

DATED November 2014

**HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

- and -

Serco Limited

SERVICES AGREEMENT

for the Operation, Management and Maintenance of the
Yarl's Wood Immigration Removal Centre, which is
situated at Thurleigh, Bedfordshire

OFFICIAL – SENSITIVE

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THIS CONTRACT is made the day of November 2014

BETWEEN

- (1) **HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR THE HOME DEPARTMENT** (the "**Authority**" which term shall include its successors and permitted assigns); and
- (2) **Serco Limited** (registered under number 242246) whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY (the "**Service Provider**").

WHEREAS

- (A) The Authority, in exercise of its powers under the Immigration Act 1971, the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002 determined it was desirous to obtain the services of a service provider to provide operation, maintenance and management services at the Yarl's Wood Immigration Removal Centre, at Thurleigh, Bedfordshire. Accordingly, the Authority invited tenders from interested persons for the Project.
- (B) Proposals were submitted on behalf of the Service Provider in response to the Authority's invitation. Following clarifications, it appears to the Authority to be expedient for the purpose of, or in connection with, the discharge of its powers to enter into this Contract, which sets out the terms and conditions upon which the Service Provider will carry out the Project.

NOW IT IS HEREBY AGREED as follows:

PART 1 - GENERAL TERMS

1. DEFINITIONS

- 1.1 In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

1971 Act means the Immigration Act 1971;

1999 Act means the Immigration and Asylum Act 1999;

2002 Act means the Nationality, Immigration and Asylum Act 2002;

Affiliate means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

Asset Register means the register of all plant at the Removal Centre, including without limitation, plant relating to electrical services, mechanical services, the buildings and fabric;

Assets means the buildings, plant, fixtures, fittings, materials, chattels, machinery, vehicles or other equipment in or upon the Removal Centre and the Site;

Authority Data means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Service Provider by or on behalf of the Authority; or
 - (ii) which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which the Authority is the Data Controller;

Authority Party means any servant, sub-contractor, agent or representative of the Authority;

Authority Software means software which is owned by or licensed to the Authority, including software which is or will be used by the Service Provider for the purposes of providing the Services but excluding the Service Provider Software;

Authority System means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Service Provider in connection with this Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Service Provider System;

Available Detainee Place shall have the meaning ascribed to it in Schedule G (*Performance Evaluation*);

Available Healthcare Place a Removal Unit for occupation by a single Detainee in the Healthcare Centre at the Yarl's Wood Site which satisfies the requirements of Schedule G (*Performance Evaluation*);

Available Removal from Association Place shall have the meaning ascribed to it in Schedule G (*Performance Evaluation*);

Available Temporary Confinement Place shall have the meaning ascribed to it in Schedule G (*Performance Evaluation*);

BCDR Plan means any plan prepared pursuant to Schedule E (Contingency and Emergency Procedures, as may be amended from time to time;

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

Centre Manager means the person or persons appointed by the Service Provider and approved by the Authority under Section 148 of the 1999 Act in accordance with 23 (*The Centre Manager*);

Change in Law means any change in Legislation which impacts on the Services which comes into force after the Date of Contract;

Yarl's Wood Site means that part of the Site on which the Yarl's Wood Immigration Removal Centre is situated, as identified in Schedule I.

Commencement Date means 26th April 2015;

Commercial Premiums means a level of premium that, having regard to market conditions, it would be reasonable to expect a person (providing services of the nature provided by the Service Provider pursuant to the Contract) requiring insurance of a particular kind to pay for that insurance on an arm's length basis;

Commercially Available in relation to the software referred to in Clause 63 (*Intellectual Property Rights*) means that the software is generally available for purchase or to be licensed on normal commercial terms;

Commercially Sensitive Information means the sub set of Confidential Information listed in column 1 of [the table set out in Schedule Q (*Commercially Sensitive Information*) in each case for the period specified in column 2 of that table;

Comparable Supply means the supply of services to another customer of the Service Provider that are the same or similar to the Services;

Confidential Information means:

- (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or

would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

(b) Commercially Sensitive Information; and

(c) Confidential Matters;

Confidential Matters means any information which:

(a) relates to the way in which the Operating Fee is calculated; or

(b) might prejudice security at the Removal Centre;

Contract means this contract as concluded between the Authority and the Service Provider including all Schedules, annexes and appendices, plans, specifications and drawings attached thereto, together with any variations agreed by the Authority in accordance with Clause 67 (*Authority to Commit and Variation*);

Contract Term shall be the period referred to in Clause 2.1;

Contract Month Means any calendar month in a Contract Year (commencing on the 1st day of each month) provided that:

a) The first Contract Month shall commence on the date upon which the Full Operation Date falls and end on the last day of the month in which the Full Operation Date occurs; and

b) The last Contract Month shall begin on the first day of the month in which the last day of the Contract Term occurs and end on the last day of the Contract Term.

Control means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "**Controls**" and "**Controlled**" shall be interpreted accordingly;

Controller means a Crown servant or servants appointed by the Authority pursuant to Section 151 of the 1999 Act;

CPI means the "Consumer Price Index" as published by the Office for National Statistics or such index in such other journal as shall replace such table (and, for the avoidance of doubt, if CPI is rebased during the Contract Term, it shall nevertheless be determined for the purposes hereof as if no such rebasing had occurred);

Crown includes the Authority;

Crown Body means any department, office or agency of the Crown;

Crown Fire Officer means the officer responsible for conducting fire safety inspections on behalf of the Crown Property Inspection General. The UK Border Agency is part of the Home Office and as such is subject to Crown Buildings policies.

Custodial Functions means custodial functions at the Removal Centre as defined in the 1999 Act;

Cut-off Date means, subject to Clause 14 (Extension of Time) **26 March 2015**;

Daily Report means a written record of the number of Available Detainee Places and of all Detainees accommodated at the Removal Centre in the previous twenty-four (24) hour period to be completed by the Service Provider in a form approved by the Monitor;

Data means all data and information received, created, processed or output by the Service Provider for from or on behalf of the Authority or third parties pursuant to an obligation to the

Authority in performing the Contract in all media and all formats including without limitation any data or information relating to a Detainee;

Data Controller shall have the same meaning as set out in the Data Protection Act 1998;

Data Processor shall have the same meaning as set out in the Data Protection Act 1998;

Data Protection Act means the Data Protection Act 1998;

Data Protection Legislation means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

Data Subject shall have the same meaning as set out in the Data Protection Act 1998;

Date Compliant means that no previous or future date change has had or will have any adverse impact on the performance or functionality of the Service Provider System;

Date of Contract means the date of signature of the Contract;

Day means any period of twenty-four (24) hours beginning at midnight;

DC Legislation means any Legislation first having legal effect after the Date of Contract (other than such Legislation which on the Date of Contract is or ought reasonably to have been foreseeable by the Service Provider) which expressly refers to the provision or running of the Removal Centre or removal centres generally;

DC Rules means such rules as shall be made from time to time pursuant to Section 153 of the 1999 Act for the regulation and management of removal centres;

Demobilisation Costs means:

- (a) the reasonable costs incurred directly as a result of termination of this Contract payable by the Service Provider in respect of the termination of any agreements entered into with third parties at arms' length for the sole purpose of the Project (excluding any payment to compensate for any consequential damages or loss of future revenue or profits (or similar payment) or any item other than costs incurred as a result of early termination);
- (b) the aggregate of all amounts properly payable by the Service Provider to employees exclusively engaged in the Project under their contracts of employment from the Termination Date until the earlier of:
 - (i) the date falling three (3) months after the Termination Date; and
 - (ii) the date on which such employees are redeployed to other activities (the Service Provider having used all reasonable endeavours to so redeploy such employees); and
- (c) subject to sub-paragraph (b) the aggregate of all Redundancy Payments;

Deputy Monitor means the Crown servant or servants appointed by the Authority as a deputy contract monitor;

Detainee means a person detained under the 1971 Act as provided for in Section 147 of the 1999 Act and assigned by the Authority to a Detainee Place in the Removal Centre;

Detainee Custody Officer means a person in respect of whom a certificate is for the time being in force certifying that he has been approved by the Authority for the purpose of performing Escort Functions or both Escort Functions and Custodial Functions in relation to detained persons and that he is accordingly authorised to perform them;

Detainee Place means a unit of accommodation for occupation by a single Detainee in a Removal Unit;

Dispute has the meaning ascribed to it in Clause 77 (*Dispute Resolution*);

Document includes any written or printed work, or photograph, or any work produced by electronic means;

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;

Escort Functions means escort functions as defined in Section 147 of the 1999 Act;

Euro Compliant means that:

- (i) the introduction of the euro within England and Wales shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business;
- (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and
- (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):
 - (a) be able to perform all such functions in any number of currencies and/or in euros;
 - (b) during any transition phase applicable to England and Wales be able to deal with multiple currencies and in relation to the euro and the national currency of England and Wales dual denominations;
 - (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
 - (d) incorporate protocols for dealing with rounding and currency conversion;
 - (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of England and Wales and/or the euro; and
 - (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of England and Wales;

Event of Default means any of the events listed in Clause 46 (*Default by the Service Provider*);

Expert means an appropriately qualified expert as agreed between the Parties or, failing agreement within five (5) days, as appointed (upon application by either of the Parties) by the president for the time being of the Association of British Insurers;

Expiry Date means, subject to Clause 2.3 (*Extension to the Contract Term*), 25th April 2023;

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

FOIA means the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act

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

Force Majeure Event means the occurrence after the Date of Contract of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is the result of actions or breach of the Service Provider or Sub-contractors of any tier; 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;

Full Operation Date means [the date [after the date] of issue of the Permit to Operate];

Full Operation Period means the period so defined in Clause 18 (*Full Operation Period*);

Full Quota means, as appropriate, the maximum number of 410 Available Detainee Places together with the, as a minimum number of, 284 Available Female Places, 121 Available Family places, 2 Available Female Temporary Confinement Places, 2 Available Male Temporary Confinement Places, 6 Available Female Removal from Association Places, 6 Available Male Removal from Association places and 6 Available Healthcare Places

General Change in the Law means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a Comparable Supply;

Good Industry Practice means the exercise of the degree of skill, diligence, timeliness, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same type of undertaking under the same or similar circumstances including (where applicable) the circumstances of a removal centre and seeking in good faith to perform its obligations with sufficient financial resources and complying with all relevant Legislation and applicable law;

Guarantee means the parent company guarantee given on behalf of the Service Provider by the Guarantor in favour of the Authority in substantially the form appended at Schedule O (*Form of Parent Company Guarantee*);

Guarantor means **Serco Group Plc** (No: 2048608) whose registered address is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire, RG27 9UY;

Healthcare Centre means the healthcare centre at the Yarl's Wood Site;

Hearing Facility means the hearing facility located at the Yarl's Wood Site which, for the avoidance of doubt, forms part of the Removal Centre;

Housing Grants Act means the Housing Grants, Construction and Regeneration Act 1996;

ICTA means the Income and Corporation Taxes Act 1988;

ICT Environment means the Authority System and the Service Provider System;

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;

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

Insurance means the insurance policies required to be taken out from time to time in accordance with the Contract;

Insurance Claim means a claim under the Insurances by or on behalf of the Service Provider and/or the Authority;

Insurance Notice shall have the meaning set out in Clause 6.1.1 (*Obligation to notify of Unavailability*);

Insurance Proceeds Account means the account in the name of the Authority at the bank nominated by the Authority and advised to the insurers by the Service Provider;

Intellectual Property Rights or “IPR” means any design right, moral right, goodwill, copyright, database right, patent, trade mark, or performing right (whether registerable or otherwise) or any other intellectual property right;

Inventory means the inventory of all equipment held at the Removal Centre;

Invitation to Tender means the invitation to tender dated 17th December 2012 in respect of the Project;

Key Personnel means those personnel who are identified as such in Schedule J (Named Representatives and Key Personnel);

Know-How means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know how already in the Service Provider's or the Authority's possession before this Contract;

KPI Escape means as defined in SF3 and SF4 of Schedule G.

Legislation means any Act (including without limitation the 1999 Act and the Human Rights Act 1998) or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978 and any exercise of the Royal Prerogative and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972 and in each such case includes the interpretation, administration or application thereof;

LIBOR means in respect of any month, the three (3) month London Interbank Offer Rate on the first Working Day of such month, as shown in the Financial Times;

Lease means, as the context requires, the lease of the Yarl's Wood Site, as referred to in Clause 22 (*Land Provisions*);

Losses means any losses, liabilities (whether in contract, in tort, under statute or otherwise) claims, actions, proceedings, demands, costs, charges, penalties or expenses including loss of revenue;

Malicious Software 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;

Material Damage Policy means the Material Damage All Risks as required by Schedule A (*Insurances*);

Material Damage Insurance Proceeds has the meaning specified in Clause 5.5.1(a) (*Insurance, Material Damage Insurance Proceeds*);

Medical Malpractice Insurance means the insurance specified in paragraph 4 of Part 1 of Schedule A (*Insurances*);

Mobilisation Period means the period between the Date of Contract and the Full Operation Date;

Monitor means the Crown servant or servants appointed by the Authority as a contract monitor in accordance with Section 149(4) of the 1999 Act;

Month means a calendar month;

Monthly Performance Report means the report produced by the Service Provider, in the agreed format, to be received no later than 7 calendar days after the relevant Performance Month.

Named Representatives of the Authority means those persons whose names appear in Schedule J (*Named Representatives*) which may be amended from time to time pursuant to Clause 67 (*Authority to Commit and Variation*);

Named Representatives of the Service Provider means those representatives of the Service Provider whose names appear at Schedule J (*Named Representatives*) or such other person(s) notified to the Authority by the Service Provider in writing attaching a resolution of the board of directors of the Service Provider appointing such person(s);

Notice of Change shall have the meaning ascribed to it in Clause 13.1.1 (*Changes*);

Notification Date shall have the meaning in Clause 6.1.1 (*Obligation to notify of Unavailability*);

Obligations of the Contract includes all works, services, payments and supplies of goods required by the Contract, and all duties imposed by the Contract all as permitted or amended in accordance with the terms of the Contract;

Operating Fee means the fee referred to in Schedule F (*Operating Fee*);

Operating Fee Analysis means the analysis in relation to the Operating Fee as set out in Part 1 of Schedule F (*Operating Fee*);

Parties means the Service Provider and the Authority and **Party** shall be construed accordingly;

Performance Credit means credits raised against the respective Monthly Service Payment for Service Failures in the previous month as set out in Schedule F (*Operating Fee*).

Performance Failure Category means the list of performance failures as specified in the Table in Section 2 Schedule G (*Performance Evaluation*);

Performance Measure means an event or circumstance listed as such in Schedule G (*Performance Evaluation*);

Performance Month means in respect of the first Performance Month, the period commencing on the Full Operation Date and ending on the last day of the month in which the Full Operation Date falls, and thereafter shall be each period of one (1) month commencing on the day following the last day of the previous Performance Month and in respect of the last Performance Month means the period commencing on the day following the last day of the previous Performance Month and ending on the Termination Date;

Performance Point means each point accruing on the occurrence of a Performance Measure, as more particularly set out at paragraph 1.6 of Schedule G (*Performance Evaluation*);

Permit to Operate shall mean the permit described in Clause 16 (*Permit to Operate*);

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

Personal Data shall have the same meaning as in the Data Protection Act;

Process has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing;

Project means the operation, management and maintenance of the Removal Centre and the carrying out of any other obligation of the Contract or any works or services requested by the Authority in accordance with the terms of this Contract;

Quality Plans means the Service Provider's plans that reflects its quality management systems as further described in Clause 36 (*Monitoring, Inspection and Access*);

Rectification Notice means any notice issued in accordance with Clause 48 (*Rectification*);

Redundancy Payments means any amounts properly payable by the Service Provider, whether by virtue of statute or under any contract of employment, as a result of making redundant an employee exclusively engaged in the Project;

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly;

Re-instatement Date shall have the meaning ascribed to it in Clause 7.2.1(c) (*Reporting Requirements*);

Re-instatement Works shall have the meaning ascribed to it in Clause 7.2.1(a) (*Reporting Requirements*);

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

Relevant Event means any of the following events:

- (a) a change is required by the Authority under, or DC Legislation is enacted as contemplated in, Clause 13 (*Changes*) or Clause 13.11 (*Changes as a result of DC Legislation*) (as relevant), and that change or such DC Legislation requires the Service Provider to amend the nature or extent of the Services;
- (b) any failure by the Authority to comply with any of its obligations under the Contract, or any delay by the Authority or any representative of the Authority in allowing the Service Provider to have access to the Site or any obstruction by the Authority of such access;
- (c) civil commotion (other than any civil commotion the primary intention of which is to disrupt the operation of the Removal Centre) or terrorism; or
- (d) fire, lightning, explosion, storm, tempest, flood, earthquake, bursting or overflowing water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped there from,

provided that, in each case, such event is not caused by the negligence, default or breach of a relevant obligation under the Contract or a Sub-contract by any of the Service Provider and/or the Sub-contractors and/or any Service Provider Parties;

Relevant Regulatory Authority means the European Commission or the Office of Fair Trading or such other regulator who may have concurrent jurisdiction with the Office of Fair Trading under the Competition Act 1988;

Removal Centre (or Immigration Removal Centre) has the meaning ascribed to it in Section 147 of the 1999 Act as amended by Section 66(2)(b) of the 2002 Act. For the avoidance of doubt, in this Contract, references to the "Removal Centre" shall generally be construed as references to Yarl's Wood Immigration Removal Centre (incorporating all the buildings and structures and land on the Yarl's Wood Site and each and any of the component parts), together with any extensions and alterations thereto existing from time to time in accordance with the Contract.

