longstop Date; and/or
 - (v) 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;
- (c) any accrued warning notices issued pursuant to **clause 52.1 (Persistent Breach)**, accrued Performance Points and/or Deductions shall, for the purposes of termination only and without prejudice to the rights of the Authority to make financial deductions, be cancelled and any period for which there has been a failure to provide any one (1) or more Available Prisoner Place or (from the Actual Houseblock Full Operation Date) Houseblock Available Prisoner Place shall, for the purposes of termination only, and without prejudice to the rights of the Authority to make financial deductions, be disregarded;
 - (d) the term of such agreement shall be equal to the term from the Termination Date to the Expiry Date; and
 - (e) any other amendments which do not adversely

affect the Contractor;

"New Contractor"	means the person who has entered or who will enter into the New Contract with the Authority;
"Next Deductible Level"	has the meaning given to it in clause 78.16.3.2 (Increase in Insured Amounts);
"Next Insurable Amount"	has the meaning given to it in clause 78.16.3.1 (Increase in Insured Amounts);
"NOMS"	means the National Offender Management Service operating as an executive agency of the Authority;
"Non-Compliance Notice"	means a notice from the Authority to the Contractor stating that a Prison Cell does not comply with the Cell Certificate Requirements and specifying any outstanding matters that must be attended to before a Cell Certificate can be issued in respect of the relevant Prison Cell;
"Notice Date"	means the later of the Termination Date and (if applicable) the date that the Adjusted Estimated Fair Value of the Contract is agreed between the Parties pursuant to clause 52.6 (No Retendering Procedure);
"Notice of Adjudication"	has the meaning given to it in clause 80.3 (Adjudication);
"Notice of Non-Completion"	has the meaning given to it in clause 16.4.2 (Issue of Independent Engineer's Declaration or Notice of Non-Compliance);
"Notifiable Financings"	means any Refinancing described in paragraph (a) or (c) of the definition of Refinancing and any other arrangement which has or would have a similar effect or which has or would have the effect of limiting the Contractor's or any Associated Company's ability to carry out any such arrangement;
"Offender"	means any person who has been found guilty by a court and who has received a community sentence or a custodial sentence from a court;
"Operating"	means the procedures listed in Section 6 of the

Procedure"	Custodial Service Specification;
"Operating Manual"	has the meaning given to it in clause 32.1 (Maintenance of Manual) ;
"Operating Sub-Contract"	means the agreement dated 30 June 2010 between the Contractor and the Operating Sub-Contractor to provide the Custodial Service and as amended and restated on the date of the Amending Agreement to provide the Houseblock Works and the Custodial Service at the Houseblock and as further amended and restated on or around Financial Close;
"Operating Sub-Contractor"	means [REDACTED] with registered address [REDACTED] [REDACTED]
"Operating Sub-Contract Dispute"	has the meaning given to it in clause 80.16.2 (Similar Disputes) ;
"Operational Staff"	means an individual who is required to work or perform duties at the Prison at any time during the Custodial Service Period save for those carrying out the Houseblock Works and who is an employee of the Contractor, or an employee of any sub-contractor or is self-employed, including the Director and any Prisoner Custody Officer, but excluding the Construction Staff;
"Operational Staff Information"	has the meaning given to it in clause 17.7.1 (Operational Staff Information) ;
"Operational Staffing Certificate"	has the meaning given to it in clause 17.7.2.1 (Operational Staff Information)
"Option Period"	has the meaning given to it in clause 78.15.4 (Uninsurable Risks) ;
"Order"	has the meaning given to it by clause 7.4.1 (Exclusion of Security) ;
"Original Senior	means the amount of principal issued and outstanding

"Commitment"	in respect of the Bonds as at Financial Close;
"Original Site"	means the area edged red on Site Plan A together with the Buildings and the Services Media for all utilities and services serving the Buildings;
"Outstanding Principal Amount"	has the meaning given in the Terms and Conditions of the Bonds;
"Original Project Documents"	means the agreements entered into by the Contractor for the performance of the obligations under this Contract in the agreed form which are listed in Parts 1 and 2 of Schedule 12 (Project Documents) ;
"Outstanding Work"	has the meaning given to it in clause 64.4 (Maintenance Work) ;
"Paying Agency Agreement"	has the meaning given in the Senior Financing Agreements;
"Paying Agent"	has the meaning given in the Senior Financing Agreements;
"Performance Point"	means a point accruing on the occurrence of a Custodial Service Failure as set out in the column headed 'Performance Points' in the tables in paragraph 6 of Schedule 6 (Contract Delivery Indicators) ;
"Performance Point Deduction"	means a deduction to the Contract Price and made as a result of the occurrence of a Custodial Service Failure and in accordance with Schedule 5 (Payment Mechanism) ;
"Performance Quarter"	<p>means each of the successive four (4) periods of three (3) Months during the Contract Year ending on 31 March, 30 June, 30 September and 31 December, provided that:</p> <p>(a) in the first Contract Year, if the number of Months is not divisible by three (3), the first Performance Quarter shall start on the Actual Opening Date and shall end on the next to occur of 31 March, 30 June, 30 September or 31 December; and</p> <p>(b) in the last Contract Year, if the number of</p>

Months is not divisible by three (3), the last Performance Quarter shall be the period commencing on the 1 April, 1 July, 1 October or 1 January immediately preceding the last Day of the Custodial Service Period and ending on the last day of Custodial Service Period;

"Permitted Borrowing"

means, without double counting, any:

- (a) advance to the Contractor, the Issuer or [REDACTED] under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of **clause 61.1.1 (No Increase in Liability)**), provided that such advance is not made under any Committed Standby Facility;
- (b) Additional Permitted Borrowing;
- (c) advance to the Contractor, the Issuer or [REDACTED] under any Committed Standby Facility which is made solely for the purpose of funding any cost overruns, increased expenses or loss of revenue which the Contractor incurs, provided that such funds are not used in substitution for other sources of committed funding designated for those purposes; and
- (d) interest under the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of **clause 61.1.1 (No Increase in Liability)** save in the case of Additional Permitted Borrowings); and,
- (e) in respect of the Senior Financing Agreements (disregarding any amendments that have not been approved for the purposes of **clause 61.1.1 (No Increase in Liability)**) other amounts accrued or payable under them,

except where the amount referred to in paragraphs (a) to (e) of this definition (inclusive) is or is being used to fund a payment of Default Interest on any Additional Permitted Borrowing;

"Permitted Level"	has the meaning given to it in Part 1 of Schedule 5 (Payment Mechanism) ;
"Persistent Breach"	means a breach for which a Final Warning Notice has been issued, which has continued for more than fourteen (14) Days or recurred in two (2) or more Months within the six (6) Month period after the date on which such Final Warning Notice is served on the Contractor;
"Personal Data"	means personal data as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of providing the Custodial Service;
"PFI"	means the Government's Private Finance Initiative or any similar or replacement initiative;
"PFI Contractor"	means a person that has contracted with the Government, a local authority or other public or statutory body to provide services under the PFI;
"Phase-In Timetable"	means the timetable set out in Part 13 of Schedule 5 (Payment Mechanism) ;
"Physical Damage Policies"	has the meaning given to it in clause 78.14.1 (Reinstatement) ;
"PI Insurance"	has the meaning given to it in clause 78.11 (Professional Indemnity Insurance) ;
"Planning Approval"	means such planning clearance or permission whether under DCLG Circular 02/2006 or the Town and Country Planning Act 1990 as is necessary for the Contractor to discharge lawfully its obligations under this Contract;
"Police Authority"	has the meaning given to it in clause 78.18.2.1 (Riot (Damages) Act 1886) ;
"Post Completion Houseblock Works"	means those parts of the Houseblock Works to be completed after the Contractual Houseblock Opening Date in accordance with the Houseblock Construction Programme;
"Post Completion Houseblock Works"	means a certificate issued by the Independent Engineer confirming that the Post Completion Houseblock Works

Acceptance Certificate"	Acceptance Requirements have been met;
"Post Completion Houseblock Works Acceptance Date"	means in relation to the Post Completion Houseblock Works, the date on which the Post Completion Houseblock Works Acceptance Certificate is issued;
"Post Completion Houseblock Works Acceptance Requirements"	means the satisfaction of the relevant tests set out in Part 2A of Schedule 3 (Initial Availability Requirements) ;
"Post Completion Houseblock Works Longstop Date"	means the same date as the Houseblock Longstop Date;
"Post Completion Works"	means those parts of the Works to be completed after the Contractual Opening Date in accordance with the Construction Programme;
"Post Completion Works Acceptance Certificate"	means a certificate issued by the Independent Engineer confirming that the Post Completion Works Acceptance Requirements have been met;
"Post Completion Works Acceptance Date"	means in relation to any Post Completion Works, the date on which a Post Completion Works Acceptance Certificate is issued;
"Post Completion Works Acceptance Requirements"	means the satisfaction of the relevant tests set out in Part 2 of Schedule 3 (Initial Availability Requirements) ;
"Post Completion Works Longstop Date"	means the date that is fifteen (15) Months after the Contractual Post Completion Works Acceptance Date;
"Post Termination Service Amount"	means for the purposes of clause 52.5 (Retendering Procedure) , for the whole or any part of a Month for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Contract Price which would have been payable in that Month under this Contract had this Contract not been terminated, less an amount equal to the aggregate of: <p style="text-align: center;">(a) the Market Value Availability Deduction Amount for that Month;</p>

(b) the Rectification Costs incurred by the Authority in that Month; and

(c) (where relevant) the amount by which the Post Termination Service Amount for the previous Month was less than zero;

"Pre-Refinancing Equity IRR" means the nominal post-tax (i.e. post-tax with respect to the Contractor, pre-tax with respect to Shareholders) Equity IRR calculated immediately prior to the Refinancing;

"Prescribed Documentation" has the meaning given to it in **clause 74.10 (Prescribed Documentation)**;

"Prescribed Documentation Security Officer" has the meaning given to it in **clause 74.11.6 (Security and Confidentiality of Prescribed Documentation)**;

"Prescribed Rate"

[REDACTED]

"President" means, for the purposes of **clause 46.3 (Adjustment to Deemed Lease Premium Relief)**, the president for the time being of the Institute of Chartered Accountants in England and Wales;

"Primary Care Trust" or "PCT" means [REDACTED] and any successor organisation;

"Principal Construction Sub-Sub-Contractor" means:

(a)

[REDACTED]

(b)

[REDACTED]

"Prison" means:

(a) before the issue of the Independent Engineer's Houseblock Declaration for the first

Houseblock IEPD Phase, the buildings and other facilities and equipment to be provided, maintained and serviced at the Original Site in accordance with this Contract; and

(b) on and from the issue of an Independent Engineer's Houseblock Declaration for a Houseblock IEPD Phase, also comprises the buildings and other facilities and equipment which are certified as complete pursuant to that Independent Engineer's Houseblock Declaration; and

(c) on and from the Actual Houseblock Full Operation Date, comprises the buildings and other facilities and equipment to be provided, maintained and serviced at the Site;

"Prison and Probation Ombudsman"

means the individual for the time being appointed by any Relevant Authority to investigate complaints from prisoners;

"Prison Cell"

means a secure unit of accommodation for occupation by a Prisoner or Prisoners (including the Care and Separation Unit and the areas for occupation by a Prisoner or Prisoners in the Healthcare Unit of the Prison);

"Prison Population"

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

"Prison Rules"

means the Prison Rules 1999, Statutory Instrument 1999, no. 728;

"Prisoner"

means, as the case may be:

- (a) an Offender; or
- (b) a Remand Prisoner;

who is accommodated at the Prison;

"Prisoner Custody Officer" or "PCO"

means a person, as defined in section 89(1) of the Criminal Justice Act 1991, in respect of whom a certificate is for the time being in force certifying that such person has been approved by the Authority for

the purpose of performing Custodial Duties in accordance with **clause 41 (Certification as Prisoner Custody Officers)**;

"Prisoner Escort Custodial Service Contractor" or "PECS Contractor"

means a contractor appointed under the Criminal Justice Act 1994 to provide prisoner escort arrangements;

"Prisoner Escort Services"

has the same meaning as "prisoner escort arrangements" in section 80 of the Criminal Justice Act 1991 (as amended by section 93 of the Criminal Justice and Public Order Act 1994) and shall be in respect of the Prison;

"Prisoner Place"

means a unit of accommodation for occupation by a Prisoner in a Prison Cell (other than in a Prison Cell which is a Care and Separation Unit or is within the Healthcare Unit) at the Prison, and on and from the Actual Houseblock Opening Date also includes such units in the Houseblock;

"Professional Team"

means the Architect or any replacement architect appointed by the Construction Sub-Contractor in connection with the Works;

"Prohibited Act"

means:

- (a) offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;
- (b) entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been

agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Authority;

- (c) committing any offence:
 - (i) under the Prevention of Corruption Acts 1889-1916;
 - (ii) under Legislation creating offences in respect of fraudulent acts;
 - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or
 - (iv) under the Bribery Act 2010; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Crown;

"Prohibited Equality and Diversity Act"

means any act which results in a finding of any unlawful discrimination (whether in relation to race, gender, age, disability, religious belief, sexual orientation or otherwise) by any Relevant Authority against the Contractor or any of its sub-contractors in relation to the Project;