Removal Unit means a unit of accommodation for occupation by a Detainee or Detainees (including segregation units and units for occupation by disabled Detainees but excluding the Healthcare Centre);

Replacement Service Provider means any third party service provider of Replacement Services appointed by the Authority from time to time;

Replacement Services means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Authority internally and/or by any third party;

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

Request for Information shall have the meaning set out in the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);

Required Insurance means the Service Provider Insurances;

Review Date means each anniversary of the Full Operation Date during the Contract Term;

Security Plan means the Service Provider's systems and procedures approved from time to time by the Authority to support the Service Provider's obligations to maintain security, control and safety as set out in Schedule D2 Safety & Security;

Security Policy means any policy which sets out the Authority's requirements with regard to security and which is notified by the Authority to the Service Provider, as the same may be updated from time to time;

Security Technology Change means any change in the manner in which security and control are or might, if implemented, be maintained in the Removal Centre at a level sufficient to satisfy the relevant tests in Clause 42 (*Available Detainee Places*) (including, without limitation, at a level set out in Schedule D (*Operational Specification*) which reduces or will reduce the number of Detainee Custody Officers required or otherwise materially reduces or will materially reduce the costs of the Service Provider or any Sub-contractor in performing its obligations under the Contract or any Sub-contract;

Service Provider Insurances has the meaning specified in Clause 5.1 (*Insurance, Scope of Obligations*);

Service Provider Party means any servant, sub-contractor of any tier, agent or representative of the Service Provider;

Service Provider's Background IPRs means: (a) IPRs owned by the Service Provider before the Date of Contract, for example those subsisting in the Service Provider's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Service Provider's Know-How or generic business methodologies; and/or (b) IPRs created by the Service Provider independently of this Contract but excluding IPRs owned by the Service Provider subsisting in the Service Provider Software;

Service Provider Equipment means the hardware, computer and telecoms devices and equipment supplied by the Service Provider or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;

Service Provider Software means software which is proprietary to the Service Provider, including software which is or will be used by the Service Provider for the purposes of providing the Services;

Service Provider System means the information and communications technology system used by the Service Provider in performing the Services including the Software, the Service Provider Equipment and related cabling (but excluding the Authority System);

Service Provider's Permit to Operate Notice Date has the meaning ascribed to it in Clause 17.1 (*Timetable for Permit to Operate*);

Services means those parts of the Obligations of the Contract which concern the operation, management and maintenance of the Removal Centre upon the Site including any change of service pursuant to Clause 13 (*Changes*);

Significant Performance Failure means the list of performance failures as specified in the Table in Section 3 Schedule G (*Performance Evaluation*);

Site means, all that land together with the buildings and other structures which may exist thereon from time to time to this Contract and known as the Yarl's Wood Removal Centre;

Software means Specially Written Software, Service Provider Software and Third Party Software;

Specially Written Software means any software created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of this Contract;

Specific Change in the Law means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;

Staff means (except in Clause 66 (*Independent Contractor*)) persons from time to time who work or perform duties or provide services (whether or not on a full-time basis and whether paid or volunteers) at or in relation to the Removal Centre following the Full Operation Date who intend to continue such work or duties or services during the Full Operation Period, including without limitation the Centre Manager and any Detainee Custody Officer whether they are an employee of or otherwise engaged by the Service Provider, or an employee of or otherwise engaged by any Sub-contractor, and a member of staff shall have the like meaning;

Staff Vetting Procedures means the Authority's procedures for the vetting of Staff whose role will involve the handling of information of a sensitive or confidential nature or the handling of which is subject to any relevant security measures;

Standards means any British or international standards which apply to the Services together with any applicable internal policies and procedures and Government codes of practice which are identified as "Standards" and notified by the Authority to the Service Provider from time to time;

Statutory Deduction means the deduction which is in force at the time of payment referred to in Section 559(4) and (4A) ICTA;

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

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

Sub-contractor means any person who has contracted with the Service Provider for the performance of any obligation of the Service Provider under the Contract and has been approved by the Authority pursuant to Clause 10 (*Sub-contracting*);

Termination Date means the date on which the Contract terminates in accordance with the terms hereof;

Termination Notice means a notice issued in accordance with Clause 49 (*Termination for Default*);

Third Party Software means software which is proprietary to any third party other than an Affiliate of the Service Provider which is or will be used by the Service Provider for the purposes of providing the Services;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

Unavailable means, in the context of insurance, that an insurance policy is not available in the worldwide insurance market at Commercial Premiums or is available but the deductibles, limits of indemnities or the scope of such cover are not at levels that an entity providing services of the nature referred to in this Contract to the removal centre sector would reasonably be expected to accept, provided that such unavailability is not caused by an act or omission of the Service Provider, any Sub-contractor or any Guarantor and their respective subsidiaries and affiliates and "**Available**" shall be construed accordingly;

Value Added Tax and **VAT** means United Kingdom value added tax including any similar tax which may be imposed in place thereof from time to time;

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

Working Day means a day other than a Saturday, Sunday or a bank holiday in England; and

Year means a calendar year unless otherwise specified.

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

- 1.2.1 the masculine includes the feminine and the singular includes the plural;
- 1.2.2 any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EC instrument) as amended or re-enacted;
- 1.2.3 any reference to an alteration in costs "in real terms" excludes changes attributable to RPI during the relevant period;
- 1.2.4 any reference to an agreement, contract or document shall be to such agreement, contract or document as amended, supplemented, novated or replaced as permitted under the Contract;
- 1.2.5 any reference in the Contract to a Schedule shall be to such Schedule as amended, modified or varied in accordance with the terms hereof; and
- 1.2.6 any capitalised terms used but not defined in any Schedule or Appendix to this Contract shall have the meaning ascribed to them in Clause 1.1 of this Contract;
- 1.2.7 references to "Clauses", "Schedules" and "Appendices" are, unless the context requires otherwise) to the clauses of and schedules and appendices to, this Contract.
- 1.2.8 the headings to the Clauses contained herein are for the convenience of the Parties and are not intended to affect the interpretation thereof.

2. DURATION OF CONTRACT AND EXTENSION

Contract Term

- 2.1 Subject to terms of Part 5 (*Default and Termination*) of the Contract and any other provisions herein relating to termination or extension, the Contract Term shall be from the Date of Contract to the earlier of the Expiry Date or the Termination Date.

2.2 The Contract will have binding effect from the Date of Contract.

Extension of the Contract Term

2.3 The Authority shall be entitled to extend the term of this Contract on one or more occasions on giving the Service Provider notice in writing.

2.4 Any notice given under Clause 2.3 above shall:

2.4.1 specify the length of the extension sought; and

2.4.2 be served not less than 3 months prior to the Expiry Date.

2.5 Following an extension under Clause 2.3, the Expiry Date shall be the last day of the Contract Term as extended provided that the Expiry Date may not fall more than 11 years after the Full Operation Date.

2.6 For the avoidance of doubt, any extension shall be on the same terms as specified in this Contract.

3. GUARANTEE

The Service Provider shall prior to or on the date hereof provide to the Authority the Guarantee.

4. INDEMNITY

4.1 Service Provider Indemnity

Subject to Clauses 4.2 (*Service Provider Exclusions*) and 7.1.1 (*Service Provider Liability for Loss, Damage and Reinstatement*) but without prejudice to the Authority's rights under Clause 46 (*Default by the Service Provider*) and Clause 49 (*Termination for Default*) and the Service Provider's obligations under Clause 7 (*Liability for Loss and Damage*), the Service Provider shall fully and effectively indemnify the Authority and any Authority Party in respect of all Losses suffered or incurred by (or which may be made against) the Authority or any Authority Party (including, without limitation, any payment or charge payable by or on behalf of the Authority to an entity, or a division or agency of any entity, in the public sector) which arise in connection with the performance or non-performance by the Service Provider of its obligations under the Contract or the breach thereof.

4.2 Service Provider Exclusions

The Service Provider shall not be liable under Clause 4.1 (*Service Provider Indemnity*) for:

4.2.1 any Losses to the extent arising directly from the negligence or wilful default of the Authority or any Authority Party or any failure of the Authority to comply with its obligations under the Contract; or

4.2.2 any Losses which are attributable to any event, matter of fact or circumstance occurring after the expiry of the Contract Term, excluding, for the avoidance of doubt, those attributable to any matters for which the Service Provider has accepted responsibility under Clause 12 (*Provision and Interpretation of Information*); or

4.2.3 any Losses incurred by the Authority in connection with a breach by the Authority of any public procurement rules.

4.3 Losses Relating to Section 151 of the 1999 Act

For the avoidance of doubt, the Service Provider shall remain liable for Losses arising in respect of any action taken by the Authority pursuant to Section 151 of the 1999 Act except to the extent such loss or damage is caused by the negligence of the Authority or an Authority Party.

4.4 Reimbursement

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

- 4.4.1 an amount equal to the sum recovered (or the value of the savings or benefit obtained) less any reasonable out-of-pocket costs and expenses incurred by the Authority in recovering the same; or
- 4.4.2 if the figure resulting under Clause 4.4.1 is greater than the amount paid by the Service Provider to the Authority in respect of the Losses, such lesser amount as shall have been so paid to the Authority.

4.5 Limits of Liability

- 4.5.1 Subject to Clause 4.5.3, the maximum annual amount for which the Service Provider shall be liable under this Clause 4 (*Indemnity*) in respect of Losses against which the Service Provider is not required to maintain insurance pursuant to the Contract shall be £10,000,000 (Indexed) for any one incident or series of related incidents and £20,000,000 (Indexed) in aggregate in such year.
- 4.5.2 Subject to Clause 4.5.3 the maximum annual amount for which the Service Provider shall be liable at any time under the indemnity of Clause 4.1 (*Service Provider Indemnity*) in respect of Losses against which it is required to maintain insurance pursuant to this Contract shall be the greater of:
 - (a) the maximum amount for which the Service Provider could at such time be liable pursuant to Clause 4.5.1; and
 - (b) the amount of insurance (net of any deductible) procured or maintained or (if greater) required to be procured or maintained pursuant to this Contract at such time by or on behalf of the Service Provider in respect of such Losses.
- 4.5.3 Neither Clause 4.5.1 or 4.5.2 shall apply in the event of termination of the Contract under Clause 49 (*Termination for Default*) if such termination takes place prior to the issuance of the Permit to Operate.
- 4.5.4 The liability of the Service Provider pursuant to this Clause 4 shall arise at the time the relevant Losses are incurred by the Authority provided, however, that (save in the event of termination of the Contract under Clause 49 (*Termination for Default*)) to the extent the amount referred to in Clause 4.5.2(b) exceeds the amount referred to in Clause 4.5.2(a) in respect of any Losses, the Service Provider shall not be required to remit the amount of the excess to the Authority except in so far as the relevant claim has been paid by the Service Provider's insurer. The Service Provider will use its best endeavours to ensure the prompt settlement of any claim under any policy of insurance. Nothing in this Clause 4.5.4 shall in any way affect the Service Provider's obligations to make payment up to the amount specified in Clause 4.5.2(a) in respect of any Losses.

4.6 Authority Indemnity

- 4.6.1 Subject to Clause 4.6.2, except as expressly provided in this Contract, the Service Provider shall not make any claim against the Crown or any servant, agent or representative of the Crown in respect of any Losses sustained by the Service Provider (or by any other person whether or not employed by the Service Provider or a Sub-contractor) by reason of or arising out of or in any way connected with the performance of the Contract.
- 4.6.2 Where any Losses specified in Clause 4.6.1 are caused or contributed to by the negligence or wilful default of the Authority or any Authority Party or the breach by the

Authority of its obligations under the Contract, the Authority will fully and effectively indemnify the Service Provider, except to the extent that the Losses are covered (or should have been covered) by a policy of insurance which is maintained by the Service Provider or which the Service Provider is obliged to maintain pursuant to [Clause 5 Insurance](#)(Insurance).

- 4.6.3 The liability of the Authority under this Contract shall be subject to the Service Provider's duty to take reasonable steps to mitigate its Losses and the limits and qualifications set out in [Clause 4.2 \(Service Provider Exclusions\)](#), [Clause 4.3 \(Losses Relating to Section 151 of the 1999 Act\)](#), [Clause 4.4 \(Reimbursement\)](#), [Clause 4.5 \(Limits of Liability\)](#) shall apply to the Authority's obligations under this [Clause 4.6](#) as if they were set out in full here (save that references to the Service Provider would be replaced with references to the Authority).

4.7 Conduct of Claims

- 4.7.1 The Service Provider undertakes to:

- (a) notify the Authority in writing as soon as reasonably practicable after it becomes aware of the occurrence of any event which may give rise to a claim against the Service Provider or the Authority under any policy of insurance required by this Contract where the claim exceeds (or is expected to exceed) £100,000 and relates to the Project;
- (b) keep the Authority fully informed of subsequent action and developments in relation to any claim under any policy notified pursuant to [Clause 4.7.1\(a\)](#);
- (c) not settle or compromise any claim notified or which ought to have been notified under [Clause 4.7.1\(a\)](#) without the Authority's prior written consent (not to be unreasonably delayed); and
- (d) procure that its Sub-contractors give undertakings (which shall ensure for the benefit of the Authority) identical to those given by the Service Provider under this [Clause 4.7.1](#).

- 4.7.2 The Service Provider agrees that the Authority has the right to control the conduct of proceedings in relation to any claim arising from the operation and maintenance of the Removal Centre from third parties, including employees of the Parties hereto, to which the Authority is or may become a party.

- 4.7.3 The Authority agrees:

- (a) not to settle or compromise any claim exceeding £100,000 for which the Service Provider is liable to indemnify the Authority under [Clause 4.1 \(Service Provider Indemnity\)](#) above without prior consultation with the Service Provider; and
- (b) to keep the Service Provider reasonably informed as to the progress and status of any such claim until such claim is settled or withdrawn.

- 4.7.4 If, in controlling and contesting any claim, the Authority takes or fails to take any action which it might reasonably be expected to take or not take and as a direct result the Service Provider reasonably incurs Losses greater than that which it might otherwise have incurred, the Authority shall indemnify the Service Provider for all such additional Losses as is reasonable and properly evidenced, provided that the Service Provider has:

- (a) given as much prior notice of Losses as is practicable to the Authority; and
- (b) given the Authority full particulars of the failure or action which gives rise to such Losses as soon as practicable (such particulars to be to the satisfaction of the Authority).

4.8 Failure to Provide Available Detainee Place

- 4.8.1 The provisions of this Clause 4.8 shall apply to a claim made by the Authority under Clause 4.1 (*Service Provider Indemnity*) as a result of the Service Provider failing to fulfil its obligations under this Contract leading to the Authority having to accommodate Detainees outside the Removal Centre.
- 4.8.2 The amount of Losses recoverable under Clause 4.1 (which shall include, without limitation, additional costs incurred in transportation and the cost to the Authority of providing for the relevant Detainees' conditions under a regime substantially similar to those required to be provided by the Service Provider under this Contract) shall be calculated by deducting (to the extent not already taken into account) from the total of the relevant Losses the aggregate of the following:
- (a) any damages for breach of contract received by the Authority in respect of the failure by the Service Provider to provide such Available Detainee Places pursuant to Clause 18.2 (*Full Operation Period*) or otherwise;
 - (b) any insurance proceeds received by the Authority under the insurances maintained by the Service Provider pursuant to Clause 5 (*Insurance*) in respect of the failure by the Service Provider to provide such Available Detainee Places; and
 - (c) the amount of the Operating Fee the Authority would have paid the Service Provider if the Service Provider had fulfilled its obligations under the Contract to provide Available Detainee Places.

- 4.9 Nothing in this Clause 4 shall act to limit either Party's liability for death or personal injury which is caused by its own negligence.

5. INSURANCE

5.1 Scope of Obligations

- 5.1.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, from the Full Operation Date the Service Provider shall procure and maintain in full force and effect the insurances specified in Part 1 of Schedule A (*Insurances*) on the terms and conditions set out therein (including with respect to the endorsements specified in Part 4 of Schedule A (*Insurances*)).
- 5.1.2 The Authority shall approve in writing (not to be unreasonably withheld or delayed) the broker placing and maintaining and the insurer providing each of the Service Provider Insurances.
- 5.1.3 Without prejudice to the obligations of the Service Provider under this Clause 5, the Service Provider shall effect and maintain in full force those insurances which it is required to have by any applicable law.