"Project"

means the carrying out of Works and the Houseblock Works and the provision of the Custodial Service;

"Project Accounts"

means the accounts referred to in and required to be established under the Senior Financing Agreements;

"Project Data"

means:

- (a) all Design Data;
- (b) any other materials, documents or data acquired or brought into existence or used in relation to the Works, the Houseblock Works,

the Custodial Service or this Contract,

in each case that is used by or on behalf of the Contractor and/or its sub-contractors in connection with the carrying out the Works and/or the Houseblock Works and/or the provision of the Custodial Service or the performance of the Contractor's obligations under this Contract;

"Project Documents"

means the Original Project Documents and the Houseblock Documents and the Refinancing Documents;

"Prolific and Priority Offenders"

means those offenders who meet the prolific and priority criteria for special attention by the criminal justice system;

"Qualification Criteria"

means the criteria that the Authority requires tenderers to meet as part of the Tender Process, which (subject to compliance with the procurement regulations) shall be:

- (a) tenderers accept the New Contract terms;
- (b) tenderers have the financial ability to pay the capital sum tendered for the New Contract and the financial ability to deliver the Works and/or the Custodial Service (as appropriate) for the price tendered;
- (c) tenderers may only bid on the basis of a single capital payment to be made on the date of the New Contract;
- (d) tenderers are experienced in providing the Custodial Service or similar services;
- (e) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Services;
- (f) tenderers have submitted a declaration that they and their advisers have not colluded in any way with any other tenderers or such

other tenderer's advisers; and

- (g) any other tender criteria agreed by the Authority and the Contractor;

"Qualified Valuer" means the qualified valuer appointed by the DLPR Expert to provide the DLPR Valuation;

"Qualifying Bank Transaction" means:

■ [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED] ([REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

- [illegible]

[REDACTED]

**"Qualifying
Change in Law"**

means:

- (a) a Discriminatory Change in Law;
- (b) a Specific Change in Law; or
- (c) a General Change in Law which comes into effect during the Custodial Service Period and which involves Capital Expenditure,

which:

- (i) in respect of the Works and Custodial Services not provided at the Houseblock, was not foreseeable at the date of this Contract; or
- (ii) in respect of the Houseblock Works and Custodial Services to be provided at the Houseblock, was not foreseeable at the date of the Amending Agreement;

**"Qualifying
Institution"**

means:

- (a) any holder in due course of any security arising or constituted by the Senior Financing Agreements in respect of which an application has been made for such security to be admitted to listing, either:
 - (i) on the Official List of the Financial Conduct Authority in its capacity as competent authority for the purposes of Part IV of the Financial Services and Markets Act 2000 (and to trading on the London Stock Exchange); or
 - (ii) to the competent authority in any other

EEA state; or

- (b) in a situation where any security arising under or constituted by the Senior Financing Agreements is no longer admitted to listing as described in paragraph (a) above, any person whose ordinary activities involve them in acquiring, holding or disposing of investments (as principal or agent) for the purposes of their business where the acquisition of the rights of a Senior Creditor in the Senior Financing Agreements takes place in accordance with all applicable securities legislation other than where such acquisition, grant or disposition is made in concert with the Shareholders and/or the Subordinated Lenders for the purpose of giving rise to a Refinancing Gain; or
- (c) a trustee for any other entity listed in paragraph (b)(ii) to (viii) or (c)(ii) or (iii) of the definition of Qualifying Bank Transaction other than a trustee whose acquisition, grant or disposition is made in concert with the Shareholders and/or the Subordinated Lenders for the purpose of giving rise to a Refinancing Gain;

"Qualifying Refinancing"

means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing;

"Qualifying Variation"

means either:

- (a) a change in the Works and/or the Houseblock Works and/or the Custodial Service in respect of which:
 - (i) the Authority has issued a Low Value Change Notice and has issued an Authority Confirmation in relation to that Low Value Change Notice;
 - (ii) the Authority has issued a Medium Value Change Notice and the Authority approves the Estimate in relation to that Medium Value

Change Notice and where the Contractor is not obtaining funding for all or part of the required Capital Expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure;

(iii) the Authority has issued a High Value Change Notice and has issued a Stage 2 Confirmation in relation to that High Value Change Notice and where the Contractor is not obtaining funding for all or part of the required Capital Expenditure, the Authority has agreed to meet all or the remaining part (as appropriate) of such Capital Expenditure; or

(iv) the Contractor has issued a Contractor Notice of Change that has been accepted by the Authority; or

(b) a Qualifying Change in Law,

and in respect of which any Documents or amendments to the Project Documents which are required to give effect to such change in the Works and/or the Houseblock Works and/or the Custodial Service or Qualifying Change in Law have become unconditional in all respects;

"Quantum" means the HMPS ICT system, for use by the Authority and its employees;

"Real Pre-tax Project IRR" means 6.13 per cent;

"Recipient" has the meaning given to it in **clause 46.1.2 (Value Added Tax)**;

"Rectification Costs" means, for the purposes of any Termination Date that occurs during the Custodial Service Period, an amount equal to the reasonable and proper costs incurred by the Authority in a particular Month or part of a Month

in ensuring that the Custodial Service is available;

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

"Referral Notice" has the meaning given to it in **clause 80.5 (Referral of the Dispute)**;

"Referring Party" has the meaning given to it in **clause 80.3 (Adjudication)**;

"Refinancing" means:

- (a) any amendment, variation, novation, supplement or replacement of any Financing Agreement (other than any Subordinated Financing Agreement);
- (b) the exercise of any right, or the grant of any waiver or consent, under any Financing Agreement (other than any Subordinated Financing Agreement);
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Financing Agreement (other than any Subordinated Financing Agreement) or the creation or granting of any other form of benefit or interest in either the Financing Agreements (other than the Subordinated Financing Agreement) or the contracts, revenues or assets of the Contractor or the Issuer whether by way of security or otherwise; or
- (d) any other arrangement put in place by the Contractor or the Issuer or another person which has an effect which is similar to any of (a) to (c) above or which has the effect of limiting the Contractor's or the Issuer's or any Associated Company's ability to carry out any of (a) to (c) above;

"Refinancing Collateral Warranty" the duty of care deed executed by the Operating Sub-Contractor on 30 June 2010, as restated and amended by a letter dated 19 December 2013 and executed as a

deed by the Operating Sub-Contractor and the Contractor and the Authority, and as further restated and amended by a letter dated on or around the date of the Second Amending Agreement and executed as a deed by the Operating Sub-Contractor and the Contractor and the Authority;

"Refinancing Documents"

means the agreements entered into by the Contractor for the performance of the obligations under this Contract in relation to the Bond Refinancing in the agreed form which are listed in Parts 5 and 6 of **Schedule 12 (Project Documents)**;

"Refinancing Gain"

means an amount equal to the greater of zero and $((A - B) - C)$, where:

A = the Net Present Value of the Distributions projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Contract following the Refinancing;

B = the Net Present Value of the Distributions projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Base Case as updated (including as to the performance of the Project) so as to be current immediately prior to the Refinancing) to be made to each Relevant Person over the remaining term of this Contract following the Refinancing; and

C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Threshold Equity IRR;

"Refinancing Notice"

has the meaning given to it in **clause 48.9.1 (Authority Right to Request Refinancing)**;

"Regional Commissioning"

has the meaning given to it in the Custodial Service Specification;

Plan"

**"Regional
Reducing Re-
offending
Delivery Plan"**

means the delivery plan for each NOMS region designed to deliver a ten per cent (10%) reduction in re-offending rates through implementation of the proposals set out in the "National Reducing Re-offending Action Plan" published from time to time;

**"Regulated
Collective
Investment
Scheme"**

has the meaning given to it in the rules from time to time of the Financial Conduct Authority;

**"Reinstatement
Plan"**

has the meaning given to it in **clause 78.14.3.1 (Reinstatement)**;

**"Reinstatement
Works"**

has the meaning given to it in **clause 78.14.3.1 (Reinstatement)**;

**"Relevant
Amount"**

has, for the purpose of **clause 76.8 (Limit of Liability)** only, the meaning given to it in **clause 76.8.6 (Limit of Liability)**;

**"Relevant
Assumptions"**

means the assumptions that the sale of the Contractor is on the basis that there is no default by the Authority, that the sale is on a going concern basis, that no restrictions exist on the transfer of share capital, that no Additional Permitted Borrowing has taken place and therefore that the effect of the Additional Permitted Borrowing on the calculation of such amount is disregarded but that otherwise the actual state of affairs of the Contractor and the Project is taken into account;

**"Relevant
Authority"**

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

**"Relevant
Employee"**

has the meaning given to it in **clause 43.2.2 (Termination of Contract)**;

"Relevant Event"

means any:

- (a) Authority Change;

- (b) Qualifying Change in Law;
- (c) Required Action taken by the Authority pursuant to **clause 70.4 (Step-In without Contractor Breach)** that affects the carrying out of the Custodial Services and/or any Works;
- (d) Compensation Event; or
- (e) other matter as a result of which there may be an adjustment to the Contract Price, in accordance with **clause 69 (Financial Adjustments)** other than any event which relates only to the Houseblock Works;

"Relevant Incident" has the meaning given to it in **clause 78.14.3 (Reinstatement)**;

"Relevant Legislation" has the meaning given to it in **clause 46.2.4 (Construction Industry Scheme)**;

"Relevant Payment" has the meaning given to it in **clause 78.15.4 (Uninsurable Risks)**;

"Relevant Proceeds" has the meaning given to it in **clause 78.14.3.2(c) (Reinstatement)**;

"Relevant Person" means a Shareholder and any of its Affiliates;

"Relief Event" means:

- (a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event) and earthquakes;
- (b) riot, acts of concerted indiscipline, public disorder and/or civil commotion, provided that in the case of such events occurring within the site the Contractor:
 - (i) has complied in all material respects with all procedures and protocols relating to safety and security at the

Prison and incidents of riot during a reasonable period before, during and after the incident of riot, act of concerted indiscipline, public disorder and/or civil commotion; and

(ii) has not, by its acts or omissions caused or contributed to such riot, acts of concerted indiscipline, public disorder and/or civil commotion:

(aa) unless such acts or omissions are in accordance with the provision of the Custodial Service in accordance with this Contract; or

(bb) except to the extent that the Contractor is acting on the written instruction of the Authority;

(c) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;

(d) any accidental loss or damage to the Site or any roads servicing it;

(e) any failure or shortage of power, fuel or transport;

(f) any blockade or embargo which does not constitute a Force Majeure Event;

(g) any:

(i) official or unofficial strike;

(ii) lockout;

(iii) go-slow; or

(iv) other dispute,

generally affecting the construction industry, the custodial service industry and/or the facilities management industry or a significant sector of any of them; and

(h) any matter referred to as such in **clauses 8.2.3.1 (Site Matters), 8.2.3.2 (Site Matters), 8.2.4.2 (Site Matters) and 8.7.2 (Expansion Site Matters)**, or in the case of the carrying out of the Houseblock Works any matters referred to as such in **clause 8.2A.1.2 (Site Matters - Houseblock Works Site)**,

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

"Remand Prisoner"

means any person who has been:

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

"Repair Cost"

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

"Request for Information"

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

"Required Action"

has the meaning given to it in **clause 70.3.1 (Action by Authority)**;

"Required Insurance"

means the insurances set out in Parts 1, 1A and 2 of **Schedule 7 (Required Insurances)**;

"Required

has the meaning given to it in **clause 64.3.1 (Results**

Standard"

**"Reserved
Rights"**

of Survey);

means:

- (a) the right to use any Service Media (including the Foul Water Sewer and Surface Water Sewer) within or passing through the Original Site for the free and uninterrupted passage of water, soil, gas, electricity, telephone and other services to and from any Adjoining Property owned by the Authority;
- (b) the rights to enter and remain upon so much as is necessary of the Original Site on not less than 48 hours prior notice (except in the case of emergency when as much notice as is practicable in the circumstances shall be given) with or without workmen, plant and equipment to carry out or to permit the repair, maintenance, replacement, renewal, cleaning connection to and capping of the Foul Water Sewer and Surface Water Sewer the person or persons exercising such rights making good in a reasonable manner any damage caused to the Site as soon as reasonably practicable and to the reasonable satisfaction of the Contractor; and
- (c) either:
 - (i) an uninterrupted right of way in favour of the Authority and any other person having express or implied authority from the Authority (and which shall include both the Police and the Court Service) with vehicles (including heavy vehicles) over and along the road and/or access way between the points marked "A" and "B" on the Site Plan A (such road and/or access way to follow such reasonably convenient route as from time to time designated by the Contractor (acting reasonably) and to be sufficiently commodious to

accommodate such rights of access with vehicles including heavy vehicles, as reasonably required by or on behalf of the Authority) for all purposes in connection with access to and from the Adjoining Property and the Contractor shall permit the exercise of these rights of way and shall not obstruct or prevent these rights being exercised, provided that the Authority shall take responsibility for closing the gate situated in the position marked "A" on the Site Plan A after each occasion that it uses this right of way; or

- (ii) on designation from the Contractor a right of way in accordance with paragraph 5 of Schedule 2 to the Lease;

"Review Procedure"

means the procedure set out in **Schedule 10 (Review Procedure)**;

"Revised Senior Debt Termination Amount"

means, subject to **clause 61 (Changes to Financing Agreements and Project Documents)**:

- (a) all amounts outstanding at the Termination Date, including interest and (other than in respect of Additional Permitted Borrowing) Default Interest accrued as at that date, from the Contractor, [REDACTED] or the Issuer under the Senior Financing Agreements in respect of Permitted Borrowing; and
- (b) all amounts including costs of early termination of interest rate hedging arrangements and other breakage costs (including, for the avoidance of doubt, any Make-Whole Payment), payable by the Contractor, [REDACTED] or the Issuer to the Senior Creditors as a result of a prepayment of amounts outstanding in respect of Permitted Borrowing, or in the case of early termination of interest rate hedging arrangements only, as

a result of termination of this Contract, subject to the Contractor, [REDACTED] or the Issuer and the Senior Creditors mitigating all such costs to the extent reasonably possible (unless the amount, or formula for determining the amount, of such costs is fixed in advance under the terms of the Senior Financing Agreements),

less, to the extent it is a positive amount, the aggregate of (without double counting in relation to the calculation of the Revised Senior Debt Termination Amount or the amounts below):

- (i) all credit balances on any bank accounts (but excluding the Joint Insurance Account and the Distribution Account) held by or on behalf of the Contractor and/or [REDACTED] and/or the Issuer on the Termination Date;
- (ii) any amounts claimable on or after the Termination Date in respect of Contingent Funding Liabilities;
- (iii) all amounts, including costs of early termination of interest rate hedging arrangements and other breakage costs, payable by the Senior Creditors to the Contractor and/or [REDACTED] and/or the Issuer as a result of a prepayment of amounts outstanding in respect of Permitted Borrowing, or in the case of early termination of interest rate hedging arrangements only, as a result of termination of this Contract;
- (iv) all other amounts received by the Senior Creditors on or after the Termination Date and before the date on which any compensation is payable by the Authority to the Contractor as a result of enforcing

any other rights they may have; and

(v) all APB Distributions;

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

"RPIx" means the index published in Table RP05 (RPI all items excluding mortgage interest payments) reference CHMK published by the Office for National Statistics or failing such publication or in the event of a fundamental change to the index, such other index as the Parties may agree, or such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

"Scheme" has the meaning given to it in **clause 46.2.1 (Construction Industry Scheme)**;

"Second Amending Agreement" means the amending agreement entered into between the Authority and the Contractor on or around Financial Close to which this amended and restated agreement forms an appendix;

"Section 88" means section 88 of the Criminal Justice Act 1991 (as amended by section 101 of the Criminal Justice and Public Order Act 1994);

"Security Trustee" means [REDACTED] in its capacity as security trustee to the Senior Creditors under the Senior Financing Agreements, which expression shall include all trustees to the Senior Creditors under the Senior Financing Agreements from time to time;

"Senior Creditors" has the meaning given in the Senior Financing Agreements;

"Senior Debt" means the financing provided by the Senior Creditors under the Senior Financing Agreements;

"Senior Debt Rate"	means the non-default interest rate, as defined in the Senior Financing Agreements, or such lower rate as the Parties may agree;
"Senior Creditors' Financial Model"	means the financial computer model designated as the "Base Case Financial Model" pursuant to the Senior Financing Agreements as amended from time to time in accordance with the Senior Financing Agreements;
"Senior Financing Agreements"	means the documents set out in Part 2 of Schedule 11 (Financing Agreements) as at Financial Close or, without prejudice to clause 61.1 (No Increase in Liability) , as the same may be amended as allowed by clause 4.3 (Changes to Financing Agreements) ;
"Services Media"	means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus;
"Shareholder"	means any person from time to time holding share capital in the Contractor or [REDACTED] or the Issuer or [REDACTED];
"Single Prison Cell"	means a Prison Cell designed for single occupancy with a floor area in excess of six point eight square metres (6.8m ²) or, if a shower area is to be incorporated within the Prison Cell, a floor area in excess of eight point five square metres (8.5m ²), such areas to include a toilet compartment or suitable modesty screening around a toilet;
"Site"	means the Original Site and the Expansion Site;
"Site Conditions"	means the conditions of the Site including climactic, hydrological, hydrogeological, ecological, environmental and geotechnical conditions and, in relation to the carrying out of the Houseblock Works, the archaeological conditions including the requirements of the local planning authority in relation to such archaeological conditions;
"Site Plan A"	means the plan of the Original Site set out in

	Schedule 19 (Site Plans) and labelled Site Plan A;
"Site Plan B"	means the plan of the Original Site set out in Schedule 19 (Site Plans) and labelled Site Plan B;
"Site Plan C"	means the plan of the Houseblock Works Site set out in Schedule 19 (Site Plans) and labelled Site Plan C;
"Site Plans"	means the plans of the Original Site set out in Schedule 19 (Site Plans) and labelled Site Plan A and Site Plan B;



"Snagging Items"	means minor defects, deficiencies or omissions which do not prevent the Independent Engineer's Declaration or the Post Completion Works Acceptance Certificate (as the case may be) from being issued;
"Snagging List"	means the list to be prepared by the Independent Engineer in accordance with clause 16.6.1 (Snagging Items) containing Snagging Items;
"Snagging Programme"	has the meaning given to it in clause 16.6.4 (Snagging Items) ;
"SOGÉ"	means the document entitled "Sustainable Operations on the Government Estate", as published by the Government from time to time, including any replacement document;
"SOGÉ Report"	means the report prepared by the Contractor and delivered to the Authority which shall be substantially in the form set out in Schedule 14 (SOGÉ Report) , containing all sustainability data measured and collected by the Contractor;
"SOGÉ Return"	means the information return required by any Relevant Authority and completed by the Authority;
"Specific Change in Law"	means any Change in Law which specifically refers to the provision of works the same as or similar to the Works or the Houseblock Works or the provision of services the same as or similar to the Custodial Service

or to the holding of shares in companies whose main business is providing works the same as or similar to the Works or the Houseblock Works or providing services the same as or similar to the Custodial Service;

"Stage 2 Confirmation" has the meaning given to it in **Schedule 9 (Change Protocol)**;

"Sub-Contract" means the contract entered into between the Contractor and the Sub-Contractor;

"Sub-Contractor" means each of the Construction Sub-Contractor and the Operating Sub-Contractor or any other person engaged by the Contractor from time to time as may be permitted by this Contract to procure the provision of the Works and/or the Custodial Service (or any of them) or engaged by the Operating Sub-Contractor from time to time as may be permitted by this Contract to procure the provision of the Houseblock Works (or any of them) and references to sub-contractors means sub-contractors (of any tier) of the Contractor;

"Sub-Contractor Breakage Costs" means Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the termination of this Contract, but only to the extent that:

- (a) the Losses are incurred in connection with the Project and in respect of the provision of the Custodial Service or completion of the Works or the Houseblock Works, including:
 - (i) any materials or goods ordered or Sub-Contracts placed that cannot be cancelled without such Losses being incurred;
 - (ii) any expenditure incurred in anticipation of the provision of services or the completion of works or the Houseblock Works in the future;
 - (iii) the cost of demobilisation including the cost of any relocation of

equipment used in connection with the Project; and

- (iv) redundancy payments;
- (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms and in the case of loss of profits are limited to an amount equivalent to the Sub-Contractor's projected loss of profits for the period from the Termination Date to the earlier of the Expiry Date and the date falling 12 Months after the Termination Date; and
- (c) the Contractor and the relevant Sub-Contractor has each used its reasonable endeavours to mitigate the Losses;

"Subordinated Financing Agreements"

means the documents set out in Part 3 of **Schedule 11 (Financing Agreements)** as at Financial Close or as amended with the prior written approval of the Authority;

"Subordinated Lender"

means a person who is providing finance under a Subordinated Financing Agreement;

"Successful Tenderer"

means a sub-contractor appointed by the Contractor pursuant to **clause 35.2.1.8 (Market Testing of Tested Custodial Service)**;

"Suitable Substitute Contractor"

means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under this Contract;
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial

resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under this Contract; and

(c) being a Suitable Third Party;

"Suitable Third Party" means any person who is not an Unsuitable Third Party;

"Supplier" has the meaning given to it in **clause 46.1.2 (Value Added Tax)**;

"Surface Water Sewer" means the surface water sewer shown coloured purple on Site Plan A;

"Suspended Member of Staff" has the meaning given to it in **clause 42.7.1 (Suspension of Staff)**;

"Sustainability Strategy" means the Contractor's strategy for the Prison which is consistent with and complies with the Government Sustainable Development and Waste Management Policies;

"Tax" means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the date of this Contract and whether imposed by a local, governmental or other Relevant Authority in the United Kingdom or elsewhere;

"Tender Costs" means the reasonable and proper costs of the Authority incurred in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value of the Contract;

"Tender Documents" means the documents to be delivered to prospective tenderers pursuant to a Market Testing;

"Tender Process" means the process by which the Authority requests tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a new service provider, in accordance with **clause 52.5 (Retendering Procedure)**;

"Tender Process" means a third party appointed by the Contractor

Monitor"	pursuant to clause 52.5.5 (Retendering Procedure) ;
"Termination Date"	means the date of early termination of this Contract in accordance with Part X (Expiry and Termination) of this Contract;
"Termination Date Discount Rate"	<p>means a discount rate expressed as $(1 + \text{real base case project IRR} + \text{Gilt B} - \text{Gilt A}) * (1 + i) - 1$</p> <p>where:</p> <p>"real base case project IRR" is the Real Pre-tax Project IRR;</p> <p>"i" is the agreed assumed forecast rate of increase in the formula set out in clause 1.5 (Indexation) for the remaining term of this Contract;</p> <p>"Gilt A" is the real yield to maturity as at the date of this Contract on a benchmark government Gilt instrument of the same maturity as the average life of the Senior Debt of 16.5 years; and</p> <p>"Gilt B" is the real yield to maturity on a benchmark government Gilt instrument of the same maturity as the average life of the outstanding Senior Debt shown in the Base Case as at the Termination Date;</p>
"Termination Notice"	means a notice of termination issued in accordance with this Contract;
"Termination Sum"	means any compensation payable by the Authority to the Contractor on an early termination of this Contract under Part X (Expiry and Termination) of this Contract (excluding the Adjusted Highest Compliant Tender Price);
"Terms and Conditions of the Bonds"	means the terms and conditions endorsed on the Bonds;
"Tested Custodial Service"	means all elements of the Custodial Service, excluding the Building maintenance services provided by the Contractor in order to comply with its obligations under clause 26 (Maintenance of Prison) and the core management team of the Contractor as identified, at

the commencement date in **paragraph 2.6** and **Appendix 2 of Part 2 of Schedule 2 (Custodial Service Delivery Proposals)**;

"Third Party Claim"

has the meaning given to it in **clause 76.4 (Notification of Claims)**;

"Threshold Equity IRR"

[REDACTED]
[REDACTED]
[REDACTED]

"Title Matters"

means the matters relating to the title to the Original Site referred to in Part 1 of **Schedule 20 (Title Matters)**;

"TPL Risk"

means a risk which is required to be insured under the third party liability insurance policy;

"TUPE"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI No 246);

"Unavailability Deduction"

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

"Unavailable"

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

"Uninsurable"

means, in relation to a risk, either that:

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

"Uninsured Losses"

means Losses arising from any risks pursuant to which the Contractor or any Contractor Related Party does not maintain insurance (where not required to maintain insurance for such risk under this Contract or by law),

provided that:

- (a) the amount of any Losses that would otherwise be recoverable under any Required Insurance but for the applicable uninsured deductible in respect of such insurance; and
- (b) any exclusion of loss of insurance proceeds caused or contributed to by any act or omission of the Contractor or any Contractor Related Party,

shall not be treated as Uninsured Losses;

**"Unsuitable
Third Party"**

means any person:

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

**"Value Testing
Option"**

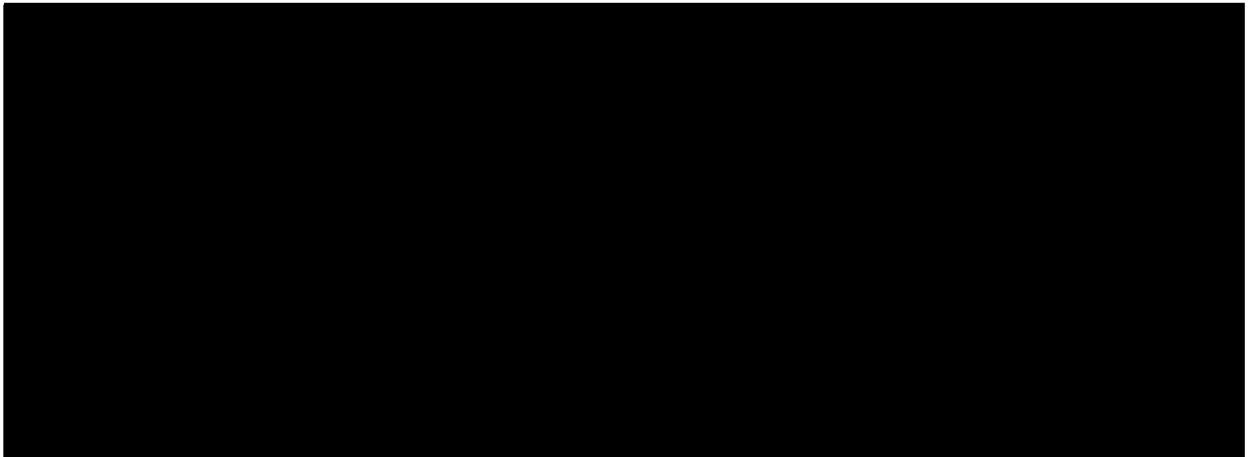
means an exercise carried out pursuant to **clause 35.4 (Value Testing Option)**;

"VAT"

means any value added taxes;

"Western Ditch"

means the ditch identified as such in writing on Site Plan B (insofar as this is within the Site) and which



"Works" means all of the works (including design and works necessary for obtaining access to the Site) to be undertaken in accordance with this Contract to satisfy the Design and Construction Requirements including the works involved in the Post Completion Works; and

"Year" means calendar year unless otherwise specified.