5.2 Evidence of Compliance

The Service Provider shall:

- 5.2.1 in the case of the insurances specified in Part 1 of Schedule A (*Insurances*), thirty (30) days prior to the Full Operation Date;
- 5.2.2 in the case of the insurances specified in Part 1 of Schedule A (*Insurances*), thirty (30) days before any renewal or replacement of each Service Provider Insurance (and at any other time on request by the Authority); and

provide evidence that the premiums payable under all Insurance policies have been paid and that the insurances are in force and effect (including copies of all insurance policies) that in accordance

with the requirements of this Clause 5 (Insurance) and Schedule A (Insurances), to satisfy the Authority that it is complying with its obligations under this Clause 5.

5.3 Conduct of claims

Conduct of insurance claims shall be dealt with in accordance with Clause 4.7 (*Conduct of Claims*).

5.4 Service Provider Undertakings

The Service Provider undertakes to the Authority (and shall procure that every Sub-contractor gives the same undertakings):

- 5.4.1 to comply with all requirements and, to the extent reasonable or necessary to preserve the benefit of the relevant cover, recommendations of the insurers;
- 5.4.2 not to do or omit to do anything which could cause any policy of insurance to become void or voidable wholly or in part;
- 5.4.3 to comply with all requirements and recommendations of the fire authority as to fire precautions relating to the Removal Centre, the Site and the Assets; and
- 5.4.4 to give notice to the Authority immediately upon the happening of any event which might adversely affect any policy of insurance effected in accordance with this Clause;

and if the Service Provider considers that the requirements of Clauses 5.4.1, 5.4.2 or 5.4.3 conflict with any other Clause herein, the Service Provider shall immediately notify the Authority in writing.

5.5 Material Damage Insurance Proceeds

- 5.5.1 On each and every occasion when the whole or any part of the Removal Centre, the Site or the Assets is destroyed or damaged:
 - (a) the Service Provider shall (and shall procure that every Sub-contractor shall) pay all insurance proceeds received under a Material Damage Policy (the "**Material Damage Insurance Proceeds**") where the total claim value is £250,000 or higher, into the Insurance Proceeds Account. Insurance proceeds below this threshold shall be applied to the immediate repair, reinstatement or replacement of the insured property;
 - (b) the Authority shall pay any Material Damage Insurance Proceeds it receives into the Insurance Proceeds Account;
 - (c) Material Damage Insurance Proceeds shall be released to the Service Provider with the consent of the Authority (not to be unreasonably withheld or delayed) and the Service Provider shall provide all information the Authority may reasonably require in determining whether to grant its consent; and
 - (d) the Service Provider shall subject to the Authority's rights pursuant to Clause 8 (Authority's *Right to Terminate rather than Reinstate*) using Material Damage Insurance Proceeds and at its own expense reinstate, rebuild and/or replace the Removal Centre in accordance with Clause 7.2 (*Reporting Requirements*) in a workman-like manner using reasonable skill and care such that the reinstated facilities are fit for purpose and to the reasonable satisfaction of the Authority and in accordance with all such consents and approvals as shall be necessary, together with such drawings and specifications as may be approved in writing by the Authority.

5.6 Authority Payment of Premiums

If the Service Provider fails to provide evidence when required in accordance with Clause 5.2 (*Evidence of Compliance*) or fails to take out or procure insurances as required under this Clause 5

as notified by the Service Provider immediately and by the insurance broker pursuant to the Broker's Letter of Undertaking, the Authority may (but shall not be obliged to) pay such premiums as may be necessary to take out and maintain such insurance and the amount so paid, and any incidental costs incurred by the Authority, shall be recoverable as a debt due from the Service Provider to the Authority.

5.7 **Broker's Letter of Undertaking**

The Service Provider shall procure (at or before the effective date of the relevant policy and the date of appointment of any replacement broker) the issue of a Broker's Letter of Undertaking in relation to each policy of insurance maintained in accordance with this Clause 5.

5.8 **Amendments to Schedule A (*Insurances*)**

The Authority may require the Service Provider to amend the terms of Schedule A (*Insurances*) and any such amendment shall be dealt with in accordance with Clause 13 (*Changes*)

5.9 **Riot (Damages) Act 1886**

The Service Provider undertakes to the Authority not to permit or agree any wording in any policy which would permit:

5.9.1 any commercial insurer; or

5.9.2 any commercial insurer's successors or permitted assigns; or

5.9.3 any other person claiming by or through a commercial insurer

to bring any claim under the Riot (Damages) Act 1886 in respect of any damage to the Removal Centre, the Site or any Assets. This undertaking shall be for the benefit of any police authority in the United Kingdom and the statutory successors of any such police authority, each of which may enforce the terms of this Clause 5.9 against the Service Provider and/or its successors and permitted assigns (as appropriate), and shall be binding upon the Service Provider and each of its successors and permitted assigns.

5.10 **Insurance Premia**

5.10.1 The insurance premiums in respect of insurances referred to in Clauses 5.1.1 and 5.1.3 (*Scope of Obligations*) shall be the responsibility of the Service Provider.

5.11 **Excess or Deductible**

5.11.1 Where any insurance referred to in Clause 5.1.1 or 5.1.3 (*Scope of Obligations*) are subject to an excess or deductible below which the indemnity from insurers is excluded, the Service Provider shall be liable for such excess or deductible and shall indemnify the Authority against any loss or claims which would otherwise be insured but for the excess or deductible. The Service Provider shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

6. **UNAVAILABILITY OF INSURANCE**

6.1 **Obligation to notify of Unavailability**

6.1.1 If the Service Provider considers that a Required Insurance will be or is likely to be Unavailable on the Relevant Date, it shall no later than sixty (60) days before the Relevant Date (the "**Notification Date**") provide the Authority with written notification of such Unavailability (the "**Insurance Notice**"), which Insurance Notice shall contain;

(a) the Service Provider's proposals for:

- (i) effecting the Required Insurance for the twelve (12) month period following the Relevant Date; and
 - (ii) what it reasonably considers reasonable and appropriate to mitigate, manage and control any uninsured risks; and
- (b) all information that the Authority might reasonably require to determine whether the relevant Required Insurance is Unavailable including, but not limited to:
 - (i) full details of the terms on which the relevant Required Insurance will, or is likely to, be available in the worldwide insurance market as at the Relevant Date; and
 - (ii) why, if at all, the Service Provider considers the Removal Centre and/or the removal centre sector generally are an exception from general market conditions as regards the Required Insurance.

6.1.2 If the Service Provider fails to notify the Authority in accordance with Clause 6.1.1 then the Service Provider shall pay all amounts and take all action necessary in order to obtain the relevant Required Insurance on the Relevant Date.

6.2 Action following receipt of Insurance Notice

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

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

then the Authority shall notify the Service Provider, within thirty (30) days of receipt of the Insurance Notice that it accepts the Service Provider's proposals set out in the Insurance Notice. The Parties will take all action necessary to ensure that the Service Provider's proposals are put into effect and, for the avoidance of doubt, the Operating Fee shall be reduced to take into account the non-payment of any insurance premium.

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

- (a) consider that the relevant Required Insurance is Unavailable; and/or
- (b) agree with the Service Provider's proposals set out in the Insurance Notice

the Parties shall, as soon as reasonably practicable, meet and hold discussions in good faith to resolve any areas of disagreement arising out of the Insurance Notice. The Authority may put forward its own proposals and, in this event, the Service Provider shall consider such proposals in good faith.

6.2.3 The discussions referred to in Clause 6.2.2 will take into account the following:

- (a) the state of the insurance market generally and whether other commercial enterprises are paying premiums and obtaining cover which is broadly comparable to the Required Insurance that the Service Provider has notified is Unavailable;
- (b) whether the combined effect of any proposals (whether by the Service Provider or the Authority) when taking into account the insurance that could be obtained in the worldwide insurance market is such that the other Party should reasonably be expected to accept the proposal having regard to the terms of any arrangement between the Parties concluded in respect of any previous period, the terms obtained by the Service Provider when the Required

Insurance was last Available, any claims made during that period and any changes in the insurance market; and

(c) the circumstances particular to the removal centre sector.

6.2.4 If the Parties are unable to reach agreement by thirty (30) days before the Relevant Date then, notwithstanding Clause 77 (*Dispute Resolution*), the matter will be referred to an expert pursuant to Clause 6.3 (*Role of the Expert in relation to Unavailability Disputes*).

6.3 Role of the Expert in relation to Unavailability Disputes

6.3.1 Where pursuant to Clause 6.2.4 (*Action following receipt of Insurance Notice*) a matter is referred to the Expert, the Expert shall determine whether the Required Insurance the subject of the Insurance Notice is Unavailable. In making such determination, the Expert shall consider:

(a) the terms upon which the relevant Required Insurance may be arranged in the market; and

(b) the state of the worldwide insurance market generally and whether other commercial enterprises providing services of the nature provided by the Service Provider under this Contract in the removal centre sector are effecting insurance, and if so, on what terms.

6.3.2 If the Expert determines that the relevant Required Insurance is Unavailable, then the Expert shall:

(a) specify why, if at all, he considered the circumstances applicable to the removal centre sector are an exception from general market conditions;

(b) determine which of the Parties' proposals should be implemented considering the combined effect of any proposal put forward by either Party together with insurance that could be obtained in the worldwide insurance market is such that the other Party should reasonably be expected to accept the proposal having regard to the matters described in Clauses 6.2.3(a) to 6.2.3(c) (*Action following receipt of Insurance Notice*);

(c) specify a timetable (including a deadline) for implementation of the proposal selected by the Expert, such proposal to be implemented no later than the Relevant Date.

6.3.3 The Parties shall implement any proposal selected by the Expert under Clause 6.3.2 above, in accordance with the timetable specified.

6.3.4 The Expert may suggest his own proposals but the Parties shall be under no obligation to accept such proposals.

6.3.5 The Expert shall be required to select either the Service Provider's or the Authority's proposal when making a determination as to what proposal should be implemented by the Parties, unless the Parties agree to accept his proposal (if any).

6.3.6 Where the Expert determines that a Party should not be expected to accept the other Party's proposal, the Expert will be required to state why the combined effect of the relevant proposal and the insurance that could be obtained, is such that it is materially worse than previous arrangements or other proposals even after due allowance for claims and changes in market conditions.

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

- 6.3.8 The Expert shall be required to make his determination no later than fourteen (14) days prior to the Relevant Date.
- 6.3.9 Subject to Clause 6.3.10 below, any determination by the Expert shall be final and binding upon the Parties.
- 6.3.10 Prior to making his determination, the Expert shall have the right, upon giving reasonable notice, to convene meetings with either or both of the Parties at which he may require either of them to clarify and explain their respective proposals. Each Party may present its own expert opinion or evidence at any such meeting.

6.4 Payment of Costs on Appointment of Expert

6.4.1 If:

- (a) the Authority puts forward a proposal pursuant to Clause 6.2.2 (*Action following receipt of Insurance Notice*) that the Service Provider rejects but which the Expert determines would be reasonable for the Parties to adopt; and/or
- (b) the Expert determines that the insurance is Available;

then the Service Provider shall be liable for:

- (i) all reasonable costs incurred by the Authority in connection with any discussions or negotiations carried out with the Service Provider pursuant to Clause 6.2.2 (*Action following receipt of Insurance Notice*) to Clause 6.3 (*Role of the Expert in relation to Unavailability Dispute*) inclusive; and
- (ii) all of the Expert's costs in making his determination.

6.4.2 If:

- (a) the Expert determines that the insurance is Unavailable; and
- (b) the Expert determines it would be reasonable for the Parties to adopt a proposal made by the Service Provider pursuant to Clause 6.2.1 (*Action following receipt of Insurance Notice*) but which the Authority had rejected;

then the Authority shall be liable for:

- (i) all reasonable costs incurred by the Service Provider in connection with any discussions or negotiations carried out with the Authority pursuant to Clause 6.2.2 (*Action following receipt of Insurance Notice*) to Clause 6.3 (inclusive); and
- (ii) all of the Expert's costs in making his determination.

6.4.3 In all circumstances other than those in Clauses 6.4.1 and 6.4.2 above, each of the Parties shall bear its own costs, and the costs incurred by the Expert in making his determination will be split equally between the Parties.

6.5 Authority Proposals Involving Additional Capital Expenditure or Increased Costs

Where a proposal made by the Authority under Clause 6.2.2 (*Action following receipt of Insurance Notice*) is agreed by the Parties or determined by the Expert to apply, and it amends or alters the extent of the Service Provider's obligations in such a way as to give rise to:

6.5.1 Capital Expenditure; or

6.5.2 any other increases in cost (other than any increase in premia) to the Service Provider;

such proposals shall be treated as a Notice of Change issued by the Authority under Clause 13 (*Changes*).

6.6 **Obligation to Effect Suspended**

6.6.1 If the Authority does not terminate pursuant to Clause 8.2 (*Authority's Right to Terminate Rather Than Reinstate*) then the Service Provider's obligation to effect the relevant Required Insurance shall be suspended until the earlier of:-

- (a) where the Parties agree a proposal, the date on which the Parties agree the Service Provider should effect such insurance as part of that proposal;
- (b) where the Expert makes a determination in accordance with this Clause 6, the date on which the Expert determines that the Service Provider should effect such insurance as part of that determination; and
- (c) where the Required Insurance becomes Available, immediately upon the Required Insurance becoming Available.

6.6.2 For the avoidance of doubt, where the Authority does not terminate this Contract, the Service Provider shall continue to be liable for all its obligations (other than its obligation to effect the relevant Required Insurance) under this Contract.

6.7 **Occurrence of Uninsured Event**

6.7.1 If the Authority does not terminate pursuant to Clauses 8.2 and 8.3 (*Authority's Right to Terminate Rather Than Reinstate*) and following the Relevant Date an event occurs which, but for the Unavailability, would have been the subject of the Required Insurance, the Authority shall:-

- (a) pay to the Service Provider an amount equal to the insurance proceeds that would have been payable pursuant to the relevant Required Insurance had such insurance been Available and procured by the Service Provider in accordance with this Contract; and
- (b) have the right to terminate this Contract.

6.7.2 Where the Authority exercises its right to terminate this Contract pursuant to Clause 6.7.1(b) the Authority shall be relieved from paying the Service Provider any amount pursuant Clause 6.7.1(a) to the extent that such amount is to be used to meet a liability or to perform an obligation from which the Service Provider has been relieved as a result of such termination.

7. **LIABILITY FOR LOSS AND DAMAGE**

7.1 **Service Provider Liability for Loss, Damage and Reinstatement**

7.1.1 The Service Provider shall not be liable under this Contract for any loss or damage to the Removal Centre, the Site or the Assets occurring prior to the Full Operation Date, except to the extent that such loss or damage is caused or contributed to by any act or omission of the Service Provider or the breach by the Service Provider of any of its obligations under this Contract.

7.1.2 Subject to Clause 7.1.1 the Service Provider shall be liable for all loss or damage to the Removal Centre, the Site and/or any Assets, except (but without prejudice to Clause 7.1.3 or Clause 9.2 (*Event Control Measures*)) or where insurance proceeds are or should be available in accordance with Schedule A (*Insurances*)) to the extent that such loss or damage was caused:

- (a) by an act of or omission (including negligence) by the Authority or any Authority Party;

- (b) directly as a result of an express written instruction of the Authority or any Authority Party; or
 - (c) by the breach by the Authority or any Authority Party of any of its or their obligations under this Contract
- 7.1.3 The Service Provider shall remain liable for any loss or damage occurring by reason of the exercise by the Authority or any Authority Party of its powers under Section 151 of the 1999 Act except to the extent such loss or damage is caused by the negligence of the Authority or any Authority Party in exercising such powers.
- 7.1.4 The Service Provider shall at its own cost re-instate, replace or make good to the satisfaction of the Authority any loss or damage for which the Service Provider is responsible under Clause 7.1.2 or pay the Authority (with the prior agreement of the Authority) equivalent to the full cost of reinstatement.
- 7.1.5 The Service Provider shall perform its obligations under Clause 7.1.4 as soon as reasonably practicable and use all reasonable endeavours to complete any works necessary within forty-eight (48) hours of the loss or damage occurring, unless the health, safety or security of a Detainee is at risk thereby necessitating immediate action subject to the remaining provisions of this Clause 7 and the provisions of Clause 46.2 (*Default by a Service Provider*) shall apply.
- 7.1.6 The Service Provider shall immediately notify the Authority of any and all instances of:
 - (a) loss and/or damage to; and/or
 - (b) defects in the structure, fabric or otherwise of
 the Removal Centre, the Site and/or the Assets.
- 7.1.7 Without prejudice to the generality of Clause 13 (Changes), except to the extent specifically provided in Clause 4.6 (*Authority Indemnity*) or Clause 12.3 (*Provision and Interpretation of Information*), the Authority shall not have any responsibility or liability to the Service Provider or any other person with respect to:
 - (a) any liability or loss suffered which is caused directly or indirectly by reason of any of the provisions of Clause 12 (*Provision and Interpretation of Information*);
 - (b) the design, construction, maintenance, operation or financing of the Removal Centre or any risks relating thereto; or
 - (c) any interruption or loss of business, anticipated profits or consequential damages.