1.2 Interpretation

In this Contract, except where the context otherwise requires:

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

- 1.2.8 headings are for convenience of reference only;
- 1.2.9 words preceding "include", "including" and "included" shall be construed without limitation by the words which follow those words;
- 1.2.10 any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
- 1.2.11 subject to any express provisions of this Contract to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense; and
- 1.2.12 for the avoidance of doubt, references in this Contract to the "date of this Contract" shall be to 30 June 2010.

1.3 **Housing Grants, Construction and Regeneration Act**

This Contract is entered into under the PFI and the consideration due under this Contract is determined in part by reference to the standards attained in the performance of a service and one party to this Contract is a Minister of the Crown. This Contract is excluded from Part II of the Housing Grants, Construction and Regeneration Act 1996 by operation of paragraph 4 of the Construction Contracts (England and Wales) Exclusion Order 1998. The Contractor acknowledges that the operation of the Housing Grants, Construction and Regeneration Act 1996 upon any Original Project Documents shall not affect the Parties' rights or obligations under this Contract.

1.4 **Schedules**

The Schedules to this Contract form part of this Contract.

1.5 **Indexation**

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

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

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

1.6 **Precedence of Documentation**

If there is any inconsistency between the provisions of the body of this Contract and the Schedules, the body of this Contract shall take precedence. In the event of any inconsistency between **Schedule 1 (Authority's Requirements)** and **Schedule 2 (Contractor's Proposals)**, **Schedule 1 (Authority's Requirements)** shall take precedence.

1.7 **Responsibility for Related Parties**

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

1.8 **Approval**

None of the following:

- 1.8.1 the giving of any approval or consent;
- 1.8.2 the examination, acknowledgement and/or knowledge of the provisions of any agreement or document; or
- 1.8.3 the review of any document or course of action, or the failure to do so,

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

1.9 **Succession**

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

1.10 The Parties acknowledge that upon the date of the Amending Agreement:

(a) the Enabling Activities Agreement shall cease to have effect, including any amendments it made to the Contract prior to the date of the Amending Agreement;

(b) this Contract shall apply to the Houseblock Works whether carried out by the Contractor before, on or after the date of the Amending Agreement and any Enabling Activities carried out by the Contractor on or prior to the date of the Amending Agreement shall be deemed to form part of the Houseblock Works and shall be treated, for the purposes of this Contract, as if such Enabling Activities had been performed pursuant to the terms of this Contract; and

(c) any payments which have been made under the Enabling Activities Agreement (such payments being identifiable as such in **Schedule 41 (Houseblock Works Fee)**) shall be deemed to be part of the Houseblock Works Fee.

1.11 Incorporation of Notices of Change

The Parties agree that from the date of the Amending Agreement all Notices of Change made prior to the date of the Amending Agreement and listed in **Schedule 43 (Change Notice Register)** have been incorporated into the Contract as more fully set out in **Schedule 43 (Change Notice Register)**.

2. **DURATION OF CONTRACT**

This Contract and the rights and obligations of the Parties shall take effect on the date of this Contract and (subject to the provisions for early termination set out in this Contract) shall continue until the Expiry Date.

3. **COLLATERAL WARRANTIES**

3.1 **Provision of Collateral Warranties**

3.1.1 The Contractor shall deliver the Collateral Warranties from the Construction Sub-Contractor, the Architect and the Operating Sub-Contractor to the Authority on the date of this Contract.

3.1.1A The Contractor shall deliver the Houseblock Collateral Warranties from the Houseblock Construction Sub-Contractor and the Operating Sub-Contractor on the date of the Amending Agreement.

3.1.1B The Contractor shall deliver the Refinancing Collateral Warranty from the Operating Sub-Contractor on the date of the Second Amending Agreement.

3.1.2 Not used.

3.2 **Replacement Sub-Contractors and Collateral Warranties**

The Contractor shall not engage any new Construction Sub-Contractor or any new Operating Sub-Contractor in connection with the Project unless such person has delivered to the Authority a duly executed agreement substantially in the form of the relevant Collateral Warranty or Houseblock Collateral Warranty duly executed as a deed and in each case such Collateral Warranty or Houseblock Collateral Warranty must be delivered to the Authority before such entity enters onto the Site.

4. **DOCUMENTS AND CO-OPERATION**

4.1 **Delivery of Initial and Changed Project Documents and Financing Agreements**

4.1.1 As at the date of the Contract the Contractor has provided to the Authority copies of the Original Project Documents listed in Part 2 of **Schedule 12 (Project Documents)**.

4.1.1A The Contractor shall provide to the Authority copies of the Houseblock Documents listed in Part 4 of **Schedule 12 (Project Documents)**.

4.1.1B The Contractor shall provide to the Authority copies of the Refinancing Documents listed in Part 6 of **Schedule 12 (Project Documents)**.

4.1.2 Without prejudice to the provisions of **clauses 4.2 (Changes to Project Documents)** and **4.3 (Changes to Financing Agreements)** or to the definition of Senior Financing Agreements, if at any time an amendment is made to any Project Document or Financing Agreement, or the Contractor enters into a new Project Document or Financing Agreement (or any agreement which affects the interpretation or application of any Project Document or Financing Agreement), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days after the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.

4.2 **Changes to Project Documents**

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

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

- 4.2.2 make or agree to any material variation of any Project Document;
- 4.2.3 in any material respect depart from its obligations (or waive or allow to lapse any rights it may have in a material respect), or procure that others in any material respect depart from their obligations (or waive or allow to lapse any rights they may have in a material respect), under any Project Document; or
- 4.2.4 enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document,

unless the proposed course of action (and any relevant Document) has been submitted to the Authority for review under the Review Procedure and there has been no objection under the Review Procedure within twenty (20) Business Days after receipt by the Authority of the submission of the proposed course of action (and any relevant Document), or such shorter period as may be agreed by the Parties, and, in the circumstances specified in **clause 4.2.1 (Changes to Project Documents)**, the Contractor has complied with **clauses 82 (Sub-Contracting and Assignment)** and **83 (Change of Ownership)**.

4.3 **Changes to Financing Agreements**

Without prejudice to the provisions of **clauses 4.1 (Delivery of Initial and Changed Project Documents and Financing Agreements)**, **46 (Refinancing)** and **61 (Changes to Financing Agreements and Project Documents)**, the Contractor shall not, without the prior written consent of the Authority, enter into new Financing Agreements or terminate, amend, waive its rights or otherwise deal with its Financing Agreements if to do so may reasonably be expected to have a material adverse effect on the ability of the Contractor to perform its obligations under the Project Documents or this Contract.

4.4 **Authority Obligations**

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

4.5 Co-operation

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

4.6 Third Party Contracts

4.6.1 The Authority shall provide to the Contractor a copy of the executed contracts for the provision of education services, healthcare services and prisoner escort and custodial services contracts for the Prison entered into prior of the Contractual Opening Date, and shall use reasonable endeavours to provide to the Contractor a copy of the final executed version of any other contract entered into by the Authority with any other party, (other than the Contractor), where such party requires access to the Prison.

4.6.2 Where the Authority is aware that any party (other than the Authority, the Contractor and/or any Contractor Related Party) is entering into any contract with another party (other than the Authority, the Contractor and/or any Contractor Related Party) under which either of such parties require access to the Prison, the Authority shall request (and provide the Contractor with a copy of such request) either of such parties to provide the Contractor with a copy of the final executed version of the contract.

5. GENERAL WARRANTIES AND INDEMNITIES

5.1 Contractor Warranties

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

5.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

5.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Original Project Documents;

5.1.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Original Project Documents has been taken or, in the case of any Original Project Document executed after the date of this Contract, will be taken before such execution;

- 5.1.4 the obligations expressed to be assumed by the Contractor under the Original Project Documents are, or in the case of any Original Project Document executed after the date of this Contract will be, legal, valid, binding and enforceable to the extent permitted by law;
- 5.1.5 each of the Original Project Documents is or, when executed, will:
 - 5.1.5.1 be in full force and effect;
 - 5.1.5.2 be in the proper form for enforcement in England;
 - 5.1.5.3 constitute or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties to them, provided that the Contractor does not give the warranty set out in this **clause 5.1.5.3 (Contractor Warranties)** in respect of the obligations of the Authority;
- 5.1.6 the execution, delivery and performance by it of the Original Project Documents does not contravene any provision of:
 - 5.1.6.1 any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
 - 5.1.6.2 the Memorandum and Articles of Association of the Contractor;
 - 5.1.6.3 any order or decree of any court or arbitrator which is binding on the Contractor; or
 - 5.1.6.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.1.7 the Contractor Warranted Data is true and accurate in all respects;
- 5.1.8 the Contractor has not, other than in connection with the Project, traded at any time since its incorporation as a company pursuant to the Companies Act 2006;
- 5.1.9 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Original Project Document;

- 5.1.10 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Original Project Document;
- 5.1.11 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
- 5.1.12 the copies of the Original Project Documents which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Original Project Documents which would materially affect the interpretation or application of any of the Original Project Documents,

and the Authority relies upon such warranties and representations.

5.1A Contractor Warranties - Houseblock

The Contractor warrants and represents to the Authority that on the date of the Amending Agreement:

- 5.1A.1 It is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 5.1A.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Houseblock Documents;
- 5.1A.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Houseblock Documents has been taken or, in the case of any Houseblock Document executed after the date of the Amending Agreement, will be taken before such execution provided that the Contractor does not give the warranty set out in this **clause 5.1A.3 (Contractor Warranties - Houseblock)** in respect of compliance with Legislation, either in force or enacted but not yet in force, binding on the Authority;
- 5.1A.4 the obligations expressed to be assumed by the Contractor under the Houseblock Documents are, or in the case of any Houseblock Document executed after the date of the Amending Agreement will be,

legal, valid, binding and enforceable to the extent permitted by law provided that the Contractor does not give the warranty set out in this **clause 5.1A.4 (Contractor Warranties - Houseblock)** in respect of compliance with Legislation, either in force or enacted but not yet in force, binding on the Authority;

5.1A.5 each of the Houseblock Documents is or, when executed, will to the extent permitted by law:

5.1A.5.1 be in full force and effect;

5.1A.5.2 be in the proper form for enforcement in England;

5.1A.5.3 constitute or, when executed, will constitute the valid, binding and enforceable obligations of the parties to them,

provided that the Contractor does not give the warranty set out in this **clause 5.1A.5 (Contractor Warranties - Houseblock)** in respect of (i) the obligations of the Authority, or (ii) compliance with Legislation, either in force or enacted but not yet in force, binding on the Authority;

5.1A.6 the execution, delivery and performance by it of the Houseblock Documents does not contravene any provision of:

5.1A.6.1 any existing Legislation, either in force or enacted but not yet in force, binding on the Contractor provided that the Contractor does not give the warranty set out in this **clause 5.1A.6 (Contractor Warranties - Houseblock)** in respect of compliance with Legislation, either in force or enacted but not yet in force, binding on the Authority;

5.1A.6.2 the Memorandum and Articles of Association of the Contractor;

5.1A.6.3 any order or decree of any court or arbitrator which is binding on the Contractor; or

5.1A.6.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;

5.1A.7 the Contractor Warranted Updated Data is true and accurate in all respects;

5.1A.8 the Contractor has not, other than in connection with the Project and the subject matter of the Enabling Activities Agreement, traded at any

time since its incorporation as a company pursuant to the Companies Act 2006;

- 5.1A.9 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Houseblock Document;
- 5.1A.10 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Houseblock Document;
- 5.1A.11 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
- 5.1A.12 the copies of the Houseblock Documents which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Houseblock Documents which would materially affect the interpretation or application of any of the Houseblock Documents,

and the Authority relies upon such warranties and representations.