7.2 Reporting Requirements

- 7.2.1 Subject to Clause 7.2.3 in circumstances where any of the Removal Centre, the Site or the Assets is/are destroyed or damaged so that the Full Quota is not provided in accordance with this Contract, the Service Provider shall, at its own cost provide the Authority with a report from an independent expert (the "**Independent Report**") identifying:
 - (a) the work required to re-instate, replace or make good the relevant loss or damage (the "**Reinstatement Works**");
 - (b) the estimated cost of such work; and
 - (c) the earliest date by which such work may reasonably practicably be completed (the "**Re-instatement Date**") (having regard to such factors as may be identified in the Independent Report).

- 7.2.2 The Service Provider shall ensure that the Independent Report is produced as soon as possible and in any event within fourteen (14) days of the date the relevant loss or damage occurs.
- 7.2.3 Notwithstanding Clauses 7.2.1 and 7.2.2, an Independent Report shall not be required if the cost of repair or reinstatement is less than £100,000 and if the Service Provider provides its own report (the "**Service Provider's Report**") to the Authority on the matters set out in Clauses 7.2.1(a) to 7.2.1(c) inclusive within five (5) days of the relevant loss or damage occurring.
- 7.2.4 If the Service Provider fails to deliver the Independent Report in accordance with Clause 7.2.1 the Authority shall, upon giving written notice to the Service Provider, have the right to commission its own independent report ("**Authority's Report**") at the Service Provider's cost, which report shall identify each of the elements set out in Clauses 7.2.1(a) to 7.2.1(c) inclusive.
- 7.2.5 If the Authority does not agree with the Independent Report or the Service Provider's Report, it shall inform the Service Provider in writing as soon as reasonably practicable and in any event within fourteen (14) days of the date on which it receives the Independent Report or the Service Provider's Report and the Parties shall agree such changes thereto as may be appropriate within fourteen (14) days from the date the Authority so informs the Service Provider. If the Parties cannot reach agreement the matter shall be referred for resolution pursuant to Clause 77 (*Dispute Resolution*) and the Expert shall be required to resolve such matter within twenty-one (21) days of the matter being referred to him.
- 7.2.6 Subject to Clause 8.7 (*Authority's Right to Terminate Rather Than Reinstate*) the Service Provider shall undertake the work required by:-
- (a) the Independent Report (as amended pursuant to Clause 7.2.5);
 - (b) the Authority's Report if the Service Provider fails to comply with Clauses 7.2.1 and 7.2.2; or
 - (c) the Service Provider's Report (as amended pursuant to Clause 7.2.5) if no Independent Report is required

and in each case shall complete the same on or before the Reinstatement Date or such other reinstatement date specified in the Authority's Report or the Service Provider's Report (as appropriate).

7.3 Authority Rights to Change

- 7.3.1 If the Authority does not terminate this Contract pursuant to Clause 8.7 (*Authority's Right to Terminate Rather Than Reinstate*) the Authority shall have the right (in addition to the receipt of payment from the Insurer) by serving written notice on the Service Provider within fourteen (14) days of issuing the notice under Clause 8.7 (*Authority's Right to Terminate Rather Than Reinstate*) to require the Service Provider:
- (a) to carry out such works with regard to reinstatement or repair as the Authority may specify, following the procedure in Clause 13 (*Changes*); or
 - (b) subject to Clause 7.3.2, to make such arrangements as may be reasonably necessary in order to enable a third party to carry out such works for repair or reinstatement as the Authority may specify

and in any such event references in this Clause 7.3 to repair or reinstatement shall include building works with such modifications to the original specification for the Removal Centre as may be specified by the Authority. Any change which may be required to the operation of the Removal Centre as a result of such modification shall be

the subject of a Notice of Change by the Authority pursuant to and in accordance with Clause 13 (*Changes*).

7.3.2 Where, in accordance with Clause 7.3.1(b), the Authority requires a third party to carry out works, such third party shall be reasonably acceptable to the Service Provider and the manner in which such works are to be carried out shall be such so as to prevent any unnecessary disruption to the operation of the Removal Centre in accordance with this Contract, save to the extent any variations are agreed between the Authority and the Service Provider (in which event, the Service Provider's consent shall not be unreasonably withheld).

7.3.3 Without prejudice to this Clause 7.3, if the Service Provider makes a payment at the request of the Authority pursuant to Clause 7.1.4 (*Service Provider Liability for Loss, Damage and Reinstatement*) the Service Provider shall be relieved of its obligations under Clause 7.1.3 (*Service Provider Liability for Loss, Damage and Reinstatement*) with regard to works which are represented by that payment (and related insurance proceeds received by the Authority).

7.4 Interface with Police Investigation

Where the Authority is required to give notice or take such other action under this Clause 7 within a specified time period, such time period shall be extended as necessary where there is a police investigation which prevents the Authority from so complying.

8. AUTHORITY'S RIGHTS TO TERMINATE RATHER THAN REINSTATE

8.1 Where the Authority terminates this Contract pursuant to Clause 8.7, the Authority shall pay Demobilisation Costs in accordance with Clause 8.9 provided that:-

8.1.1 the Service Provider shall (and shall procure that all Service Provider Parties shall) use all reasonable endeavours to minimise the amount claimed and provide the Authority with reasonable evidence supporting the amount claimed;

8.1.2 without prejudice to the generality of Clause 8.1.1 above the Service Provider shall (and shall procure that all Service Provider Parties shall) mitigate the cost related to employees by allowing any such employees to be redeployed on other facilities to the extent reasonable and practicable;

8.1.3 the amount that the Service Provider would reasonably be expected to pay in respect of Demobilisation Costs on scheduled expiry shall be deducted from the amount payable; and

8.1.4 the amount payable by the Authority under this Clause 8 shall not exceed £1,000,000.

8.2 The Authority shall have the right to terminate this Contract:-

8.2.1 within five (5) days of any determination by the Expert pursuant to Clause 6 (*Unavailability of Insurance*) except where the determination is that the relevant Required Insurance is Available;

8.2.2 if the Service Provider fails to accept or act in accordance with any determination made by the Expert pursuant to Clause 6 (*Unavailability of Insurance*); or

8.2.3 if the Expert fails to comply with Clause 6.3.8 (*Role of the Expert in Relation to Unavailability Disputes*);.

8.3 If the Service Provider fails to comply with Clause 6.1.2 (*Obligation to Notify Unavailability*) the Authority may either exercise its rights pursuant to Clause 5.6 (*Authority Payment of Premiums*) or terminate this Contract and the provisions of Clause 8.6, below, shall apply.

- 8.4 The rights of the Authority to terminate this Contract pursuant to this Clause 8 are in addition to and without prejudice to any other right of the Authority under this Contract to terminate this Contract.
- 8.5 No arrangement with respect to insurance entered into by the Parties shall prejudice any rights of the Authority to terminate this Contract.
- 8.6 If the Authority terminates this Contract pursuant to Clause 8.2 or 8.3 the only obligation of the Authority to pay compensation to the Service Provider shall be limited to an amount equal to any amount fallen due pursuant to Clause 50 (*Voluntary Termination by the Authority*) but which has not yet been paid less, subject to Clause 5.5.1 (*Material Damage Insurance Proceeds*) if the Authority terminates pursuant to Clause 8.3 any Losses incurred by the Authority as a result of the Service Provider or Service Provider Party's breach, (including, without limitation, the additional cost of re-tendering this Contract (or any part of it) and entering into any replacement contract for the performance of the Services).
- 8.7 Notwithstanding any other provision of this Clause 8 the Authority shall, upon serving written notice to the Service Provider within twenty-eight (28) days of receiving a report pursuant to Clause 7.2 (*Reporting Requirements*) have the right (without prejudice to any other rights it may have under the Contract) to terminate this Contract by giving fourteen (14) days notice to the Service Provider.
- 8.8 If the Authority exercises its termination rights pursuant to Clause 8.7 the insurer shall subject to the terms and conditions of the insurance policy, make a cash payment equivalent to the full cost of reinstatement of the Removal Centre.
- 8.9 In the event of termination by the Authority pursuant to Clause 8.7, to the extent the loss or damage was not caused (whether directly or indirectly) or contributed to by the Service Provider or any Service Provider Party (including, as a result of a breach of this Contract), the Authority shall also pay to the Service Provider Demobilisation Costs on the terms specified in Clause 8.1.

9. EVENT CONTROL MEASURES

- 9.1 The Service Provider shall (and procure that all Service Provider Parties shall) at all times:
- 9.1.1 not act, and shall use reasonable endeavours to ensure that its Staff do not act in a way which is likely to cause or provoke and does cause or provoke a riot or other serious disturbance at any part of the Removal Centre or the Site; and
 - 9.1.2 if a riot or other serious disturbance does occur at any part of the Removal Centre or the Site, take reasonable steps having regard to all relevant circumstances, to limit as far as possible the duration and consequences of the riot or other serious disturbance, including, without limitation, minimising the risk of personal injury or death and limiting the damage to all parts of the Removal Centre, Site or Assets resulting from the riot or other serious disturbance or any related incident; and
 - 9.1.3 comply with the requirements of Schedule E (*Contingency and Emergency Procedures*).
- 9.2 Subject to Clause 9.4, the Service Provider shall not be relieved or absolved in any respect from any of its obligations or liability under or in connection with Clause 9.1, by any act or omission of the Authority, the police or any other Person including, without limitation:
- 9.2.1 any approval by the Authority of security procedures, systems for fire prevention or contingency plan arrangements proposed by the Service Provider or any other Person;
 - 9.2.2 any failure to provide any approval or any examination or lack of examination by the Authority of such procedures, systems and arrangements; or
 - 9.2.3 any comment, suggestion or opinion expressed by the Authority in regard thereto nor any arrangements or discussions between the Authority and the police or any other emergency service.
- 9.3 Without prejudice to the generality of Clauses 9.1 and 9.2 and subject to Clause 9.4:

- 9.3.1 the Service Provider shall implement any instruction given in an emergency by a police officer or the Authority for the purpose of controlling or bringing to an end a riot or other serious disturbance or incident related to a riot or other serious disturbance or which might reasonably be expected to involve the imminent risk of a riot or other serious disturbance provided that:
- (a) this Clause 9.3.1 shall be without prejudice to the Service Provider's obligations under Clause 9.3.2; and
 - (b) the Service Provider shall not delay complying with its obligations under this Clause 9.3.1 on the grounds that it has not received instructions from any Person;
- 9.3.2 the Service Provider shall implement any written instructions of the Authority or the police which are made for the purpose of reducing the risk of a riot or other serious disturbance occurring.
- 9.3.3 the Service Provider shall once per month, provide a written report to the Authority which shall be headed "Riot Risk Report" detailing any incidents which might reasonably be regarded as evidence of an increased risk of a riot or other serious disturbance occurring and details of such measures as the Service Provider has taken in response thereto and the Service Provider and the Authority shall meet to discuss such report if so required by the Authority;
- 9.3.4 the Service Provider shall enter into such arrangements with the police and other emergency services as may be reasonably appropriate in order to establish the basis upon which the police and such other emergency services shall or may respond in the event of a riot or other serious disturbance occurring and shall provide to the Authority copies of any documentation relating to any such arrangements; and
- 9.3.5 without prejudice to any other provisions of the Contract, the Service Provider expressly acknowledges that neither the occurrence of a riot or other serious disturbance nor any steps taken by the Authority or any emergency service in response thereto or as a consequence thereof shall relieve the Service Provider of any of its obligations under the Contract.

9.4 Notwithstanding Clauses 9.2 and 9.3:

- 9.4.1 the Service Provider's obligations under this Contract may not be amended, except pursuant to Clause 13 (*Changes*), if any instruction referred to in such Clauses would involve significant extra expense for the Service Provider; and
- 9.4.2 the Service Provider shall not be liable to the Authority for following any express instruction of the Authority or the police if the Service Provider, at the time the instruction is given protests to the Authority or the police (as the case may be) that it would be unwise or imprudent to comply with that instruction, supplying reasons for such protest and the Service Provider establishes:
- (a) that the loss or damage claimed by the Authority would not have been incurred if such instruction had not been followed; and
 - (b) the course of action proposed by the Service Provider at the time of such protest would have been reasonable in all the circumstances.

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

- 9.6 Notwithstanding Clause 61 (*Confidential Information and Use of Documents*), the Authority shall have the right to disclose to the police and /or any other emergency services ("**recipient**") Confidential Matters if the Authority reasonably believes such information is material to the matters in respect of which the Authority consults or confers with the police or any other emergency services pursuant to Clause 9.5 and subject, in each case, to the recipient undertaking to keep the information confidential and to use it only for the purpose for which it was provided.
- 9.7 The Service Provider shall advise the Authority of any meetings and/or negotiations the Service Provider proposes having, with the Crown Fire Officer in respect of the Removal Centre. The Authority shall have the right to require an Authority representative to be present at all such meetings and/or negotiations. Where an Authority representative is not present at a meeting or any negotiations between the Service Provider and the Crown Fire Officer, the Service Provider must advise the Authority of and provide it with full and complete details of such meetings and/or negotiations.
10. **SUB-CONTRACTING**
- 10.1 **Permitted Sub-contractors**
- 10.1.1 The Service Provider shall not at any time permit any of its obligations under the Contract to be performed or undertaken by any other Person without the prior written consent, (including without limitation, consent as to the terms of the relevant contract with such other Person) and the identity of such Person, of the Authority (such consent not to be unreasonably withheld or delayed). Subject to Clause 10.3 (*Sub-Contract Terms*), the Authority hereby consents to the Sub-contractors listed in Schedule M (*Permitted Sub-contractors and Sub-contracts at the Date of Contract*) performing the services referred to in Schedule M (*Permitted Sub-contractors and Sub-contracts at the Date of Contract*).
- 10.1.2 The Service Provider agrees not to make any amendment to, nor grant or (to the extent within the control of the Service Provider) permit to arise (whether pursuant to statute or otherwise howsoever) any extension of time, nor waive any right to liquidated damages under, any Sub-contract without the prior written consent of the Authority unless the Authority has agreed to a like amendment, extension or waiver under the Contract.
- 10.1.3 The Authority shall be deemed to have approved any amendment to any Sub-contract which is required as a result of any change being made to the Contract (provided that any changes made correspond exactly in each of the Sub-contract and the Contract).
- 10.1.4 In the event that the Authority consents to the sub-contracting of any obligation of the Contract as described at Clause 10.1.1 the Service Provider shall ensure that such Sub-contractor (including any replacement Sub-contractor) shall, as a condition to its Sub-contract, deliver to the Authority a direct undertaking in a form to be approved by the Authority containing obligations corresponding to those imposed in Clause 25.9 and Clause 25.10 (*Staff*) to the extent that the same apply to the staff employed or engaged from time to time by the Sub-contractor, Clauses 60 (*Public Relations and Publicity*) and 61 (*Confidential Information and Use of Documents*).
- 10.1.5 The Service Provider shall take all reasonable steps to secure the due observance by each Sub-contractor (including any replacement Sub-contractor) of all such obligations and the due observance by each Sub-contractor of all obligations under the relevant Sub-contract and, at the Authority's request, shall provide any assistance required by the Authority in its pursuit of any claim against a Sub-contractor or any of its employees or sub-sub-contractors pursuant to any such obligation, including without limitation giving evidence before a court, expert or arbitrator.
- 10.2 The Service Provider shall be directly responsible for the management and supervision of Sub-contractors unless otherwise requested by the Authority.
- 10.3 **Sub-Contract Terms**

- 10.3.1 Where the Service Provider enters into a Sub-contract with a Sub-contractor to whom the Authority has consented, as described in Clause 10.1.1 (*Permitted Sub-contractors*) it shall cause the Sub-contract to include the following terms:
- (a) a requirement that any payment by the Service Provider to the Sub-contractor is made within a specified period not exceeding thirty (30) days from receipt of a valid invoice as required pursuant to the terms of such Sub-contract;
 - (b) a requirement that:
 - (i) the Service Provider shall notify the Sub-contractor in writing immediately that it becomes aware that the Contract is to be terminated for whatever reason; and
 - (ii) the Sub-contractor shall give the Authority sixty (60) days' prior notice in writing in the event that the Sub-contractor intends to terminate the Sub-contract setting out its reasons;
 - (c) a provision stating that, in the event of any notice given pursuant to Clause 10.3.1(b)(i) or 10.3.1(b)(ii) above, if the Authority so requires, the Sub-contractor agrees that it shall enter into a deed of novation with the Authority and the Service Provider as soon as practicable after the giving of the aforesaid notice whereby, with effect from the date of such deed of novation:
 - (i) the Authority shall become a party to the Sub-contract in place of the Service Provider and thereafter shall be treated as if it had originally been named as a party thereto in place of the Service Provider *ab initio*; and
 - (ii) the Sub-contractor shall owe its obligations, liabilities and duties under the Contract to the Authority in place of the Service Provider *ab initio*; and
 - (d) where the Sub-contractor is to carry out the whole of the Services, back-to-back obligations corresponding and consistent with those parts of the Obligations of the Contract which concern the Services.
- 10.3.2 The Service Provider shall, if so requested by the Authority, forthwith enter into the deed of novation referred to in Clause 10.3.1(c).
- 10.3.3 The giving of consent by the Authority to the identity of a Sub-contractor or the review or approval by the Authority of the terms of any Sub-contract or the knowledge of the Authority of the appointment of any Sub-contractor shall not relieve the Service Provider of any of its obligations or liabilities under or pursuant to the Contract nor render the Authority in any way liable to the Sub-contractor or in any way bound by the terms of any Sub-contract, and the Service Provider shall remain wholly and primarily responsible for its liabilities and obligations under or in connection with the Contract.
- 10.3.4 Where the Service Provider invites or knowingly permits any Sub-contractor onto the Site, for whatsoever reason (including but not limited to any person visiting a Detainee), and that person is not a person certified or approved by the Authority within the meaning of Clause 24 (*Detainee Custody Officers*) or Clause 25 (*Staff*), the Service Provider shall ensure that the requirements of the DC Rules are complied with at all times and that such person does nothing to breach the security and safety of the Removal Centre or any Detainee.