5.1B Contractor Warranties – Bond Refinancing

The Contractor warrants and represents to the Authority that on the date of the Second Amending Agreement:

- 5.1B.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 5.1B.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Refinancing Documents;
- 5.1A.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Refinancing Documents has been taken or, in the case of any Refinancing Document executed after the date of the Second

Amending Agreement, will be taken before such execution provided that the Contractor does not give the warranty set out in this **clause 5.1B.3 (Contractor Warranties - Refinancing)** in respect of compliance with Legislation, either in force or enacted but not yet in force, binding on the Authority;

5.1B.4 the obligations expressed to be assumed by the Contractor under the Refinancing Documents are, or in the case of any Refinancing Document executed after the date of the Second Amending Agreement will be, legal, valid, binding and enforceable to the extent permitted by law provided that the Contractor does not give the warranty set out in this **clause 5.1B.4 (Contractor Warranties - Refinancing)** in respect of compliance with Legislation, either in force or enacted but not yet in force, binding on the Authority;

5.1B.5 each of the Refinancing Documents is or, when executed, will to the extent permitted by law:

5.1B.5.1 be in full force and effect;

5.1B.5.2 be in the proper form for enforcement in England;

5.1B.5.3 constitute or, when executed, will constitute the valid, binding and enforceable obligations of the parties to them,

provided that the Contractor does not give the warranty set out in this **clause 5.1B.5 (Contractor Warranties - Refinancing)** in respect of (i) the obligations of the Authority, or (ii) compliance with Legislation, either in force or enacted but not yet in force, binding on the Authority;

5.1A.6 the execution, delivery and performance by it of the Refinancing Documents does not contravene any provision of:

5.1B.6.1 any existing Legislation, either in force or enacted but not yet in force, binding on the Contractor provided that the Contractor does not give the warranty set out in this **clause 5.1B.6 (Contractor Warranties - Refinancing)** in respect of compliance with Legislation, either in force or enacted but not yet in force, binding on the Authority;

5.1B.6.2 the Memorandum and Articles of Association of the Contractor;

5.1B.6.3 any order or decree of any court or arbitrator which is binding on the Contractor; or

- 5.1B.6.4 any obligation which is binding upon the Contractor or upon any of its assets or revenues;
- 5.1B.7 the Contractor Warranted Second Updated Data is true and accurate in all respects;
- 5.1B.8 the Contractor has not, other than in connection with the Project and the subject matter of the Enabling Activities Agreement, traded at any time since its incorporation as a company pursuant to the Companies Act 2006;
- 5.1B.9 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under any Refinancing Document;
- 5.1B.10 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under any Refinancing Document;
- 5.1B.11 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; and
- 5.1B.12 the copies of the Refinancing Documents which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Refinancing Documents which would materially affect the interpretation or application of any of the Refinancing Documents,

and the Authority relies upon such warranties and representations.

5.2 **Contractor Undertakings**

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

- 5.2.1 it shall:
 - 5.2.1.1 upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings

before or of any court, arbitrator or Relevant Authority ("Legal Proceedings") may be threatened or pending and immediately after the commencement of such Legal Proceedings; or

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

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

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

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

5.2.4 it shall not undertake the performance of its obligations under this Contract for carrying out of the Works and the Houseblock Works and the provision of the Custodial Service otherwise than through itself or a Sub-Contractor;

5.2.5 it shall not, without the written consent of the Authority (such consent not to be unreasonably withheld or delayed), incorporate any company or purchase or acquire or subscribe for any shares in any company save where such company is involved in carrying out the Works or the Houseblock Works or providing the Custodial Service;

5.2.6 it shall not, without the written consent of the Authority (such consent not to be unreasonably withheld or delayed), make any loans or grant any credit or give any guarantee or indemnity to or for the benefit of any person or otherwise voluntarily or for consideration assume any liability (whether actual or contingent) in respect of any obligation of any other person except in the ordinary course of business and/or as contemplated by the Project Documents and/or Financing Agreements; and

5.2.7 it shall not change or cease its business or start any other business which is materially different from that to be carried out by it under this Contract.

5.3 **Status of Warranties**

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

6. **AUTHORITY WARRANTIES**

6.1 **No Warranty by Authority**

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

6.2 **No Liability to Contractor**

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

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

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

6.3 **Fraudulent Statements**

Nothing in this **clause 6 (Authority Warranties)** shall exclude any liability which the Authority or any of its agents or employees would otherwise have to the Contractor in respect of any statements made fraudulently:

6.3.1 in respect of the Works, before the date of the Contract; and

6.3.2 in respect of the Houseblock Works, before the date of the Amending Agreement.

6.4 **Rights and Remedies**

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

6.5 Contractor's Due Diligence

The Contractor shall be deemed to have:

- 6.5.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract (including, for the avoidance of doubt, in relation to the carrying out of the Houseblock Works); and
- 6.5.2 save only and to the extent clause 6.5.3 applies, gathered all information necessary to perform its obligations under this Contract and all other obligations assumed, including:
 - 6.5.2.1 information as to the nature, location and condition of the land (including hydrological, geological, geo-technical and sub-surface conditions); and
 - 6.5.2.2 information relating to archaeological finds, areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures.
- 6.5.3 not been provided with sufficient opportunity (including the provision of access to the Expansion Site for the purpose of inspecting and testing the Expansion Site) to gather all information necessary to perform its obligations under this Contract with respect to the carrying out of the Houseblock Works (including gathering information of the kind referred to in **clause 6.5.2**). In this respect the Authority agrees that it remains entirely responsible for all Authority Houseblock Site Risks in accordance with the provisions of **clause 8.2A (Site Matters – Houseblock Works Site)** and shall have no claim against the Contractor (including pursuant to **clause 6.6**) in respect of any Authority Houseblock Site Risk save as provided for in **clause 8.2A (Site Matters – Houseblock Works Site)**.

6.6 No Relief

Subject to **clause 6.3 (Fraudulent Statements)** and except as provided for in clause 6.5.3, the Contractor shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

PART II - NATURE OF LAND INTEREST

7. NATURE OF LAND INTEREST

7.1 Access during the Works

From the date of this Contract until the date when the Lease is completed in accordance with **clause 7 (Nature of Land Interests)** (or, if earlier, the Termination Date), the Authority shall afford the Ancillary Rights to the Contractor and the Contractor Related Parties for the purpose of implementing the Works and/or providing the Custodial Service.

7.1A Access during the Houseblock Works

7.1A.1 From the date of the Amending Agreement until the later of the date when the Houseblock Lease and Deed of Variation is completed and (to the extent the Houseblock Lease does not grant the same) the Houseblock Works are completed in accordance with **clause 7 (Nature of Land Interests)** (or, if earlier, the Termination Date), the Authority shall afford the Expansion Site Ancillary Rights (notwithstanding the terms of the completed lease) to the Contractor and the Contractor Related Parties for the purpose of implementing the Houseblock Works and/or providing the Custodial Service.

7.1A.2 The Authority and the Contractor agree that the rights contained in the provisions of Schedule 2 paragraphs 2, 5 and 6 of the Lease shall be suspended until the date of completion of the Houseblock Lease it being the agreed intention of the parties that for so long as such suspension persists the Houseblock Reserved Rights shall apply.

7.2 Grant of Lease

7.2.1 Within twenty (20) Business Days after the Actual Opening Date, the Authority shall grant to the Contractor, and the Contractor shall accept, the Lease in accordance (including as to timing) with this **clause 7 (Nature of Land Interest)**.

7.2.2 The grant of the Lease shall take place at the offices of the Authority's

7.2.3 The term of the Lease shall commence on the Actual Opening Date and Schedule 1 of the Lease is to be supplemented by such title matters and other documents affecting the title as are agreed between the Contractor and the Authority in writing.

7.2.4 Part 1 of the Commercial Conditions, as varied by **Schedule 24 (Variations to the Commercial Conditions)**, form part of this

Contract so far as they are applicable to the letting of the Original Site and are consistent with the provisions of this Contract. Part 2 of the Commercial Conditions do not form part of this Contract.

7.2.5 The Authority has deduced title to the Original Site to the Contractor in accordance with Commercial Condition 6.1 and (except as referred to in **clause 7.2.7 (Grant of Lease)**) the Contractor is not entitled to raise any requisition or objection to the title.

7.2.6 The Original Site is let subject to and, to the extent that the Authority is able to grant them, with the benefit of the Title Matters.

7.2.7 The Contractor is to be treated as accepting the grant of the Lease with full knowledge of the Title Matters and will not raise any requisition or objection to them except in relation to any formal requisitions or enquiries arising from the usual pre-completion searches or any new title entries that have been registered after 26

the Contractor's Land Registry search carried out immediately prior to completion of the Lease.

7.2A **Grant of Houseblock Lease**

7.2A.1 Within twenty (20) Business Days after the Actual Houseblock Opening Date, the Authority shall grant to the Contractor, and the Contractor shall accept, the Houseblock Lease in accordance (including as to timing) with this **clause 7 (Nature of Land Interest)**.

7.2A.2 The grant of the Lease shall take place at the offices of the Authority's

7.2A.3 The term of the Houseblock Lease shall commence on the Actual Houseblock Opening Date and Schedule 1 of the Houseblock Lease is to be supplemented by such title matters and other documents affecting the title as are agreed between the Contractor and the Authority in writing.

7.2A.4 Part 1 of the Commercial Conditions, as varied by **Schedule 24 (Variations to the Commercial Conditions)**, form part of this Contract so far as they are applicable to the letting of the Expansion Site and are consistent with the provisions of this Contract. Part 2 of the Commercial Conditions do not form part of this Contract.

7.2A.5 The Authority has deduced title to the Expansion Site to the Contractor in accordance with Commercial Condition 6.1 and (except as referred to in **clause 7.2A.7 (Grant of Houseblock Lease)** the Contractor is not entitled to raise any requisition or objection to the title.

7.2A.6 The Expansion Site is let subject to and, to the extent that the Authority is able to grant them, with the benefit of the Expansion Site Title Matters.

7.2A.7 The Contractor is to be treated as accepting the grant of the Houseblock Lease with full knowledge of the Expansion Site Title Matters and will not raise any requisition or objection to them except in relation to any formal requisitions or enquiries arising from the usual pre-completion searches or any new title entries that have been

[REDACTED]

Houseblock Lease and which are revealed by the Contractor's Land Registry search carried out immediately prior to completion of the Houseblock Lease.

7.2B **Deed of Variation**

7.2B.1 On the date of completion of the Houseblock Lease in accordance with clause 7.2A.1 above the parties shall also enter into the Deed of Variation.

7.2B.2 Completion of the Deed of Variation shall take place at the

[REDACTED]

7.3 **General Matters**

The Site (unless otherwise specified as at the date of completion of the relevant lease) is let subject to:

7.3.1 the matters contained or referred to in Commercial Condition 3.1.2;

7.3.2 any registered local land charges and any matter capable of being registered as a local land charge even if not so registered:

7.3.2.1 in the case of the Lease at the Actual Opening Date; and

7.3.2.2 in the case of the Houseblock Lease at the Actual Houseblock Opening Date;

7.3.3 any notice, order or proposal given or made by any Relevant Authority, statutory undertaker or other competent body or person;

- 7.3.4 all charges, orders, proposals, restrictions, agreements, notices or other matters arising under the town and country planning or highways legislation which affect or relate to the Site and to any orders or regulations made under that or any other legislation;
- 7.3.5 all rates, charges and other outgoings which affect or are charged on the Site;
- 7.3.6 any unregistered interest that overrides the disposition effected pursuant to this Contract under Schedules 1, 3 or 12 of the Land Registration Act 2002;
- 7.3.7 all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Site; and
- 7.3.8 all matters which either are revealed or would reasonably be expected to be revealed by inspection or by the searches and enquiries usually made by a prudent purchaser.

7.4 Exclusion of Security

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

- 7.4.1 the Authority served on the Contractor a notice dated 30 June 2010 in relation to the tenancy created by the Lease (the "Lease Notice") in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "Order");
- 7.4.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Lease Notice made a statutory declaration (the "Lease Declaration") dated 30 June 2010 in a form complying with the requirements of Schedule 2 of the Order;
- 7.4.3 where the Lease Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Lease Declaration on the Contractor's behalf; and
- 7.4.4 the Authority and Contractor agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Lease.

7.4A Exclusion of Security – Houseblock Lease

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

- 7.4A.1 the Authority served on the Contractor a notice dated 10 December 2013 in relation to the tenancy created by the Houseblock Lease (the "Houseblock Lease Notice") in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "Order");
- 7.4A.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Houseblock Lease Notice made a statutory declaration (the "Houseblock Lease Declaration") dated December 2013 in a form complying with the requirements of Schedule 2 of the Order;
- 7.4A.3 where the Houseblock Lease Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Houseblock Lease Declaration on the Contractor's behalf; and
- 7.4A.4 the Authority and Contractor agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Houseblock Lease.