11. ASSIGNMENT

- 11.1 Subject to Clause 10 (*Sub-contracting*) the Service Provider shall not give, bargain, sell, assign, sub-let or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof.

- 11.2 Nothing in the Contract shall prohibit or prevent any assignment, transfer or disposal by the Authority of any of its rights or obligations under the Contract in favour of:
- 11.2.1 another Minister of the Crown; or
- 11.2.2 any other Person not being a Minister of the Crown provided that in the case of this Clause 11.2.2;
- (a) the Service Provider has confirmed to it that the Service Provider has given its consent (which consent shall not be unreasonably withheld or delayed); and
- (b) the person to whom the assignment, transfer or disposal is made has agreed in writing with the Service Provider on the same terms as the Contract.
- 11.3 The Service Provider agrees that it shall have no right to refuse to grant its consent to any assignment, transfer or other disposal by the Authority as is referred to in Clause 11.2.2 above provided that the Authority guarantees (to the reasonable satisfaction of the Service Provider) all obligations to the Service Provider so assigned, transferred or otherwise disposed of.
12. **PROVISION AND INTERPRETATION OF INFORMATION**
- 12.1 The Service Provider is responsible for obtaining all surveys and information necessary for carrying out its Obligations of the Contract. The Service Provider shall not rely and shall be deemed not to have relied on any information provided by the Authority on these matters and (except in the case of fraudulent mis-statements) the Authority shall not be liable to the Service Provider (whether in contract, tort, under statute or otherwise howsoever and whether or not arising out of any negligence on the part of the Authority or any agent or servant thereof) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in such information provided by the Authority.
- 12.2 Without prejudice to the generality of Clause 12.1, the Service Provider shall be deemed to have inspected the Site and the Removal Centre and its surroundings and to be in possession of information connected therewith, and to accept responsibility for and have fully satisfied itself before signing the Contract as to all matters relating to the Site and the Removal Centre.
- 12.3 The Authority shall not be liable for any costs arising from the Service Provider's failure to perform its obligations under this Clause 12 or from any lack of knowledge which the Service Provider is deemed to have under the foregoing provisions of this Clause 12.
- 12.4 Nothing in the Contract shall be deemed to imply that the Authority makes any representation or warranty of whatsoever nature as to the value, design, construction and fitness for use of the Removal Centre or the maintenance or operation of the Removal Centre or any of the equipment provided by the Authority referred to in Schedule B (*Fixtures, Fittings and Equipment*) or Clause 31 (*Equipment*) or Clause 33 (*Issue of Authority's Property*).
- 12.5 Without prejudice to the generality of Clause 12.1, the Service Provider shall be deemed to have:-
- 12.5.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract; and
- 12.5.2 gathered all information necessary to perform its obligations under this Contract and other obligations assumed, including information relating to the design, layout, floor plans and structure of the Removal Centre.
- 12.6 The Service Provider 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.

13. CHANGES

13.1 Right of Authority to Request a Change

- 13.1.1 The Authority may delete, suspend, amend, or alter the extent of any obligation to be met by the Service Provider under the Contract, or add to the obligations of the Service Provider under the Contract, by giving written notice (the "**Notice of Change**") to the Service Provider of the required change and complying with Clause 13.12.1 (*Procedure for Sub-contracting Notice of Change Works*). Clauses 13.1.3 to 13.1.6 (inclusive) shall apply in the case of changes to the Operating Fee resulting from a Notice of Change which does not give rise to a change in Capital Expenditure. Clauses 13.2.1 to 13.4.2 (inclusive) shall apply in the case of a Notice of Change which gives rise to a change in Capital Expenditure. To avoid doubt, the Authority is permitted to withdraw a Notice of Change by way of written notice to the Service Provider or to allow a Notice of Change to lapse. Where the Authority so withdraws a Notice of Change or elects to allow a Notice of Change to lapse, the Parties will be responsible for their own costs incurred prior to such withdrawal or lapse.
- 13.1.2 If any change proposed by the Service Provider arises from a Security Technology Change, the provisions of Clause 13.8 (*Security Technology Change*) shall apply.
- 13.1.3 Subject to Clauses 13.1.1, 13.1.2 and 13.6 (*Emergencies*), following service of any Notice of Change, the Authority will consult with the Service Provider with respect to the deletion, suspension, alteration, extension of or addition to the obligations hereunder, and the Service Provider shall provide the Authority on or before the date falling ten (10) Working Days after the date of the Notice of Change with a reasonable estimate of the increase or reduction in the Operating Fee (if any), or proposal of other changes to the terms set out herein, which it believes should occur as a result of the changes set out in the Notice of Change.
- 13.1.4 Any such estimate shall be accompanied by a reasonably detailed breakdown of the manner in which the estimate is calculated and shall include details of any redundancy costs which are reasonably expected to be incurred by reason of the proposed change together with any information which the Authority may reasonably require, including without limitation breakdowns of price and supporting material for the purpose of satisfying the Authority that the proposed revised price is fair and reasonable.
- 13.1.5 Where the Notice of Change relates to an obligation set out in the Operating Fee Analysis, the estimate shall be consistent with the relevant amount set out in such Operating Fee Analysis for such relevant obligation, making due allowance for any change in conditions under which such obligation is carried out and/or any significant change in the quantity of such obligation and the provisions of Clause 40 (*Variation of Operating Fee*) shall apply.
- 13.1.6 The Authority may accept or reject such estimate or proposal. In the event that the Authority accepts such estimate or proposal, the changes referred to in the Notice of Change shall come into immediate effect, the Operating Fee (or other relevant terms hereof) shall change as set out in the Service Provider's estimate or proposal, and the terms of the Contract shall be deemed changed as set out in the Notice of Change (except when the changes cannot be reasonably effected immediately, in which case the Authority shall allow the Service Provider such further period to effect such changes as is reasonably necessary). If the Authority rejects such estimate or proposal, it may either:
- (a) elect to allow the Notice of Change to lapse; or
 - (b) elect that the changes referred to in the Notice of Change shall come into immediate effect (in the same manner and subject to the same conditions as to time allowed to the Service Provider as aforesaid) but that the Operating Fee shall be varied or not varied in accordance with Clause 77 (*Dispute Resolution*).

- 13.1.7 The Service Provider shall review, and the Authority shall have the right to audit, actual costs incurred six (6) months after the completion of the Notice Of Change to review actual expenditure with reference to the estimates provided pursuant to Clause 13.1.1, and to the extent that the review and/or audit establishes that the actual costs incurred are less than specified in the Notice of Change, the Authority shall be entitled to set off such amount in accordance with Clause 45 (*Amount Due and Set Off*) and each subsequent payment of the Operating Fee shall be reduced to reflect the actual costs incurred.

13.2 Notice of Change Requiring Capital Expenditure

- 13.2.1 In the event that the Notice of Change would result in a change in any Capital Expenditure following the Date of Contract, the Service Provider shall within two weeks of the date of the Notice of Change provide the Authority with a written estimate of the amount of such Capital Expenditure together with its reasonable estimate of any increase or decrease in the Operating Fee which it believes should occur as a result of the changes set out in the Notice of Change.
- 13.2.2 Where the change affects the Services and involves construction works, the Service Provider shall, subject to Clause 13.2.4 provide with such estimate its proposals for carrying out such works, including a proposed programme and schedule of payments. Such schedule of payments shall, unless the Parties otherwise agree, provide for payment in monthly instalments to be spread over the then remaining Contract Term (and not merely over the period of construction) and in a manner which complies with the Housing Grants Act.
- 13.2.3 In all cases, any such estimate and/or proposal shall be accompanied by a reasonably detailed breakdown of the manner in which that estimate and/or proposal is calculated.
- 13.2.4 For the avoidance of doubt, any construction works shall be carried out in accordance with the provisions of this Contract subject to any changes required by the Authority in any Notice of Change.

13.3 Acceptance or Rejection of Capital Expenditure Estimate

- 13.3.1 The Authority may accept the estimate referred to in Clause 13.2.1 (*Notice of Change Requiring Capital Expenditure*) or request that it be changed, and following such request the Service Provider may submit a different estimate and/or proposal (as the case may be), following which:
- (a) if the Authority accepts the Service Provider's estimate and proposal, then:
 - (i) the Authority shall be liable to make payment in respect of any increased amount of Capital Expenditure as is set out in such estimate in the manner described in Clause 13.4.1 (*Determination of Capital Expenditure*) to the extent that Clause 13.4.1 (*Determination of Capital Expenditure*) is applicable or is otherwise contained in the Service Provider's proposal;
 - (ii) the Notice of Change shall come into effect once the amount of the Capital Expenditure has been agreed or determined as referred to in Clause 13.3.1.(a)(i); and
 - (iii) the Operating Fee shall be varied once the Notice of Change comes into effect;
 - (iv) the Service Provider shall review, and the Authority shall have the right to audit actual costs incurred six (6) months after the completion of the Notice of Change in order to review expenditure with reference to the estimates provided pursuant to Clause 13.1.1 (*Rights of Authority to Request a Change*) and to the extent that the review

and/or audit establishes that the actual costs incurred are less than specified in the Notice of Change, the Authority shall be entitled to either, at the Authority's option, set off against the next payment of the Operating Fee or claim as a debt due from the Service Provider.

- (b) if the Authority rejects the Service Provider's estimate and proposal, then the Authority may either:
 - (i) elect to allow the Notice of Change to lapse; or
 - (ii) elect to have the amount of the Capital Expenditure determined in accordance with Clause 13.4.1 (*Determination of Capital Expenditure*) (where applicable) or in accordance with Clause 77 (*Dispute Resolution*).

13.4 Determination of Capital Expenditure

13.4.1 Where the Authority rejects the Service Provider's estimate of the amount of the relevant Capital Expenditure, the amount of such Capital Expenditure shall be determined in accordance with this Clause 13.4.1 to the extent that the same is applicable. The Authority shall carry out a valuation of the change in accordance with the following:

- (a) such valuation, where appropriate, shall include an allowance for work;
- (b) the valuation of additional or omitted work in respect of any relevant change shall be based on a fair valuation;
- (c) any valuation of work under Clauses 13.4.1(a) and 13.4.1(b) above shall include allowance for any proper addition to or reduction of any preliminaries;
- (d) if compliance with the instruction effecting a change in whole or in part substantially changes the conditions under which any other work is executed, then such work shall be treated as if it had been the subject of an instruction effecting a change which shall be valued in accordance with these provisions; and
- (e) to the extent that the valuation does not relate to the execution of additional work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a change cannot reasonably be effected in the valuation by the application of Clauses 13.4.1(a) to 13.4.1(d) above a fair valuation thereof shall be made, taking into account any savings or reduction in liabilities consequent on the change,

provided that no allowance shall be made under these provisions for any effect upon the Services or for any other direct loss and/or expense for which the Service Provider would be reimbursed by payment under any other provision in the Contract.

13.4.2 If the Service Provider does not agree the valuation made pursuant to Clause 13.4.1 by the Authority the amount of the Capital Expenditure shall be decided in accordance with Clause 77 (*Dispute Resolution*).

13.5 Implementation of Capital Expenditure Changes

13.5.1 Once:

- (a) the amount of the relevant Capital Expenditure has been agreed; and
- (b) such programme and the schedule of payments referred to in Clause 13.2.1 (*Notice of Change Requiring to Capital Expenditure*) have been agreed or determined,

the Service Provider shall procure that all that is necessary is done in order to comply with the Notice of Change (unless the Authority notifies the Service Provider within seven (7) days of the date of agreement or determination of the estimate that the Notice of Change should lapse) and the Operating Fee shall be revised.

- 13.5.2 The Authority shall make payment in respect of such works necessary to comply with the Notice of Change in accordance with the schedule of payments as so agreed or determined, subject to the Service Provider complying with Clause 13.2.4 (*Notice of Change Requiring to Capital Expenditure*).

13.6 Emergencies

- 13.6.1 In the case of emergency, the requirements set out in the Notice of Change shall come into immediate effect and the Operating Fee shall be varied as set out in Clause 13.6.2 below.
- 13.6.2 In the case of an emergency, or when the Authority elects as referred to in Clause 13.1.6(b) above, the Authority shall set such provisional change to the Operating Fee and extension of time as it considers fair which will be effective until such time as the Operating Fee is varied (or not varied) and/or a time extension granted as agreed by the Authority and the Service Provider or determined in accordance with Clause 77 (*Dispute Resolution*) and the Operating Fee shall be deemed to be so changed on a provisional basis.
- 13.6.3 In the event that the provisional Operating Fee set by the Authority is less than the Operating Fee as so agreed or determined pursuant to Clause 77 (*Dispute Resolution*) such that following such provisional change the amounts paid by the Authority are less than they should have been, an adjusting payment shall be made by the Authority to the Service Provider on or before the date falling thirty (30) days after the date of such agreement or determination (the "**Adjusting Payment**").
- 13.6.4 The Adjusting Payment shall be in the amount of such difference over the period from the date the changes referred to in the Notice of Change became effective until the date upon which the Operating Fee was so agreed or determined pursuant to Clause 77 (*Dispute Resolution*) and vice versa by the Service Provider to the Authority if the provisional Operating Fee set by the Authority is more than the Operating Fee as so agreed or determined pursuant to Clause 77 (*Dispute Resolution*).

13.7 Service Provider Changes

- 13.7.1 The Service Provider may propose changes to the Services pursuant to this Clause 13.7. Such proposals shall be made in accordance with Schedule N (*Change Control Procedures*).
- 13.7.2 No change to the Services shall be implemented by the Service Provider unless and until the Authority has given its written consent.
- 13.7.3 The Authority shall be free to accept or reject any proposed change as it thinks fit and may require that there be a reduction in the Operating Fee if such change results in lower costs for the Service Provider in performing its obligations hereunder so as to reflect the amount of any reduction in costs.

13.8 Security Technology Change

- 13.8.1 When any Security Technology Change arises or comes to the attention of the Service Provider, the Service Provider shall as soon as reasonably practicable notify the Authority of such matter and shall provide to the Authority all information in its knowledge or possession necessary to enable the Authority to evaluate whether to approve the implementation of the Security Technology Change at the Removal Centre.

- 13.8.2 In the event that the Authority approves the implementation or if the Authority reasonably believes that a Security Technology Change has occurred or should occur, the Authority shall be entitled to a reduction of the Operating Fee equal to one hundred (100) per cent of the aggregate of the reduction in the costs of the Service Provider and the Sub-contractors which has resulted or would result from such Security Technology Change.
- 13.8.3 The Authority may, if it wishes, serve notice upon the Service Provider, whereupon:
- (a) the Service Provider shall provide the Authority with a quotation to reduce the Operating Fee;
 - (b) the Service Provider shall provide all the information as the Authority may require for the Authority to ascertain the amount of the reduction in costs which the Service Provider and the Sub-contractors will or should achieve as a result of the said Security Technology Change; and
 - (c) the Service Provider and the Authority shall agree a reduction in the Operating Fee which shall fairly reflect one hundred (100) per cent of the savings of the Service Provider and the Sub-contractors (calculated on a consolidated basis) which results or will result from the said Security Technology Change.
- 13.8.4 In the event that any Security Technology Change which is yet to be put in place at the time of the notification requires any Capital Expenditure on the part of the Service Provider before it can be implemented, the provisions of Clause 13.2 (*Notice of Change Requiring Capital Expenditure*) shall apply in respect of such notification as though it were a Notice of Change.

13.9 Principles for Variation of Operating Fee

- 13.9.1 Any change to the Operating Fee which is determined under this Clause 13 (*Changes*) shall be determined in accordance with the principles set out in Clause 40 (*Variation of Operating Fee*) and shall include any expenses falling to be reimbursed to the Service Provider under Clause 14.5 (*Extensions of Time*) to the extent not so reimbursed. The Service Provider shall and shall procure that the Sub-contractors shall, so far as they are reasonably able, mitigate any costs arising as a result of the implementation of a Notice of Change.