- 7.5.1 Within ten (10) Business Days after the Actual Opening Date, the Authority's Representative shall deliver an engrossment of the counterpart Lease to the Contractor. The Contractor shall execute and deliver the counterpart Lease as a deed to the Authority's Representative within a further five (5) Business Days after receipt. The Authority shall execute the original Lease as a deed and send the original Lease to the Contractor following completion of the Lease.
- 7.5.2 Within ten (10) Business Days after the Actual Houseblock Opening Date, the Authority's Representative shall deliver an engrossment of the counterpart Houseblock Lease to the Contractor. The Contractor shall execute and deliver the counterpart Houseblock Lease as a deed to the Authority's Representative within a further five (5) Business Days after receipt. The Authority shall execute the original Houseblock Lease as a deed and send the original Houseblock Lease to the Contractor following completion of the Houseblock Lease
- 7.5.3 Within ten (10) Business Days after the Actual Houseblock Opening Date the Authority's Representative shall deliver an engrossment of the Deed of Variation to the Contractor. The Contractor shall execute and deliver the counterpart Deed of Variation as a deed to the Authority's Representative within a further five (5) Business Days after receipt. The Authority shall execute the Deed of Variation as a Deed and send

the original Deed of Variation to the Contractor following completion of the Deed of Variation.

7.6 Registration

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

7.7 Provision of Copies

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

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

7.8 Early Termination

If this Contract is terminated for any reason prior to the Expiry Date, the Lease and the Houseblock Lease shall each automatically cease and determine with effect from the Termination Date (or, if not granted at the time, the obligation to grant the Lease and/or the Houseblock Lease shall automatically cease to apply). Where the Lease and/or the Houseblock Lease have been entered into, the Contractor shall, on the Termination Date:

7.8.1 procure the unconditional release and discharge of any charges which shall be registered against or shall otherwise affect the Contractor's interest in the Site;

7.8.2 deliver unconditionally to the Authority any title deeds and documents relating to the Contractor's interest in the Site, including the original of the Lease and the Houseblock Lease and all documents supplemental to the Lease and the Houseblock Lease and all documentation providing evidence (in a form satisfactory to the Land Registry) of the release and discharge of all charges;

7.8.3 comply with any other requirement from time to time of the Land Registry to enable the cancellation of the Contractor's leasehold title to the Site;

7.8.4 provide such documentation and assistance to the Authority as may be required to procure the cancellation of the Contractor's title to the Site at the Land Registry;

- 7.8.5 immediately vacate and procure that all of its sub-contractors and their employees shall immediately vacate the Site; and
- 7.8.6 (without prejudice to **clause 7.8.4 (Early Termination)**), if required by the Authority as evidence of the termination complete a surrender of the Lease in the form attached to the Lease and a surrender of the Houseblock Lease in the form attached to the Houseblock Lease.

7.9 **No Compensation**

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

7.10 **Compliance with the Title Matters**

The Contractor shall procure that:

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

7.10A **Compliance with the Expansion Site Title Matters**

The Contractor shall procure that:

- 7.10A.1 the carrying out of the Houseblock Works and the provision of the Custodial Service at the Expansion Site by or on behalf of the Contractor (whether before, during or after the completion of the Houseblock Works) shall be carried out in a manner that complies with and does not result in any breach of the Expansion Site Title Matters; and
- 7.10A.2 in carrying out the Houseblock Works and providing the Custodial Service at the Expansion Site, there shall be no action or omission to act by the Contractor or any Contractor Related Party, which shall give rise to a right for any person to obtain title to or any right or interest

over the Expansion Site or any part of it (except in accordance with the provisions of this Contract).

7.11 Compliance with Lease

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

8. THE SITE

8.1 Access

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

8.2 Site Matters

8.2.1 Subject to the other provisions of this Contract and without prejudice to clause 8.2A, the Site Conditions shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract), the Contractor shall be deemed to have:

8.2.1.1 carried out a ground physical and geophysical investigation and to have inspected and examined the Site and its surroundings and (where applicable) any existing structures or works on, over or under the Site;

8.2.1.2 satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the form and nature of the Site, the load-bearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, works and materials necessary for the execution of the Works;

8.2.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Site);

8.2.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority), with access to or use of, or rights in respect of

the Site, with particular regard to the owners of any land adjacent to the Site; and

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

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

8.2.2.1 subject to **clause 6.3 (Fraudulent Statements)**, not be entitled to make any claim against the Authority of any nature whatsoever on any grounds including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person; and

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

8.2.3 Subject to clause 8.2A, to the extent that any part or parts of the Site suffer from or are affected by Contamination arising from a source off Site (whether or not on adjacent land) except where the source is on land owned by the Authority, the Contractor shall be responsible for cleaning up or otherwise dealing with such Contamination and for preventing the recurrence of such Contamination on the Site and the following provisions shall apply:

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

8.2.3.2 where any such matter arises after the Actual Opening Date it shall be deemed to be a Relief Event and no Deductions may be made which would otherwise arise as a

result of such matter arising for a reasonable period (to be agreed between the Parties acting reasonably) but any work or change to the Works or Custodial Service required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute an Authority Change;

8.2.3.3 before, on or after the Actual Opening Date the Contractor shall:

- (a) clean up, or otherwise deal with such Contamination, and take steps reasonably necessary to prevent the recurrence of the same, all in accordance with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor); and
- (b) except where **clause 8.2.3.4 (Site Matters)** applies, indemnify and keep indemnified in full the Authority, its employees, agents and contractors against all Direct Losses incurred by the Authority, its employees, agents and contractors arising from such Contamination;

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

- (a) the Authority shall assist and co-operate with the Contractor in respect of such action and shall not, unless the Contractor has failed to resolve such action within a reasonable period, take any action to settle or prosecute such action;
- (b) the Contractor shall give reasonable security to the Authority for any cost or liability arising out of the conduct of such action by the Contractor;

- (c) the Contractor shall not settle such actions without the prior written approval of the Authority; and
- (d) the Contractor shall indemnify and keep indemnified in full the Authority in respect of all costs properly and reasonably incurred by the Authority in respect of such action; and

8.2.3.5 where the Authority takes action under **clause 8.2.3.4 (Site Matters)** (or where it is otherwise obliged to take action against third parties in respect of such Losses), the Authority shall be liable to the Contractor for all Losses suffered or incurred by the Contractor as a result of its obligations under this **clause 8.2.3 (Site Matters)**, provided that the Contractor's entitlement in respect of any matter to which this **clause 8.2.3.5 (Site Matters)** applies shall be limited to the amount recovered by or in the name of the Authority from the relevant third party in respect of the Losses referred to in **clause 8.2.3.4 (Site Matters)**.

8.2.4 Subject to clause 8.2A, to the extent that any part or parts of the Site suffer from or are affected by Contamination arising from a source off Site (whether or not on adjacent land) which is on land owned by the Authority, the Contractor shall be responsible for cleaning up or otherwise dealing with such Contamination and for preventing the recurrence of such Contamination on the Site and the following provisions shall apply:

8.2.4.1 where any such matter arises on or before the Actual Opening Date it shall be deemed to be a Compensation Event and any work which is required or instructed to be done in consequence of it shall, without double counting, be deemed to be an Authority Change;

8.2.4.2 where any such matter arises after the Actual Opening Date it shall be deemed to be a Relief Event and no Deductions may be made which would otherwise arise as a result of such matter arising and any work or changes to the Works or Custodial Service required or instructed to be done in consequence of it shall be deemed to be an Authority Change; and

8.2.4.3 where any such matter is Contamination (before, on or after the Actual Opening Date) the Authority shall further

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

and the Contractor shall in carrying out any works referred to in **clauses 8.2.4.1 (Site Matters) and 8.2.4.2 (Site Matters)** do so in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.2.5 To the extent that Japanese Knotweed exists on any part or parts of the Site then the Contractor shall not be responsible for it and the Authority shall be so responsible and the following provisions shall apply:

8.2.5.1 where any such Japanese Knotweed is found prior to the Actual Opening Date or, in relation to the carrying out of the Houseblock Works, prior to the Actual Houseblock Full Operation Date it shall be deemed to be a Compensation Event for the purposes of this Contract and any work which is required or instructed to be done in consequence of it shall be, without double counting, deemed to be an Authority Change;

8.2.5.2 where any such Japanese Knotweed is found after the Actual Opening Date or, in relation to the Houseblock Works Site, after the Actual Houseblock Full Operation Date it shall be deemed a Relief Event and no deductions may be made which would otherwise arise as a result of such matter and any work or changes to the Custodial Services required or instructed to be done in consequence of it shall be, without double counting, deemed to be an Authority Change; and

8.2.5.3 where any such Japanese Knotweed is found (before, on or after the Actual Opening Date or the Actual Houseblock Full Operation Date (as the case may be)) the Authority shall further hold the Contractor harmless from cleaning up and otherwise dealing with the Japanese Knotweed and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor arising from such

Japanese Knotweed (including, for the avoidance of doubt, the consequences of the growth of such Japanese Knotweed),

and the Contractor shall in carrying out any works referred to in **clauses 8.2.5.1 (Site Matters)** and **8.2.5.2 (Site Matters)** do so in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.2.6 Notwithstanding the provisions of **clauses 8.2.1 to 8.2.4**, to the extent that Authority Risk Contamination exists on any part or parts of the Site then the Contractor shall not be responsible for it and the Authority shall be so responsible and the following provisions shall apply:

8.2.6.1 where any such Authority Risk Contamination is found prior to the Actual Opening Date or, in relation to the carrying out of the Houseblock Works, prior to the Actual Houseblock Full Operation Date it shall be deemed to be a Compensation Event for the purposes of this Contract and any work which is required or instructed to be done in consequence of it shall be, without double counting, deemed to be an Authority Change;

8.2.6.2 where any such Authority Risk Contamination is found after the Actual Opening Date or, in relation to the Houseblock Works Site, after the Actual Houseblock Full Operation Date it shall be deemed a Relief Event and no deductions may be made which would otherwise arise as a result of such matter and any work or changes to the Custodial Services required or instructed to be done in consequence of it shall be, without double counting, deemed to be an Authority Change; and

8.2.6.3 where any such Authority Risk Contamination is found (before, on or after the Actual Opening Date or the Actual Houseblock Full Operation Date (as the case may be)) the Authority shall further hold the Contractor harmless from cleaning up and otherwise dealing with the Authority Risk Contamination and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor arising from such Authority Risk Contamination,

and the Contractor shall in carrying out any works referred to in **clauses 8.2.6.1 (Site Matters)** and **8.2.6.2 (Site Matters)** do so in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.2A Site Matters – Houseblock Works Site

8.2A.1 Notwithstanding the provisions of **clauses 8.2.1 to 8.2.5**, but subject always to the provisions of **clause 8.2A.2**, from the date of the Amending Agreement to the extent that any Authority's Houseblock Site Risk exists on any part or parts of the Houseblock Works Site then the Contractor shall not be responsible for it and the Authority shall be so responsible and the following provisions shall apply:

- 8.2A.1.1 where any such Authority's Houseblock Site Risk is found prior to the Actual Houseblock Full Operation Date it shall be deemed to be a Compensation Event for the purposes of this Contract and any work which is required or instructed to be done in consequence of it shall be, without double counting, deemed to be an Authority Change;
- 8.2A.1.2 where any such Authority's Houseblock Site Risk is found after the Actual Houseblock Full Operating Date it shall be deemed a Relief Event and no deductions may be made which would otherwise arise as a result of such matter and any work or changes to the Custodial Services required or instructed to be done in consequence of it shall be, without double counting, deemed to be an Authority Change; and
- 8.2A.1.3 where any such Authority's Houseblock Site Risk is found (before, on or after the Actual Houseblock Full Operating Date) the Authority shall further hold the Contractor harmless from cleaning up and otherwise dealing with the Authority's Houseblock Site Risk and shall indemnify the Contractor in respect of all Direct Losses incurred by the Contractor arising from such Authority's Houseblock Site Risk,

and the Contractor shall in carrying out any works referred to in **clauses 8.2A.1 (Site Matters)** and **8.2A.2 (Site Matters)** do so in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.2A.2 The Contractor shall, to the extent that any Contamination on the Houseblock Works Site is caused or exacerbated by the Contractor, be responsible for, and hold the Authority harmless from, cleaning up or otherwise dealing with any such Contamination at the Houseblock Works Site in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Necessary Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).

8.3 Necessary Consents

- 8.3.1 Subject to **clause 8.3.2 (Necessary Consents)**, the Contractor shall:
- 8.3.1.1 obtain and maintain all Necessary Consents which may be required for the performance of the Project;
 - 8.3.1.2 without prejudice to **clause 18 (Initial Cell Certification)** and **clause 18A (Initial Cell Certification – Houseblock)** use all reasonable endeavours to assist the Authority to obtain all Necessary Consents that, as a matter of law, the Contractor is not eligible to obtain or for which the Authority is responsible pursuant to **clause 8.3.2 (Necessary Consents)**;
 - 8.3.1.3 be responsible for implementing each Necessary Consent (which it is required to obtain pursuant to this **clause 8.3.1 (Necessary Consents)**) within the period of its validity in accordance with its terms;
 - 8.3.1.4 promptly supply free of charge to the Authority's Representative a copy of any application for a Necessary Consent where such application is made by the Contractor (with two (2) copies of all accompanying drawings and other documents) and a copy of any Necessary Consent or other response obtained;
 - 8.3.1.5 comply with the conditions attached to any Necessary Consents and procure that no such Necessary Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Necessary Consent is revoked and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Works, the Houseblock Works and/or the Custodial Service;
 - 8.3.1.6 not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not) without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before, on or after the date of this Contract) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this **clause 8.3 (Necessary Consents)**, references in this Contract to Necessary

Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

- 8.3.2 The Authority shall discharge the Authority Planning Conditions and the Authority Houseblock Planning Conditions.

8.4 No Warranty

- 8.4.1 Except as otherwise expressly provided in this Contract the Contractor shall take the Original Site in its state and condition in all respects as at the date of this Contract and nothing in this Contract or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Original Site or any part of it for the Works or for any other purpose.
- 8.4.2 Except as otherwise expressly provided in this Contract the Contractor shall take the Expansion Site in its state and condition in all respects as at the date of the Amending Agreement and nothing in this Contract or otherwise shall constitute or imply a warranty by or on the part of the Authority as to the fitness and suitability of the Expansion Site or any part of it for the Houseblock Works or for any other purpose.

8.5 Third Party Rights

The Contractor shall observe and comply with any third party rights (including public rights) which may exist from time to time in respect of land comprising and adjoining the Site, and the Contractor shall ensure that the Works and the Houseblock Works are carried out in such a way as not to interfere with access to and use and occupation of public or private roads or footpaths by any person who is entitled to any such access, use or occupation.

8.6 Fire Folder

The Contractor shall maintain an up to date fire folder for the Prison in accordance with the government guidance referring to the Fire Precautions Workplace Regulations 1997 and in particular shall:

- 8.6.1 design and install a fire alarm system and emergency lighting;
- 8.6.2 provide information relating to the operation of the fire alarm system and emergency lighting;
- 8.6.3 maintain maintenance/test records for the fire alarm systems and emergency lighting;
- 8.6.4 prepare and communicate the evacuation procedures including instruction to all persons at the Prison on the correct action when

discovering a fire and on the correct action when the fire alarm is sounded;

8.6.5 prepare notices/signs reinforcing the evacuation procedures; and

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

8.7 **Defects and Asbestos**

8.7.1 **Defects**

The Contractor accepts, in relation to the Buildings, full responsibility (including any financial and other consequences which result whether directly or indirectly) for any Defects.

8.7.2 **Asbestos Liability**

Subject to **clause 8.2.6 (Site Matters)**, the Contractor accepts, in relation to the Prison, full responsibility (including any financial and other consequences which result whether directly or indirectly) for any Asbestos.

8.8 **Fossils and Antiquities**

8.8.1 As between the Parties, all fossils, antiquities and other objects having artistic, historic or monetary value and human remains which may be found on or at the Site are or shall become, upon discovery, the absolute property of the Authority.

8.8.2 Upon the discovery of such item during the course of the Works or the Houseblock Works, the Contractor shall:

8.8.2.1 immediately notify the Authority's Representative of such discovery;

8.8.2.2 take all steps not to disturb the item and, if necessary, cease any Works and/or Houseblock Works in so far as the carrying out of such Works and/or Houseblock Works would endanger the object or prevent or impede its excavation; and

8.8.2.3 take all necessary steps to preserve the item in the same position and condition in which it was found.

8.8.3 The Authority shall procure that the Authority's Representative promptly, and in any event within fifteen (15) Business Days after

being notified of such discovery, issues an instruction to the Contractor specifying what action the Authority's Representative requires to be taken in relation to such discovery, provided that if no such instruction is forthcoming within such period the Contractor may continue to carry out the Works or the Houseblock Works as applicable.

- 8.8.4 The Contractor shall promptly and diligently comply with any instruction issued by the Authority's Representative referred to in **clause 8.8.3 (Fossils and Antiquities)** at its own cost (except and to the extent that such instruction constitutes an Authority Change pursuant to **clause 8.8.6 (Fossils and Antiquities)** in which case the provisions of Schedule 9 (Change Protocol) shall apply).
- 8.8.5 If directed by the Authority's Representative, the Contractor shall allow representatives of the Authority to enter the Site for the purposes of removal or disposal of such discovery, provided that such entry shall be subject to the Authority complying with all relevant safety procedures, which shall include any relevant health and safety plans for the construction of the Prison from time to time and any reasonable directions with regard to site safety that may be issued by or on behalf of the Contractor from time to time.
- 8.8.6 If any instruction referred to in **clause 8.8.3 (Fossils and Antiquities)** includes a requirement for the Contractor to suspend the carrying out of the Works and/or the Houseblock Works and/or to carry out works (being any work of alteration, addition, demolition or extension or variation in the Prison) which are not works which would be strictly necessary for the purpose of compliance with Legislation or any Necessary Consents, such works or instruction to suspend shall be deemed to be an Authority Change and the provisions of **Schedule 9 (Change Protocol)** shall apply.
- 8.8.7 The Authority shall act promptly and diligently in dealing with its obligations in this **clause 8.8 (Fossils and Antiquities)** in relation to any find so as to mitigate any effect on the Contractor, the Works, the Houseblock Works and/or the Custodial Service.
- 8.8.8 The Contractor shall comply with the Bronze Age Platform Requirements in the carrying out of the Works and the Houseblock Works and the provision of the Custodial Service.

PART III - CONSTRUCTION PHASE

9. THE WORKS

9.1 Obligation to Carry Out

The Contractor shall or shall procure that the Construction Sub-Contractor (and its sub-contractors and/or consultants) shall carry out the design (including the preparation of Design Data in relation to the Works), construction, completion, commissioning and testing of the Works so that:

- 9.1.1 the Contractor shall be able to provide Available Prisoner Places in accordance with (as the case may be) each of the Contractual Opening Date, any date specified for the provision of Available Prisoner Places in the Phase-In Timetable and/or the Contractual Full Operation Date, provided that a breach of this **clause 9.1.1 (Obligation to Carry Out)** shall not, of itself, be capable of giving rise to a Contractor Default under either of paragraphs (a) or (b) of that definition;
- 9.1.2 the Post Completion Works Acceptance Requirements are satisfied on or before the Contractual Post Completion Works Acceptance Date, provided that a breach of this **clause 9.1.2 (Obligation to Carry Out)** shall not, of itself, be capable of giving rise to a Contractor Default under either of paragraphs (a) or (b) of that definition;
- 9.1.3 the Works fully comply with and meet all the requirements of this Contract, the Authority's Requirements, the Construction Proposals, Good Industry Practice, Guidance, all Necessary Consents and all applicable Legislation;
- 9.1.4 new materials only will be used in carrying out the Works (unless the Authority agrees otherwise in writing or the contrary is set out in the Design and Construction Requirements) and all goods used or included in the Works will be of satisfactory quality;
- 9.1.5 products or materials which are not in conformity with relevant British or European Union Standards or codes of practice which at the time of use are widely known to building contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used shall not be used or included in the Works;

- 9.1.6 all persons employed in connection with the performance of the Works will be skilled and experienced in their several professions, trades and callings or adequately supervised;
- 9.1.7 all aspects of the Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Works in accordance with this Contract and having regard to the activities which are carried on at the Original Site;
- 9.1.8 the Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Original Site are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the Works; and
- 9.1.9 adequate retaining and supporting walls or other effective means of support are provided to support any Adjoining Property at all times during and following the carrying out of the Works.

9.2 Overall Responsibility

The obligations in **clause 9.1 (Obligation to Carry Out)** are independent obligations, and in particular:

- 9.2.1 the fact that the Contractor has complied with the Design and Construction Requirements but not the Construction Proposals shall not be a defence to an allegation that the Contractor has not satisfied the Construction Proposals, provided that the Design and Construction Requirements shall take priority over the Construction Proposals in the event of any discrepancy or inconsistency between them; and
- 9.2.2 the fact that the Contractor has complied with the Construction Proposals but not the Design and Construction Requirements shall not be a defence to an allegation that the Contractor has not satisfied the Design and Construction Requirements.

9.3 Utilities

The Contractor shall in relation to the services and utilities required or affected as a result of the carrying out of the Works:

- 9.3.1 be responsible for determining the location of such services and utilities as may be at the Original Site and for the maintenance of access to such services and utilities at the Original Site;
- 9.3.2 make and rely upon all necessary investigations and surveys as to such services and utilities at the Original Site;

- 9.3.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any services and utilities outside the Original Site;
- 9.3.4 pay to all Relevant Authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such services and utilities within the Original Site;
- 9.3.5 make connection into services and utilities outside the Original Site; and
- 9.3.6 otherwise do all that is required in relation to the utilities required for the purposes of carrying out the Works.

9.4 **Delay to the Construction Programme**

Without prejudice to the obligation of the Contractor to notify pursuant to **clause 15 (Compensation Events)**, if either:

- 9.4.1 the Contractor becomes aware at any time that the actual progress of the Works may become or has been significantly delayed or has fallen behind the Construction Programme; or
- 9.4.2 it appears to the Authority's Representative at any time that the actual progress of the Works has been significantly delayed or has fallen behind the Construction Programme (and the Authority's Representative requests the Contractor to do so),

the Contractor shall submit to the Authority's Representative a report identifying the reasons for the delay and (where the Authority's Representative requires the Contractor to do so) the Contractor shall produce and submit to the Authority's Representative a revised Construction Programme showing the manner and the periods in which the Works will be carried out to ensure that either:

- 9.4.2.1 the Contractor shall be able to provide Available Prisoner Places:
 - (a) in accordance with (as the case may be) each of the Contractual Opening Date, any date specified for the provision of Available Prisoner Places in the Phase-In Timetable and/or the Contractual Full Operation Date; or
 - (b) as soon as reasonably possible after the Contractual Opening Date, any date specified for the provision of Available Prisoner Places in the Phase-In Timetable and/or the Contractual Full Operation Date where

compliance with **clause 9.4.2.1(a) (Delay to the Construction Programme)** is not possible; or

9.4.2.2 the Post Completion Works Acceptance Requirements are satisfied:

- (a) on or before the Contractual Post Completion Works Acceptance Date; or
- (b) as soon as reasonably possible after the Contractual Post Completion Works Acceptance Date where compliance with **clause 9.4.2.2(a) (Delay to the Construction Programme)** is not possible.

9A THE HOUSEBLOCK WORKS

9A.1 Obligation to Carry Out the Houseblock Works

The Contractor shall or shall procure that the Operating Sub-contractor (and its sub-contractors and/or consultants) shall carry out the design (including the preparation of Design Data in relation to the Houseblock Works), construction, completion, commissioning and testing of the Houseblock Works so that:

- 9A.1.1 the Contractor shall be able to provide Houseblock Available Prisoner Places in accordance with (as the case may be) each of the Contractual Houseblock Opening Date, any date specified for the provision of Houseblock Available Prisoner Places in the Houseblock Phase-in Period Timetable and/or the Contractual Houseblock Full Operation Date, provided that a breach of this clause 9A.1.1 shall not, of itself, be capable of giving rise to a Houseblock Event of Default under paragraph (a) of that definition;
- 9A.1.2 the Post Completion Houseblock Works Acceptance Requirements are satisfied on or before the Contractual Post Completion Houseblock Works Acceptance Date, provided that a breach of this clause 9A.1.2 shall not, of itself, be capable of giving rise to a Houseblock Event of Default under paragraph (a) of that definition;
- 9A.1.3 the Houseblock Works fully comply with and meet all the requirements of this Contract, the Authority's Houseblock Requirements, the Houseblock Construction Proposals, Good Industry Practice, Guidance, all Necessary Consents and all applicable Legislation;
- 9A.1.4 new materials only will be used in carrying out the Houseblock Works (unless the Authority agrees otherwise in writing or the contrary is set out in the Houseblock Design and Construction Requirements) and all

goods used or included in the Houseblock Works will be of satisfactory quality;

- 9A.1.5 products or materials which are not in conformity with relevant British or European Union Standards or codes of practice which at the time of use are widely known to building contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used shall not be used or included in the Houseblock Works;
- 9A.1.6 all persons employed in connection with the performance of the Houseblock Works will be skilled and experienced in their several professions, trades and callings or adequately supervised;
- 9A.1.7 all aspects of the Houseblock Works will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the Houseblock Works in accordance with this Contract and having regard to the activities which are carried on at the Houseblock Works Site;
- 9A.1.8 the Houseblock Works are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Houseblock Works Site are secure against trespassers and clean and tidy so far as practicable having regard to the nature of the Houseblock Works; and
- 9A.1.9 adequate retaining and supporting walls or other effective means of support are provided to support any Adjoining Property at all times during and following the carrying out of the Houseblock Works.

9A.2 Overall Responsibility

The obligations in **clause 9A.1 (Obligation to Carry Out the Houseblock Works)** are independent obligations, and in particular:

- 9A.2.1 the fact that the Contractor has complied with the Houseblock Design and Construction Requirements but not the Houseblock Construction Proposals shall not be a defence to an allegation that the Contractor has not satisfied the Houseblock Construction Proposals, provided that the Houseblock Design and Construction Requirements shall take priority over the Houseblock Construction Proposals in the event of any discrepancy or inconsistency between them; and

- 9A.2.2 the fact that the Contractor has complied with the Houseblock Construction Proposals but not the Houseblock Design and Construction Requirements shall not be a defence to an allegation that the Contractor has not satisfied the Houseblock Design and Construction Requirements.