13.10 Exclusions to Change Procedure

- 13.10.1 For the avoidance of doubt, it shall not be deemed a change to any obligation hereunder and there shall not be any variation of the Operating Fee pursuant to any provision of the Contract if:
- (a) the operation of the Removal Centre changes in any way within the parameters set out in Schedule D (*Operational Specification*);
 - (b) the Authority requires any amendments to be made pursuant to Clause 15 (*Preparation for Operation of the Removal Centre*); or
 - (c) the Authority requires any amendments to be made pursuant to Clause 36.4 (*Monitoring, Inspection and Access*).

13.11 Changes as a Result of DC Legislation

- 13.11.1 Where any DC Legislation alters the costs incurred by the Service Provider in fulfilling its obligations under the Contract, the Service Provider shall notify the Authority of such fact. In the event of such DC Legislation which so alters the Service Provider's costs, either Party may request that an adjustment be made to the Operating Fee. The Parties shall thereupon endeavour to agree such adjustment as soon as practicable in accordance with the following provisions:

- (a) the Service Provider shall provide the Authority with a quotation to decrease or increase the Operating Fee;
- (b) the Service Provider shall submit such information referred to in Clause 64 (*Service Provider's Records*) as the Authority may reasonably require, together with such breakdowns of price and supporting material (including wage rates, suppliers' costs, overhead and profit calculations) as the Authority may reasonably require for the purpose of satisfying the Authority that the proposed revised price is fair and reasonable.

13.11.2 In the event of failure by the Parties to agree, either Party may refer the matter in accordance with Clause 77 (*Dispute Resolution*).

13.11.3 For the purposes of this Clause 13.11, DC Rules or changes to DC Rules from time to time shall not constitute DC Legislation (if they would otherwise do so) [except to the extent that the amount reasonably and properly required to be spent by private sector operators of removal centres in complying with the same would exceed the amount reasonably and properly required to be spent by private sector operators of removal centres in complying with the DC Rules if they were to remain unchanged.

13.11.4 The Service Provider shall consult regularly with the Authority on the development of the Service Provider's policy in relation to the Removal Centre to meet changes in Legislation and the Service Provider's obligations under the Contract, provided that the Service Provider alone shall be liable for the performance of the obligations of the Service Provider under the Contract and nothing done by the Authority shall in any respect relieve or absolve the Service Provider from its responsibility therefore.

13.12 Procedure for Sub-contracting Notice of Change Works

13.12.1 Where the Service Provider intends to enter into any Sub-contract for the implementation of a Notice of Change it shall;

- (a) agree with the Authority a list of Persons from which it shall obtain written quotations for the works required to implement the Notice of Change (the "**Third Party Work**"), such list to contain at least three (3) persons;
- (b) account to the Authority on an open book basis in respect of the quotations actually received; and
- (c) include within its estimate for the Notice of Change an element for the management of the Third Party Work, such element to be accounted for separately to any other element of the Estimate and such element not to exceed seven (7) per cent of the total amount of the Third Party Work.

14. EXTENSION OF TIME

14.1 If and whenever it becomes reasonably apparent to the Service Provider that the progress of its obligations under the Contract is being or is likely to be delayed, such that:

- 14.1.1 it will be unable to satisfy the requirements for obtaining the Permit to Operate by the Cut-off Date; or
- 14.1.2 completion of any Re-instatement Works in accordance with Clause 7 (*Liability for Loss and Damage*) will be delayed,

the Service Provider shall forthwith give written notice to the Authority of the relevant circumstances in accordance with Clause 14.2 (the "**Delay Notice**").

14.2 The Delay Notice shall:

- 14.2.1 identify the cause or causes of the delay;

- 14.2.2 state whether and to what extent the delay is caused by a Relevant Event;
 - 14.2.3 provide details of the nature of the Relevant Event and its duration (or the Service Provider's reasonable estimate of its likely continued duration);
 - 14.2.4 specify in the reasonable opinion of the Service Provider the extent to which the date for obtaining the Permit to Operate, Cut-off Date or completion of the Re-instatement Work in accordance with Clause 7.2 (Reporting Requirements) (as the case may be) is to be affected by the Relevant Event; and
 - 14.2.5 in the case of a Relevant Event being claimed under Clause 1 (Definitions), paragraph (a) or (b) of the definition of "**Relevant Event**", state the Service Provider's estimate of the expenses it is likely to incur as a direct result of the delay caused by such Relevant Event.
- 14.3 If the Service Provider serves a Delay Notice while a Relevant Event is continuing, the Service Provider shall provide the Authority periodically (and at least on a weekly basis) with details of the Relevant Event and the Service Provider's reasonable estimate of its impact on the Project. The Service Provider shall afford the Authority such access to the Site and papers of the Service Provider as the Authority acting reasonably may consider appropriate for the purposes of establishing the accuracy of any Delay Notice.
- 14.4 If the Authority (acting reasonably) determines (such determination to be made as soon as reasonably practicable) that a Relevant Event is the cause of any delay to:
- 14.4.1 satisfaction of the requirements for obtaining the Permit to Operate by the Cut-off Date; or
 - 14.4.2 completion of the Re-instatement Works as referred to in Clause 14.1.2,
- the Authority shall thereupon give a written extension of time to the Service Provider, and certify this fact in writing, by fixing such later date for:
- 14.4.3 obtaining the Permit to Operate (and, if such later date is a date later than the Cut-off Date, the Cut-off Date shall be revised to a date later than such revised date; and
 - 14.4.4 the Re-instatement Date, as it then estimates to be reasonable and fair to take into account the effect of the Relevant Event
- whereupon such revised dates shall become the revised date for obtaining the Permit to Operate, the Cut-off Date and/or the Re-instatement Date (as the case may be) for the purposes of the Contract).
- 14.5 When in accordance with Clause 14.4 a Relevant Event is found to have caused a delay and such Relevant Event is one of the events referred to in paragraph (a) or (b) of the definition of Relevant Event, the Authority shall reimburse to the Service Provider any reasonable expenses incurred by the Service Provider directly as a result of the delay caused by the Relevant Event where such expenses are properly evidenced in writing.

PART 2 - MOBILISATION PERIOD

15. PREPARATION FOR OPERATION OF THE REMOVAL CENTRE

15.1 Priority of obligations

- 15.1.1 For the avoidance of doubt, the Service Provider is obliged to comply with the requirements of Schedule D (*Operational Specification*) at all times and in the event of any inconsistency between the obligations specified in the column of Schedule D (*Operational Specification*) headed "Requirements" and the corresponding response of the Service Provider in the column of Schedule D (*Operational Specification*) headed "The Service Provider's Proposal", the Service Provider shall, subject to Clause 15.1.2, be obliged at all times to operate to meet the obligations specified in the column of

Schedule D (*Operational Specification*) headed "Requirements" and any additional costs shall be borne by the Service Provider without recourse to the Authority.

- 15.1.2 In the event that the response of the Service Provider specified in the column of Schedule D (*Operational Specification*) headed "The Service Provider's Proposal" exceeds the obligation specified in the column of Schedule D (*Operational Specification*) headed "Requirements", the Service Provider shall be obliged to provide to the higher standard at all times.

15.2 Operating Proposals

- 15.2.1 The Service Provider shall prepare the documents, plans, procedures and other matters to be supplied as provided in Schedule D (*Operational Specification*) and submit a draft copy of each to the Authority for approval not less than six (6) weeks prior to the Commencement Date.
- 15.2.2 Within four (4) weeks of receipt of such documents, plans, procedures and other matters (or such longer period as shall be reasonable in all the circumstances), the Authority shall either approve the same or provide a written record of the reasons why it does not approve such documents.
- 15.2.3 The Service Provider shall make such amendments to the documents, plans, procedures and other matters as the Authority may require for the purposes of ensuring that they are in accordance with the requirements of Schedule D (*Operational Specification*) and Schedule E (*Contingency and Emergency Procedures*) and the DC Rules and other relevant Legislation. If there is any conflict between Schedule D (*Operational Specification*) and Schedule E (*Contingency and Emergency Procedures*) and the DC Rules, the terms of the DC Rules shall prevail. The Authority shall respond to such amendments within 14 days of receipt of the same from the Service Provider (or such other period as shall be reasonable in the circumstances).
- 15.2.4 The Authority shall be entitled to refuse to approve any of the items referred to in this Clause 15.2 until the Service Provider has made all the necessary amendments and they are acceptable to the Authority in its sole discretion.
- 15.2.5 Once finally approved by the Authority under this Clause 15.2 the documents, plans, procedures and other matters so approved shall remain under review in accordance with Clause 36 (*Monitoring, Inspection and Access*).
- 15.2.6 For the avoidance of doubt, the approval by the Authority in accordance with this Clause 15.2 or any other provision of the Contract shall in no way absolve the Service Provider from complying with Clause 15.1 (*Priority of Obligations*).

15.3 Requirements for Permit to Operate

- 15.3.1 A minimum of six (6) weeks prior to the Commencement Date, the Service Provider shall provide the Authority with the necessary information required to implement Clause 23 (*The Centre Manager*), Clause 24 (*Detainee Custody Officers*) and Clause 25 (*Staff*), including:
- (a) the names, and such other information as the Authority may require, of the Centre Manager and the members of the senior management of the Removal Centre; and
 - (b) the names of, and such other information as the Authority may require, of all persons requiring certification or approval, as specified in Clause 24 (*Detainee Custody Officers*) and Clause 25 (*Staff*).
- 15.3.2 The Authority shall be entitled to request from the Service Provider and the Service Provider shall be obliged to provide such further information as the Authority may require for the purpose of implementing Clause 23 (*The Centre Manager*), Clause 24 (*Detainee*

Custody Officers) and Clause 25 (*Staff*) following receipt of any information under this Clause 15, provided that any request for such further information shall be made by the Authority as soon as is reasonably practicable following the receipt of the information under Clause 15.3.1.

- 15.3.3 Notwithstanding anything in Clause 16 (*Permit to Operate*) or Clause 17 (*Timetable for Permit to Operate*), the Authority shall not issue a Permit to Operate unless the information required by the Authority pursuant to this Clause 15.3 has been supplied to it and the necessary approvals (including without limitation final approval of the Operation Proposals) have been given by the Authority to the Service Provider as specified or referred to in this Clause.

16. PERMIT TO OPERATE

- 16.1 On or prior to the Cut-off Date the Service Provider shall (subject to the Authority acting in accordance with Clause 17.3 (*Timetable for Permit to Operate*) and Schedule H (*Mobilisation*)) obtain from the Authority a Permit to Operate.
- 16.2 A Permit to Operate will only be issued if the Service Provider has demonstrated to the reasonable satisfaction of the Authority that the Service Provider can provide the Services in a manner which meets all the requirements of the Contract.

17. TIMETABLE FOR PERMIT TO OPERATE

- 17.1 A minimum of thirty (30) days prior to the date when the Service Provider considers it will have satisfied the requirements for obtaining a Permit to Operate (the "**Service Provider's Permit to Operate Notice Date**") the Service Provider shall give written notice to the Authority of such opinion specifying the Service Provider's Permit to Operate Notice Date. The Service Provider's Permit to Operate Notice Date may not be a date later than the Cut-off Date.
- 17.2 When so notified, the Authority, and such other persons as the Authority may specify, shall carry out necessary testing and inspections for the purpose of issuing a Permit to Operate.
- 17.3 The Authority shall issue a Permit to Operate by the Service Provider's Permit to Operate Notice Date unless:
- 17.3.1 in the opinion of the Authority (acting reasonably) the provisions of Clause 16 (*Permit to Operate*) are not satisfied, in which case the Authority shall provide the Service Provider with a written record of the reasons why a Permit to Operate will not be issued; or
- 17.3.2 Clause 15.3.2 (*Requirements for Permit to Operate*) has not been satisfied; or
- 17.3.3 the Service Provider's Permit to Operate Notice Date is a date after the Cut-off Date.
- 17.4 Where the Authority refuses to issue a Permit to Operate, and a written record of the reasons has been provided to the Service Provider in accordance with Clause 17.3, the Service Provider shall comply with the requirements of this Clause 17 and Clause 16 (*Permit to Operate*) when again seeking a Permit to Operate, save that the notice period specified in Clause 17.1 shall be fourteen (14) days instead of thirty (30) days but the Authority shall respond as soon as reasonably practicable within the notice period, taking into account any reasons for any such refusal.
- 17.5 The Authority shall consider any request for a Permit to Operate as soon as reasonably practicable following receipt by the Authority of the Service Provider's notice under Clause 17.1, having regard to such information as the Authority shall consider necessary or desirable to obtain from any other person in connection with such application), and without prejudice to the foregoing the Authority shall notify the Service Provider as soon as reasonably practicable after becoming aware that any such request is not complete in a material respect.

18. **FULL OPERATION PERIOD**

- 18.1 The Full Operation Period shall commence on the date that the Authority issues a Permit to Operate pursuant to Clause 17 (*Timetable for Permit to Operate*) and shall expire upon the earlier of the Expiry Date or termination of the Contract Term.
- 18.2 At all times during the Full Operation Period the Service Provider shall provide and maintain the Full Quota for the exclusive use of the Authority.

PART 3 – OPERATIONAL MATTERS

19. **CONDUCT OF THE SERVICES**

- 19.1 The Service Provider shall be responsible for the operation, management and maintenance of the Removal Centre in accordance with the terms and specifications of the Contract, and in accordance with and by virtue of the Authority's powers under the 1999 Act and any other applicable Legislation.
- 19.2 The Independent Police Complaints Commission ("IPCC") is legally empowered to investigate certain serious complaints and incidents and may deal with matters of serious misconduct which relate to the exercise of functions of the Authority (including matters relating to the exercise of such functions by the Service Provider on behalf of the Authority). The Service Provider will provide all cooperation and assistance to the IPCC, the Authority and any police force engaged by the IPCC to undertake a managed or supervised IPCC investigation as may be required, in relation to any investigation carried out by the IPCC.

Business Continuity and Disaster Recovery

- 19.3 The Parties shall comply with the provisions of the BCDR Plan and the provisions of Schedule E (*Contingency and Emergency Procedures*).
- 19.4 The Service Provider shall ensure that it is able to implement the BCDR Plan at any time in accordance with its terms.
- 19.5 The Service Provider shall undertake regular risk assessments in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to, those risk assessments to the Authority promptly in writing following each review.
- 19.6 The Service Provider shall establish, maintain, and review its own internal processes and procedures with respect to the identification of any threats or risks to the provision of the Services, how such threats and risks may be mitigated and how the provision of the Services may be maintained in the event of any such identified threats or risks materialising.

20. **OPERATION**

- 20.1 The Service Provider shall at all times operate and manage the Removal Centre in accordance with all relevant provisions of Legislation including but not limited to the 1999 Act, the Human Rights Act 1998 and the DC Rules. The Service Provider shall be responsible for maintaining awareness of all applicable Legislation.
- 20.2 Without prejudice to Clause 20.1 the Service Provider shall operate and manage the Removal Centre in accordance with the terms of Schedule D (*Operational Specification*). For the avoidance of doubt, if there is any conflict between the terms of Schedules D (*Operational Specification*) and E (*Contingency and Emergency Procedures*) and the DC Rules, the terms of the DC Rules shall prevail.

21. **MAINTENANCE OF THE REMOVAL CENTRE**

21.1 **Scope of Obligations**

- 21.1.1 Subject to Clause 31 (*Equipment*), the Service Provider shall maintain at its own expense the Removal Centre, the Site and all plant, machinery, fixtures, fittings, furnishings, chattels and other equipment in accordance with the terms of Schedule C (*Maintenance Management*).
- 21.1.2 The Authority may exercise its rights under Clause 34 (*Dilapidation and Termination Surveys*) in order to ascertain that the Service Provider is complying with this Clause 21.
- 21.1.3 The Service Provider is obliged to supply and maintain, replace and renew the Assets (and whether specified in Schedules B (*Fixtures, Fittings and Equipment*) or otherwise) as is necessary to ensure that following the Full Operation Date the Removal Centre and all plant, machinery, fixtures, fittings, furnishings, chattels and other equipment is and remains in such condition as to enable the Service Provider to comply with its obligations under the Contract in all respects.
- 21.1.4 Where any term of the Contract requires the Service Provider to replace or renew any plant, machinery, fixture, fitting, furnishing, vehicle, chattel or other equipment, the Service Provider may retain the proceeds derived from any sale or disposal of the replaced item provided that the same has been replaced or renewed in accordance with the provisions of the Contract.