9A.3 Utilities

The Contractor shall in relation to the services and utilities required or affected as a result of the carrying out of the Houseblock Works:

- 9A.3.1 be responsible for determining the location of such services and utilities as may be at the Houseblock Works Site and for the maintenance of access to such services and utilities at the Houseblock Works Site;
- 9A.3.2 make and rely upon all necessary investigations and surveys as to such services and utilities at the Houseblock Works Site;
- 9A.3.3 make provision for lawfully diverting, disconnecting or otherwise dealing as may be necessary with any services and utilities outside the Houseblock Works Site;
- 9A.3.4 pay to all Relevant Authorities or undertakings all costs and expenses incurred in diverting, disconnecting or otherwise carrying out works in respect of such services and utilities within the Houseblock Works Site;
- 9A.3.5 make connection into services and utilities outside the Houseblock Works Site; and
- 9A.3.6 otherwise do all that is required in relation to the utilities required for the purposes of carrying out the Houseblock Works.

9A.4 Delay to the Houseblock Construction Programme

Without prejudice to the obligation of the Contractor to notify pursuant to **clause 15A (Compensation Events (Houseblock Works))**, if either:

- 9A.4.1 the Contractor becomes aware at any time that the actual progress of the Houseblock Works may become or has been significantly delayed or has fallen behind the Houseblock Construction Programme; or
- 9A.4.2 it appears to the Authority's Representative at any time that the actual progress of the Houseblock Works has been significantly delayed or has fallen behind the Houseblock Construction Programme (and the Authority's Representative requests the Contractor to do so),

the Contractor shall submit to the Authority's Representative a report identifying the reasons for the delay and (where the Authority's Representative requires the Contractor to do so) the Contractor shall produce and submit to the Authority's Representative a revised Houseblock Construction Programme showing the manner and the periods in which the Houseblock Works will be carried out to ensure that either:

9A.4.2.1. the Contractor shall be able to provide Houseblock Available Prisoner Places:

- (a) in accordance with (as the case may be) each of the Contractual Houseblock Opening Date, any date specified for the provision of Houseblock Available Prisoner Places in the Houseblock Phase-in Period Timetable and/or the Contractual Houseblock Full Operation Date; or
- (b) as soon as reasonably possible after the Contractual Houseblock Opening Date, any date specified for the provision of Houseblock Available Prisoner Places in the Houseblock Phase-in Period Timetable and/or the Contractual Houseblock Full Operation Date where compliance with **clause 9A.4.2.1(a) (Delay to the Houseblock Construction Programme)** is not possible.; or

9A.4.2.2 the Post Completion Houseblock Works Acceptance Requirements are satisfied:

- (a) on or before the Contractual Post Completion Houseblock Works Acceptance Date; or
- (b) as soon as reasonably possible after the Contractual Post Completion Houseblock Works Acceptance Date where compliance with **clause 9A.4.2.2(a) (Delay to the Houseblock Construction Programme)** is not possible.

10. INFORMATION TECHNOLOGY

10.1 Installation of Authority's ICT System

10.1.1 The Authority shall supply, install, configure, test and commission:

10.1.1.1 the Authority's ICT System at the Prison in accordance with the Construction Programme, provided that access to the Site is granted to the Authority by the Contractor;

10.1.1.1A the Authority's ICT System at the Houseblock in accordance with the Houseblock Construction Programme, provided that access to the Expansion Site is granted to the Authority by the Contractor; and

10.1.1.2 any replacement, upgrade or modification as may from time to time be made to or incorporated into the Authority's ICT System.

10.1.2 The Authority shall maintain the Authority's ICT System.

10.2 Ownership and Use of Authority ICT System

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

10.2.2 The Contractor shall only use the Authority's ICT System in order to comply with its obligations under this Contract and for no other purpose whatsoever.

10.3 Contractor's ICT Obligations

The Contractor shall:

10.3.1 provide, install and maintain all necessary infrastructure, ducts, wireways, cabling and ancillary fixtures and fittings and power supplies in accordance with the Authority's Requirements and the Authority's Houseblock Requirements for the purpose of supplying, installing, maintaining, configuring, testing, commissioning and operating the Authority's ICT System; and

10.3.2 at the Authority's reasonable request, make available appropriately qualified personnel to consult with the Authority, its nominated agents or their authorised engineers about the installation, configuration,

testing, commissioning, maintenance, operation, upgrading, modification or replacement of any Authority's ICT System; and

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

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

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

10.3.4.2 upgrade or replace the Authority's ICT System (or any part of the Authority's ICT System); and

10.3.5 not connect any device to the Quantum desktop and network infrastructure and shall indemnify and keep indemnified in full the Authority from and against all costs incurred by the Authority in removing any such unauthorised device.

10.4 **Changes to ICT Systems**

10.4.1 If the Authority wishes to change all or any part of the Authority's ICT System it shall be deemed to be an Authority Change and the provisions of **Schedule 9 (Change Protocol)** shall apply.

10.4.2 If the Contractor wishes to change all or any part of the Contractor's ICT System it shall be deemed to be a Contractor Change and the provisions of **Schedule 9 (Change Protocol)** shall apply.

10.5 **Training**

10.5.1 The Authority shall, at its own expense provide training on or before the commissioning of the Authority's ICT System:

10.5.1.1 for up to twenty (20) members of the Contractor's Staff on the Authority's ICT System; and

10.5.1.2 for up to five (5) members of the Contractor's Staff on administration of the Authority's ICT System,

and the dates, times and location for such training shall be agreed as part of the Initial Custodial Service Delivery Plan.

10.5.2 The Authority shall, at its own expense provide training on or before the commissioning of any material upgrade and/or change to the Authority's ICT System:

10.5.2.1 for up to twenty (20) members of the Contractor's Staff on the Authority's ICT System; and

10.5.2.2 for up to five (5) members of the Contractor's Staff on administration of the Authority's ICT System,

and the dates, times and location for such training shall be agreed between the Parties.

10.5.3 The Contractor shall arrange for any other training required for members of the Contractor's Staff not provided pursuant to **clauses 10.5.1 (Training) to 10.5.2 (Training)** (Inclusive).

10.6 **Responsibility for Security of Authority ICT Systems**

10.6.1 The Authority or its appointed agents shall be responsible for ensuring the security of its infrastructure, services and data up to the point at which there is a physical or logical interface with the Contractor's ICT System.

10.6.2 Notwithstanding **clause 10.6.1 (Responsibility for Security of Systems)**, the Contractor shall take all reasonable steps to ensure that the security of the Authority's systems is not jeopardised including erecting firewalls, providing protection against viruses and ensuring security of access to the Authority's ICT System.

10.7 **Malicious Software**

10.7.1 The Contractor shall use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the Contractor's ICT System.

10.7.2 Notwithstanding **clause 10.7.1 (Malicious Software)**, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Prescribed Documentation, assist each other to mitigate any Losses.

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

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

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

11. DESIGN DEVELOPMENT

11.1 Obligation to Finalise Design

The Contractor shall develop and finalise the design and specification of the Works and the Houseblock Works and the Authority may review such designs and specifications in accordance with the Review Procedure and the provisions of this **clause 11 (Design Development)**.

11.2 Not used

11.3 Not used

11.4 Not used

11.5 Not used

11.6 Review of Design Data

The Contractor shall allow the Authority's Representative at any time a reasonable opportunity to view any items of Design Data, which shall be made available to the Authority's Representative as soon as reasonably practicable following receipt of any written request from the Authority's Representative.

11.7 Design Database

The Contractor shall procure that the Construction Sub-Contractor in respect of the Works and the Operating Sub-Contractor in respect of the Houseblock Works and the Houseblock Construction Sub-Contractor establishes and maintains a computerised design database which the Contractor and the Authority's Representative may access remotely by computer to view drawings comprised within the Design Data and electronically store and print copies of such Design Data. If the Authority's Representative is unable to access that design database, the Contractor shall procure that the database is made available as soon as reasonably practicable for inspection by the Authority's Representative or any person authorised by the Authority's Representative.

11.8 Rectification of Construction Proposals

If it should be found that the Construction Proposals do not fulfil the Design and Construction Requirements, the Contractor shall, at its own expense, amend the Construction Proposals and rectify the Works or any part of the Works affected. Such amendment and rectification shall have the effect that:

11.8.1 the Construction Proposals shall satisfy the Design and Construction Requirements; and

11.8.2 following the amendment or rectification, the structural, mechanical and electrical performance of the Original Site will be of an equivalent standard of performance to that set out in the Construction Proposals prior to their amendment or rectification (for the purpose of comparison, disregarding the fault which required the amendment or rectification to be made).

11.8A Rectification of Houseblock Construction Proposals

If it should be found that the Houseblock Construction Proposals do not fulfil the Houseblock Design and Construction Requirements, the Contractor shall, at its own expense, amend the Houseblock Construction Proposals and rectify the Houseblock Works or any part of the Houseblock Works affected. Such amendment and rectification shall have the effect that:

11.8A.1 the Houseblock Construction Proposals shall satisfy the Houseblock Design and Construction Requirements; and

11.8A.2 following the amendment or rectification, the structural, mechanical and electrical performance of the Houseblock Works Site will be of an equivalent standard of performance to that set out in the Houseblock Construction Proposals prior to their amendment or rectification (for the purpose of comparison, disregarding the fault which required the amendment or rectification to be made).

12. CHANGES TO THE CONSTRUCTION PROPOSALS AND THE CONSTRUCTION PROGRAMME

12.1 Proposal to Vary Construction Proposals or the Construction Programme

12.1.1 Without prejudice to **clause 11.8 (Rectification of Construction Proposals)**, the Contractor shall be entitled to propose variations to the Construction Proposals by submitting the relevant variation to the Authority for review under the Review Procedure.

12.1.2 The Contractor shall be entitled to propose variations to the Construction Programme by submitting the relevant variation to the Authority for review under the Review Procedure.

12.2 Implementing a Variation to the Construction Proposals or the Construction Programme

The Contractor shall not implement any variation to the Construction Proposals or the Construction Programme until the Authority consents or is deemed to have consented to the variation in accordance with the Review Procedure. Once consented to, a proposed variation will form part of the Construction Proposals or the Construction Programme (as the case may be).

12A CHANGES TO THE HOUSEBLOCK CONSTRUCTION PROPOSALS AND THE HOUSEBLOCK CONSTRUCTION PROGRAMME

12A.1 Proposal to Vary Houseblock Construction Proposals or the Houseblock Construction Programme

12A.1.1 Without prejudice to **clause 11.8A (Rectification of Construction Proposals)**, the Contractor shall be entitled to propose variations to the Houseblock Construction Proposals by submitting the relevant variation to the Authority for review under the Review Procedure.

12A.1.2 The Contractor shall be entitled to propose variations to the Houseblock Construction Programme by submitting the relevant variation to the Authority for review under the Review Procedure.

12A.2 Implementing a Variation to the Houseblock Construction Proposals or the Houseblock Construction Programme

The Contractor shall not implement any variation to the Houseblock Construction Proposals or the Houseblock Construction Programme until the Authority consents or is deemed to have consented to the variation in accordance with the Review Procedure. Once consented to, a proposed variation will form part of the Houseblock Construction Proposals or the Houseblock Construction Programme (as the case may be).

13. CDM REGULATIONS

13.1 Responsibility for Design

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

13.2 The Contractor as Client

In accordance with the CDM Regulations, the Authority and the Contractor have elected that the Contractor shall be, and shall be treated as the only client in respect of the Works pursuant to Regulation 8 of the CDM Regulations. The Contractor shall not, prior to the completion of the Works, seek in any way to withdraw, terminate or derogate from such election.

- 13.2A In accordance with the CDM Regulations the Authority and the Contractor hereby elect that the Operating Sub Contractor shall be and shall be treated as the only "client" in respect of the Houseblock Works pursuant to the CDM Regulations. The Contractor shall not (and shall procure that the Operating Sub-Contractor shall not), prior to the termination of this Contract, seek in any way to withdraw, terminate or derogate from such election.

13.3 Duties under CDM Regulations

13.3.1 The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations, requirements and duties arising under the CDM Regulations in connection with the Works (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations) and shall, prior to the issue of the Independent Engineer's Declaration, provide a draft certified copy of Part 1 of the Building Manual for the Prison to the Authority and within thirty (30) Business Days of the Actual Opening Date, the full and complete Part 1 of the Building Manual for the Works.

13.3.1A The Contractor shall procure that the Operating Sub Contractor observes, performs and discharges and/or procures the observance, performance and discharge of all the obligations, requirements and duties of "client" arising under the CDM Regulations in connection with the Houseblock Works other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations, and shall, prior to the issue of the final Independent Engineer's Houseblock Declaration, provide a draft copy of Part 1 of the Building Manual updated to reflect the Houseblock to the Authority and within thirty (30) Business Days of the Actual Houseblock Full Operation Date, the full and complete Part 1 of the Building Manual updated to reflect the Houseblock.

13.3.2 The Contractor shall ensure that Part 1 of the Building Manual is revised as often as may be appropriate to incorporate any relevant new information for the term of this Contract.