22. LAND PROVISIONS

- 22.1 The Authority agrees to grant to the Service Provider and the Service Provider agrees to take a Lease of the Yarl's Wood Site in accordance with the following provisions:
- 22.1.1 the Lease shall be in the form of a draft lease set out in Schedule I (and the provisions of Schedule I are hereby incorporated into this Clause 22 as though the same were set out herein in extension order to satisfy the requirements of section 2 of the law of Property (Miscellaneous Provisions) Act 1989);
- 22.1.2 the Lease will be granted on or before the Commencement Date.
- 22.1.3 title to the Site is registered at HM Land Registry under title number BD229773 and comprises office copy entries of the registers (including a copy of the filed plan) dated 10 March 2014, title having been deduced to the Service Provider and the Service Provider shall be deemed to have accepted such title and the Service Provider shall not raise any requisition or objection in relation to any of the matters disclosed by such deduction of title;
- 22.1.4 the Leases will be granted subject to and with the benefit of the matters set out in schedule 1 and/or schedule 3 to the Lease as appropriate and any other matters which may affect the Site as a result of any agreement or other document entered into prior to the grant of the Leases with the approval of the Authority and the Service Provider shall take the Leases subject to all such matters and shall not raise any objection thereto or requisition thereon;
- 22.1.5 the Standard Commercial Property Conditions (Second Edition) applicable to the grant of a lease and as hereinafter varied in Clause 22.1.6 below shall be incorporated into the agreement for the grant and the taking of the Leases insofar as the same are not inconsistent with the express terms and conditions of that agreement and in the event of any conflict between the express terms and conditions of that agreement and the said Standard Commercial Property Conditions, the former shall prevail;
- 22.1.6 the said Standard Commercial Property Conditions shall be varied as follows:
- (a) there shall be incorporated in Standard Commercial Property Condition 3.1.2 a new sub-Condition (f) which shall read "overriding interests not constituting or creating a right of occupation";
 - (b) Standard Commercial Property Condition 5.1 shall be deleted; and

- (c) the following Standard Commercial Property Conditions shall be deleted:
1.4; 2.1.1; 2.1.2; 2.2; 2.3; 3.3; 6.3; 8.1.1; 8.8; 9; 10.3; 12.
- (d) Standard Commercial Property Condition 10.2.2 is deleted and "Authority" in this deed has the same meaning as 'Seller' in the Standard Conditions and "Service Provider" in this deed has the same meaning as 'Buyer' in the Standard Conditions; and

22.2 The Service Provider agrees to comply with the following provisions:

- 22.2.1 within one month following any dealing with or transmission of any interest under the Lease or derivative of it or the execution of any document dealing with that interest to deliver to the Authority a copy of any Energy Performance Certificate issued as a result of the dealing;
- 22.2.2 to co-operate with the Authority so far as is reasonably necessary to allow the Authority to obtain an Energy Performance Certificate and Recommendation Report for the Premises; and
- 22.2.3 to allow access to any Energy Assessor appointed by the Authority as is reasonably necessary to inspect the Yarl's Wood Site for the purposes of preparing an Energy Performance Certificate and/or Recommendation Report for the Yarl's Wood Site.

23. THE CENTRE MANAGER

23.1 Appointment of the Centre Manager

- 23.1.1 The Service Provider will note Section 148 of the 1999 Act.
- 23.1.2 The appointment of the Centre Manager of the Removal Centre, the terms of such appointment and any variation or amendment thereto at any time after such appointment shall be subject to the approval of the Authority and to his certification as a Detainee Custody Officer under the provisions of Section 148 of and in accordance with Section 154 of and schedule 11 to the 1999 Act.
- 23.1.3 The Service Provider will inform the Authority of the name of the person proposed as Centre Manager in accordance with Clause 15 (*Preparation for Operation of the Removal Centre*) save that the Service Provider may provide the Authority with alternative candidates for the post of Centre Manager if it so wishes, specifying, in the case of more than one such candidate, their priority of appointment. The Authority may accept or reject the proposal as it thinks fit.
- 23.1.4 The Service Provider shall submit to the Authority such particulars of the proposed Centre Manager and each alternative candidate as the Authority may require in order to approve the said appointment.
- 23.1.5 The Authority will consult with the Service Provider with respect to any such nominee and if a Service Provider's nominee is rejected by the Authority, the Authority shall provide reasons for the rejection, and the Service Provider shall nominate a new candidate for the Authority's approval in the same manner as the earlier nomination.

23.2 Change of Centre Manager

- 23.2.1 During the term of the Contract the Centre Manager will be an employee of the Service Provider. Any change to the person occupying the position of Centre Manager must be approved by the Authority before being effected.
- 23.2.2 For the avoidance of doubt, the Service Provider shall not permit any person to commence work at the Removal Centre or on the Site as the Centre Manager until the Authority has approved their appointment in accordance with this Clause 23.

23.2.3 The Service Provider shall ensure that any person required to exercise the powers of the Centre Manager, by reason of the Centre Manager's absence for whatsoever reason, will be subject to the same terms of approval and appointment as specified in this Clause 23..

24. DETAINEE CUSTODY OFFICERS

- 24.1 The Service Provider will note Section 154 of the 1999 Act.
- 24.2 All persons carrying on Custodial Functions at the Removal Centre shall first be required to be certified as Detainee Custody Officers by the Authority as required by Section 155 of and in accordance with Section 154 of and schedule 11 to the 1999 Act.
- 24.3 Subject to Clause 25.11 (*Staff*), the Service Provider shall provide training for all persons it wishes to engage as Detainee Custody Officers. Such training shall be approved by the Authority and shall contain the Authority's core training requirements as set out in Schedule D (*Operational Specification*). Representatives of the Authority may observe the conduct of such training from time to time as it thinks fit.
- 24.4 All applications for certification as a Detainee Custody Officer shall be made by the individual applicant on the Authority's forms. The Service Provider may forward the said application to the Authority or the individual applicant may submit the application independently. Without prejudice to the Authority's right to refuse certification, no application for certification as a Detainee Custody Officer will be granted by the Authority unless and until the individual applicant has completed and passed the Service Provider's training as described at Clause 24.3.
- 24.5 No person may be employed in the capacity of a Detainee Custody Officer if his certification has been revoked or during any period when his certificate is suspended or is otherwise no longer in force. The Service Provider shall notify the Authority immediately of any behaviour of a Detainee Custody Officer which comes to its attention and casts doubt upon his fitness for certification as a Detainee Custody Officer. Such notification will not absolve the Service Provider of its responsibilities under the Contract to ensure the security of the Removal Centre and the safety of Detainees.
- 24.6 The Service Provider shall ensure that all Detainee Custody Officers shall carry out their duties. The Service Provider shall operate contingency plans in accordance with Schedule E (*Contingency and Emergency Procedures*).

25. STAFF

- 25.1 The Service Provider shall comply with the Staff Vetting Procedures in respect of all Staff employed or engaged in the provision of the Services. The Service Provider confirms that all Staff employed or engaged by the Service Provider at the Full Operation Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 25.2 The Service Provider shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with the Security Plan and, the Security Policy.
- 25.3 The Service Provider shall be responsible for the recruitment, training, and provision of suitable staff and all members of Staff shall receive proper training in their functions and duties, such training to be subject to the prior approval of the Authority (such approval not to be unreasonably delayed).
- 25.4 All members of Staff engaged in the provision of the Services who are not required to be certified as Detainee Custody Officers under Clause 24 (*Detainee Custody Officers*) shall be approved by the Authority for the purpose of their function or duty (such approval not to be unreasonably delayed).
- 25.5 The Authority's approval must be obtained prior to any member of Staff commencing work at the Removal Centre. The Service Provider shall provide to the Authority such details of the said members of Staff as may be required by the Authority for the purposes of approval unless such

information is withheld by the Service Provider on reasonable grounds (in which case the Service Provider shall promptly notify the Authority in writing of the nature of the information it is withholding and the reason for withholding the same). Where the Authority gives its approval, the approval shall continue in force until such date or the occurrence of such event as may be specified in the approval.

- 25.6 If, in the opinion of the Authority, any member of Staff is guilty of misconduct or is incapable of efficiently performing his duties or it is not in the public interest for a person to be employed in the Removal Centre or to be allowed access to the Site, the Service Provider shall refuse the admittance of such person to the Removal Centre and/or the Site once informed by the Authority of its opinion, and shall, without delay, on being required to do so, remove such person from the Removal Centre, and will cause the work performed by such person to be performed by such other person as may be deemed necessary.
- 25.7 If the Service Provider fails to comply with any requirement of the Authority pursuant to Clause 25.6 or delays in so complying the Authority may employ such other person as may be deemed necessary for the purpose of carrying out the work, and any additional costs thereby incurred shall be a debt due from the Service Provider to the Authority. The opinion of the Authority pursuant to this Clause 25.7 shall be final and binding.
- 25.8 The Service Provider shall provide all Staff with the operating and procedural instructions prepared in accordance with Clause 15 (*Preparation for Operation of the Removal Centre*) which are relevant to them, and all Staff shall be provided with any revised or amended operating and procedural instructions which are relevant to them which may be issued during the Contract Term.
- 25.9 The Service Provider shall ensure that all Staff are under an obligation of confidence owed not only to the Service Provider and/or any Sub-contractor but also to the Authority not to disclose any information acquired during the course of their employment or engagement otherwise than in the proper discharge of their duty or as authorised in writing by the Authority, and shall provide in the terms of the Sub-contracts that the Sub-contractors will undertake in the same terms to the Authority as the provisions of this Clause 25.9.
- 25.10 The Service Provider will note and comply with the provisions of Section 151(3) of the 1999 Act. The Service Provider shall ensure the inclusion in the contract of employment of any member of Staff a condition requiring the said member of Staff to co-operate with any Controller who may be appointed to the Removal Centre under the terms of Section 151(2) of the 1999 Act.
- 25.11 In the event that the Service Provider wishes to engage a Detainee Custody Officer or other member of Staff who has been approved and/or certificated by the Authority in relation to another Removal Centre and provided that the terms of the said approval or certificate are such as to permit the proposed engagement by the Service Provider, the Service Provider shall inform the Authority of the name of such person prior to such person commencing work at the Removal Centre.
- 25.12 The Service Provider shall maintain sufficient Staff to carry out the provisions of the Contract, including the provision of cover for annual and sick leave or other absence, including emergencies.
- 25.13 The Service Provider shall ensure that all Staff are provided with written job descriptions and contracts of employment, Staff record systems, and a performance evaluation plan which shall be available for inspection by the Authority. All Staff shall be provided with written job descriptions before beginning work in the Removal Centre. Job descriptions shall be amended as necessary and reissued to the Staff concerned after each amendment.
- 25.14 The Supplier will have in place and promote a 'whistleblowing' policy which makes clear the legal protection afforded to staff who chose to make a protected disclosure under the terms of the Employment Rights Act 1996. Such policy shall include provisions to protect staff from instances of bullying or harassment from either the employer or co-workers and encourage staff to notify the Authority of any matter where disclosure is in the public interest.
- 25.15 The Service Provider shall ensure that members of Staff (to include Detainee Custody Officers, the Centre Manager and other senior management of the Removal Centre) with sufficient authority to

take decisions necessary for the proper operation of the Removal Centre shall be available twenty-four (24) hours a day, 365 (or 366 in a leap year) days a year throughout the Contract Term.

- 25.16 The Service Provider shall ensure that a member of the senior management of the Service Provider's organisation, as distinguished from the senior management of the Removal Centre, is contactable by the Authority twenty-four (24) hours a day, 365 (or 366 in a leap year) days a year throughout the Contract Term. The Authority shall be kept informed of the procedures by which this obligation shall be performed, and shall agree all such procedures, and require such amendments as it thinks fit (acting reasonably).
- 25.17 If, during the operation of the Removal Centre, the Service Provider or a Sub-contractor wishes to engage a new member of Staff, and such person has not been the subject of prior approval or certification for the relevant function or duty in accordance with Clause 23 (*The Centre Manager*), Clause 24 (*Detainee Custody Officers*) or this Clause 25 (*Staff*), or such certification or approval has lapsed, the Service Provider shall not permit the said person to commence work at the Removal Centre until the Authority has been provided with the information required by Clause 23 (*The Centre Manager*), Clause 24 (*Detainee Custody Officers*) or this Clause 25 and has given the requisite approval or certification (as appropriate).
- 25.18 The Authority shall endeavour to consider all applications for approval or certification pursuant to Clause 23 (*The Centre Manager*) or Clause 24 (*Detainee Custody Officers*) or this Clause 25 as soon as reasonably practicable following receipt by the Authority of the same (having regard to such information as the Authority shall consider necessary or desirable to obtain from any other person in connection with any such application), and without prejudice to the foregoing the Authority shall notify the Service Provider as soon as reasonably practicable after becoming aware that any such application is not complete in a material respect.
- 25.19 The Service Provider shall be entirely responsible for all aspects, including costs, of the employment or engagement of the Staff including, without limitation, for the termination of the contract of employment of any of the Staff and of any contract for services relating to any of the Staff (including without limitation any redundancy or other termination payment which may arise), whether such costs arise in relation to the expiry or termination of the Contract or otherwise.
- 25.20 Without prejudice to Clause 25.19, the Service Provider shall at all times indemnify and keep indemnified the Authority against all costs (on a full indemnity basis), claims, expenses, demands and other liabilities suffered or incurred by the Authority either:
- 25.20.1 during the Contract Term in connection with or arising out of the employment or engagement of any of the Staff by the Service Provider or any Sub-contractor; or
- 25.20.2 at any time on or after the termination of the Contract (whether on the expiration of the Contract Term or earlier termination of the Contract) in connection with or arising out of the termination of the employment or engagement of any of the Staff employed or engaged by the Service Provider or any Sub-contractor including without limitation where such termination of such employment or engagement is by the Authority and the same occurs: (i) at any time during the period of six (6) months from the date of termination of the Contract; and (ii) such person was employed or engaged by the Service Provider or Sub-contractor at the date of termination of the Contract and the termination of the employment or engagement of such person was, in the reasonable opinion of the Authority, justified whether on economic grounds or otherwise.
- 25.21 The Service Provider shall (and shall procure that every Sub-contractor shall) comply with all present and future Legislation affecting the recruitment and employment of Staff.
- 25.22 The Service Provider shall hold harmless and at all times indemnify and keep indemnified the Authority against all costs (on a full indemnity basis), claims, expenses, demands and other liabilities suffered or incurred by the Authority with respect to any damages arising from any violations of applicable Legislation referred to in Clause 25.21 by the Service Provider or any Sub-contractor.

25.23 During the Contract Term, the Service Provider shall not change any Key Personnel nor appointments of those directly involved with the day to day running of the Contract without the prior agreement in writing of the Authority with agreement not to be unreasonably withheld.

26. TUPE

26.1 Sub-contractors

In the event that the Service Provider enters into any Sub-contract in connection with this Agreement, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to this Clause 26 and shall procure that the Sub-contractor complies with such terms. The Service Provider shall indemnify the Authority and keep the Authority indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Authority as a result of or in connection with any failure on the part of the Sub-contractor to comply with such terms.

26.2 Application of TUPE on expiry or termination of the Contract

TUPE may apply at the end of the Contract.

26.3 Disclosure of Information

26.3.1 During the period of eighteen (18) months preceding the expiry of the Contract or at any time as directed by the Authority or after the Authority has given notice to terminate the Contract, the Service Provider shall (and shall ensure that every Sub-contractor and any sub-sub-contractor shall):

- (a) fully and accurately disclose to the Authority the information listed in Clause 26.3.2 relating to personnel who are engaged in providing the Services; and
- (b) permit the Authority to use the information for such purposes as it may deem appropriate, including but not limited to using the information to inform any tenderer bidding for any services which are substantially the same or similar services as those provided pursuant to the Contract.

26.3.2 The Service Provider shall disclose the following information in accordance with this Clause 26.3 in respect of each member of Staff and warrants that so far as the Service Provider is aware this information shall be true, complete and accurate in all material respects:

- (a) annual salary and rates of pay band/grade ;
- (b) all allowances;
- (c) shifts, unsociable hours or other premium rates of pay;
- (d) date continuous employment commenced and (if different) the commencement date;
- (e) sex and whether registered disabled;
- (f) age;
- (g) job description and conditioned hours of work;
- (h) leave entitlement;
- (i) current terms and conditions of employment and benefits (including retirement benefits), any other letters or documents or collective agreements affecting terms and conditions of employment;

- (j) whether any trade union is recognised in respect of the Staff or a group of the Staff;
 - (k) any performance assessment details; and
 - (l) any other information concerning the Staff which the Authority may require, acting reasonably.
- 26.3.3 During the period of six (6) months preceding the expiry of the Contract, or after the Authority has given notice to terminate the Contract, the Service Provider shall enable and assist the Authority and such other persons as the Authority may determine to communicate with and meet those employees and their trade union or other representatives when and where the Authority may determine.
- 26.3.4 At any time during either the period of six (6) months preceding the expiry of the Contract or after the Authority has given notice to terminate the Contract (whichever occurs first) the Service Provider shall fully and accurately disclose to the Authority the information set out in Clause 26.3.5 which relates to Staff and shall permit the Authority to use the information to inform the nominated new contractor.
- 26.3.5 The information which the Service Provider shall provide in accordance with Clause 26.3.4 is as follows:
- (a) name (surname, forename, title and initials) and whether registered disabled;
 - (b) date of birth;
 - (c) home address;
 - (d) job title;
 - (e) work location;
 - (f) national insurance number and contribution rate;
 - (g) annual salary and rates of pay band/grade;
 - (h) shifts, unsociable hours or other premium rates of pay;
 - (i) conditioned hours of work;
 - (j) overtime history for preceding twelve (12) month period and whether any member of Staff has waived their right not to work in excess of forty-eight (48) hours per week under the Working Time Regulations 1998;
 - (k) allowances and bonuses for preceding twelve (12) month period;
 - (l) tax code;
 - (m) for pension purposes, the notional reckonable service date;
 - (n) pensionable pay history for three years to date of transfer;
 - (o) percentage of any pay currently contributed under Additional Voluntary Contribution arrangements;
 - (p) any other voluntary deductions from pay;
 - (q) bank/Building Society account details for payroll purposes;
 - (r) annual holiday entitlement and accrued holiday entitlement;

- (s) details of any active disciplinary/inefficiency/grievance proceedings;
- (t) all documents, manuals, codes, handbooks, procedure guides, publication agreements (including collective agreements);
- (u) current terms of conditions of employment and benefits (including retirement benefits);
- (v) any other letters or documents or collective agreements affecting terms and conditions of employment;
- (w) whether any trade union is recognised in respect of the Staff or a group of the Staff or whether any trade union has made application for recognition in the previous three (3) years;
- (x) any performance assessment details;
- (y) existing training or sponsorship commitments;
- (z) outstanding loans/advances on salary or debts;
- (aa) those currently on maternity leave or other long term leave of absence;
- (bb) sickness and absence records for the preceding four year period including any records of parental leave taken;
- (cc) emergency contact details;
- (dd) five (5) months' copy pay slip data;
- (ee) cumulative pay for tax and pension purposes;
- (ff) cumulative tax paid; and
- (gg) any other information concerning the Staff which the Authority may require (acting reasonably).

Where the information provided in terms of Clauses 26.3.2, 26.3.4 and 26.3.5 ceases to be true, complete and accurate in all material respects on or before the end of the Contract, the Service Provider shall update the Authority in respect of the same as soon as reasonably practicable.

- 26.3.6 The Service Provider agrees to indemnify and keep the Authority fully indemnified in respect of any claims, costs, demands and liabilities arising from the provision of information under Clauses 26.3.2, 26.3.4, and 26.3.5 hereof.

26.4 **Emoluments and Outgoings**

All salaries and other emoluments (but excluding leave entitlement) including tax and national insurance payments, contributions to retirement benefit schemes, allowances, expenses and bonus and commission payments relating to the Staff and appertaining to the period up to the expiry or termination of the Contract shall be borne by the Service Provider and all necessary apportionments shall be made.

- 26.5 The Service Provider shall (and shall ensure that every Sub-contractor and any sub-sub-contractor shall) permit the Authority to use the information provided pursuant to Clauses 26.3.2, 26.3.4, and 26.3.5 for such purposes as the Authority shall deem appropriate and shall enable and assist the Authority and such other persons as the Authority may determine to communicate with and meet those members of Staff and their trade union or other employee representatives when and where the Authority may determine.

26.6 From the earlier of the date eighteen (18) months prior to the Expiry Date or the date of being given written notice of the Authority's intention to terminate the Contract and until the termination or expiry of the Contract, the Service Provider shall not (and shall ensure that any Sub-contractor and any sub-sub-contractor shall not) amend the rates of remuneration or hours to be worked by, or any other material terms of employment of, any member of Staff performing any part of the Services, including holidays, nor change the number of Staff or replace any member of Staff or deploy any person other than those already providing the Services under the Contract without the prior written agreement of the Authority, which will not be unreasonably withheld.

26.7 Indemnities

26.7.1 The Service Provider shall indemnify the Authority and/or, on demand by the Authority, any supplier of the Authority succeeding the Service Provider as provider of all or any part of the Services (a "**New Supplier**") against any costs, claims, liabilities, losses, demands and expenses suffered or incurred by the Authority and/or a New Supplier in relation to any Staff whose contract of employment has transferred to the Authority or a New Supplier from the Service Provider or a Sub-contractor under TUPE or otherwise which relate to or arise out of any act or omission by the Service Provider and/or a Sub-contractor or any other event or occurrence in each case in respect of the period prior to the expiry or termination of the Contract for which the Authority and/or a New Supplier is or becomes liable by reason of the operation of TUPE or any judicial or tribunal decision interpreting TUPE or otherwise provided that, for the avoidance of doubt, this Clause 26.7 does not relate to any obligation under TUPE to employ such Staff after the date of expiry or termination of the Contract on the terms and conditions of the employment to which they were entitled immediately prior to such date nor to recognise their periods of continuous employment.

26.7.2 The Service Provider shall indemnify the Authority and/or, on demand by the Authority, any New Supplier against any costs, claims, liabilities, losses, demands and expenses suffered or incurred by the Authority and/or any New Supplier as a result of any failure by the Service Provider and/or any Sub-contractor to comply with any obligations under Regulation 10 of TUPE.

27. THE MONITOR

27.1 The Service Provider will note and comply with the provisions of Section 149 of the 1999 Act.

27.2 The Monitor shall be allowed unrestricted access to the Removal Centre at all times of day, and shall be provided with accommodation in accordance with Clause 59 (*Facilities to be provided by Service Provider*). In accordance with Section 149(8) of the 1999 Act the Service Provider shall do all that it reasonably can to facilitate the exercise by the Monitor of his functions.

27.3 For the avoidance of doubt, the Monitor does not have authority to exercise any right of variation or waiver on behalf of the Authority.

28. VISITORS

28.1 Independent Contractors

- 28.1.1 If during the operation of the Removal Centre the Service Provider engages an independent contractor (being neither an employee of the Service Provider nor a Sub-contractor) to perform works or services on the Site, the Service Provider shall ensure:
- (a) that the said independent contractor is escorted at all times by a Detainee Custody Officer whilst visiting the Site; or
 - (b) that the said independent contractor is approved by the Authority (such approval not to be unreasonably withheld) prior to commencing any work or service on the Site.

- 28.1.2 The Service Provider will provide the Authority with such information as it may require for the purposes of Clause 28.1.1(b).

28.2 Compliance with DC Rules

- 28.2.1 Where the Service Provider invites or knowingly permits any person onto the Site, for whatsoever reason (including but not limited to any person visiting a Detainee), and that person is not a person certified or approved by the Authority within the meaning of Clause 24 (*Detainee Custody Officers*) or Clause 25 (*Staff*), the Service Provider shall ensure that the requirements of the DC Rules are complied with at all times and that such person does nothing to breach the security and safety of the Removal Centre or any Detainee.

28.3 Service Provider Responsibility for Security

- 28.3.1 The Service Provider shall be responsible for the safety and protection of all visitors to the Removal Centre and for the maintenance of security in the Removal Centre when visitors are permitted access onto the Site, for whatever purpose except, but subject to Clause 58 (*Intervention by Secretary of State*), when any Controller has been appointed under Section 151 of the 1999 Act.
- 28.3.2 The Service Provider shall comply, and shall procure the compliance of its Staff, with the then-current Security Policy and the Security Plan and the Service Provider shall ensure that the Security Plan produced by the Service Provider fully complies with the Security Policy.
- 28.3.3 The Authority shall notify the Service Provider of any changes or proposed changes to the Security Policy.
- 28.3.4 If the Service Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may propose a change in accordance with Schedule N (*Change Control Procedures*). In doing so, the Service Provider must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Operating Fee shall then be agreed in accordance with Schedule N (*Change Control Procedures*).
- 28.3.5 Until and/or unless a change to the Operating Fee is agreed by the Authority pursuant to Clause 28.3.4 the Service Provider shall continue to perform the Services in accordance with its existing obligations.

29. ESCORT DUTIES

The Service Provider shall be responsible for the escorting of any Detainee (or for procuring the same) at no additional cost to the Authority, as provided in Schedule D (*Operational Specification*).

30. USE OF DETAINEES

No Detainee shall be required to perform any work or service where such work or service constitutes an obligation placed upon the Service Provider by the Contract and no information in relation to any Detainee shall be disclosed to any third party without the consent of the Authority.

31. EQUIPMENT

- 31.1 The Service Provider shall produce and maintain annually an up-to-date inventory of all equipment as is referred to in Clause 32 (*Supply of Equipment*).
- 31.2 The Service Provider shall not permit or suffer to exist and shall not itself have any lien whatsoever on any of the equipment referred to in Clause 32 (*Supply of Equipment*) whether in respect of any sum owing to the Service Provider or otherwise howsoever. The Service Provider shall take all

necessary steps to ensure that the title of the Authority and the exclusion of any such lien are brought to the attention of all persons dealing with any of the same.

- 31.3 The Service Provider shall procure that all vehicles are at all times validly licensed and, without prejudice to Clause 5 (*Insurance*), insured as required by law and where applicable have a current Department for Transport Test Certificate and comply with all other requirements as to inspection and testing as are from time to time required by law.

32. **SUPPLY OF EQUIPMENT**

- 32.1 The Service Provider shall supply, install and retain at the Removal Centre all plant, machinery, fixtures, fittings, furnishings, vehicles, chattels, and other equipment required from time to time under the Contract in order for the Service Provider to comply with its Obligations of the Contract, including without limitation, those items referred to in Schedule B (*Fixtures, Fittings and Equipment*). All such equipment (including without limitation all vehicles used in connection with the Removal Centre) shall be supplied and shall at all times be in good and serviceable condition (or, if it is not capable of being kept in good and serviceable condition, shall be replaced by the Service Provider (at its own cost) as required with like equipment which is in good and serviceable condition) in order to allow the Service Provider to comply with the standards set out in Schedule C (*Maintenance Management*), and shall not be removed by the Service Provider from the Removal Centre except with the prior written consent of the Authority.

- 32.2 Subject to Clause 32.3, title to all such plant, machinery, fixtures, fittings, furnishings, vehicles, chattels, and other equipment referred to in Clause 32.1 (including any replacement thereof or parts thereof) shall pass to the Authority (free from any lien or other encumbrance whatsoever) upon the delivery of the same to the Site and become the absolute property of the Authority, and the Service Provider shall procure that the benefit of all guarantees, warranties, documentation and service agreements then in force relating to the said plant, machinery, fixtures, fittings, furnishings, vehicles, chattels, and other equipment is assigned to the Authority or, to the extent not assignable, is transferred in a manner reasonably required by the Authority. The Service Provider shall not acquire ownership or any proprietary interest in any such equipment.

- 32.3 Notwithstanding Clause 32.1, the Service Provider may lease any equipment referred to in Schedule B (*Fixtures, Fittings and Equipment*), provided that the Service Provider shall ensure that any lease entered into in respect of any such equipment shall be on such terms as to allow the Authority to use such equipment as if it were the Service Provider on any occasion where it exercises its powers under Section 151 of the 1999 Act or the Contract terminates before the Expiry Date. If the Service Provider wishes to lease any equipment which is not referred to in Schedule B (*Fixtures, Fittings and Equipment*), it must obtain the Authority's prior written consent.

- 32.4 The Service Provider shall, at the reasonable request of the Authority, from time to time provide the Authority with details of all equipment referred to in Schedule B (*Fixtures, Fittings and Equipment*) that is for the time being leased, together with copies of the relevant leases and other relevant documentation to enable the Authority to satisfy itself that the provisions of this Clause 32 are being complied with.

33. **ISSUE OF AUTHORITY'S PROPERTY**

All goods and chattels issued by the Authority in connection with the Contract and belonging to the Authority shall remain the property of the Authority whether paid for by or charged against the Service Provider or not. Such equipment shall be used only in the execution of the Obligations of the Contract. The Service Provider shall affix and keep such nameplates or other markings as the Authority may from time to time require on the vehicles and other equipment title to which passes to the Authority in accordance with Clause 32.2 (*Supply of Equipment*). The Service Provider shall not permit such nameplates or markings to be concealed, altered or removed nor affix or permit to be affixed any other plates or markings inconsistent with or prejudicial to the rights of the Authority.

34. **DILAPIDATION AND TERMINATION SURVEYS**

- 34.1 The Authority shall have the right to conduct:-

- 34.1.1 an annual dilapidation survey to determine the physical condition and state of maintenance of the Removal Centre and the dates of every such survey shall be notified to the Service Provider not less than seven (7) days in advance of the survey taking place; and
- 34.1.2 a final dilapidation survey six (6) months prior to the conclusion of the Contract under Clause 2 (*Duration of the Contract*) or within fourteen (14) days after the giving of any Termination Notice under Clause 49 (*Termination for Default*) or notice of termination of the Contract pursuant to Clause 50 (*Voluntary Termination*),

and the costs of all such surveys shall be borne by the Service Provider.

- 34.2 Where, following a survey referred to in Clause 34.1 (*Dilapidation and Termination Surveys*), such survey shows, in the reasonable opinion of the Authority, that the condition of the Removal Centre falls below the standards of repair and maintenance set out in Clause 21 (*Maintenance of the Removal Centre*) and Schedule C (*Maintenance Management*) the Authority shall notify the Service Provider of the work it reasonably believes is required to be done to bring the Removal Centre to the requisite contractual standard. Within seven (7) days of such notification (or such longer period as is reasonable in the circumstances), the Service Provider shall commence such works or procure such works to be commenced, at the Service Provider's cost. The works shall be completed within such period as is reasonably set by the Authority in the notice to the Service Provider (or, in the case of a final dilapidation survey carried out in accordance with Clause 34.1.2 on or before the Termination Date or Expiry Date, as applicable).
- 34.3 Where, following any survey, the Service Provider fails to effect any and all repairs and/or maintenance required, to the reasonable satisfaction of the Authority, within the reasonable time specified (or, in the case of a final dilapidation survey carried out in accordance with Clause 34.1 on or before the Termination Date or Expiry Date, as applicable), the Authority shall be entitled (without prejudice to any other rights of the Authority under the Contract) to carry out such unremedied repairs and/or maintenance itself, or to procure the same, and its costs in so doing shall be recoverable from the Service Provider and the Service Provider shall be liable for such repairs and/or maintenance as if the same had been carried out by or on behalf of the Service Provider. For the avoidance of doubt, the Authority, in accordance with Clause 45 (*Amount Due and Set-Off*), but without limitation to the provisions thereof, shall be entitled to set off such costs against any amounts payable to the Service Provider under the Contract.
- 34.4 This Clause 34 shall survive termination of the Contract for any reason.

35. **STATUTORY OBLIGATIONS, NOTICE, FEES AND CHARGES**

- 35.1 The Service Provider shall at its sole expense comply with and give all notices required by or under any Legislation (including, without limitation, any enactment, regulations or bye-laws), or required by any Statutory Undertaker with rights over the Site, or with whose systems the Removal Centre is or will be connected, which may be required in relation to the operation of the Removal Centre or otherwise affecting the Service Provider (hereinafter the "**Statutory Obligations**").
- 35.2 Where there is any conflict between the Statutory Obligations and the terms of the Contract, the Service Provider shall as soon as reasonably possible inform the Authority of this fact, and where in the reasonable opinion of the Authority the said conflict necessitates a variation of the terms of the Contract the Authority shall as soon as reasonably practicable notify the Service Provider and the Service Provider shall first use all reasonable endeavours to obtain the approval of the Authority to effect the variation in accordance with Clause 67 (*Authority to Commit and Variation*), save where the Service Provider is obliged to effect emergency compliance with a Statutory Obligation, in which case the Authority shall be informed as soon as practicable. The Service Provider shall not otherwise be liable to the Authority for complying with the Statutory Obligations where they are in conflict with the terms of the Contract.
- 35.3 Subject to Clause 35.4, the Service Provider shall pay any and all fees or charges required to be paid under any Legislation and shall pay any licence fees or charges pertaining to the provision of utilities in respect of the Removal Centre and the Site.

35.4 The Authority shall pay all business rates relating to the Removal Centre and the Site.

36. MONITORING, INSPECTION AND ACCESS

36.1 With effect from the Full Operation Date, the Service Provider shall permit the Monitor and/or any representative of the Authority, Her Majesty's Chief Inspector of Prisons and any statutory or regulatory body or, properly interested body, including relevant international bodies, to monitor, inspect, or arrange for the inspection of, the Site or the Removal Centre, as any of the same may from time to time require and will otherwise co-operate with the same. The aforesaid rights of access and inspection shall be exercisable for any purpose. Such inspections may take place without prior notice.

36.2 The Service Provider shall permit or arrange access to the Removal Centre to any independent person appointed in accordance with the DC Rules or any other relevant Legislation.

36.3 Subject to the Service Provider's security and operational requirements, the Service Provider shall permit or arrange access to any other person (not being a person within Clause 36.1 or Clause 36.2 notified to it by the Authority).

36.4 The Service Provider shall render such reports about the operation of the Removal Centre, in such form and at such frequency, as the Authority may require. Without prejudice to the foregoing and any other provision of the Contract, the Authority may require periodic reviews of the Service Provider's documents, plans, procedures and other matters referred to in Clause 15 (*Preparation for Operation of the Removal Centre*), together with financial and management reports for the Service Provider. In order to carry out such reviews, the Authority may require the aforesaid procedures to be put into operation by the Service Provider in order to test their effectiveness. Such a requirement will not be invoked so as to compromise the security or control of the Removal Centre. The Authority may require the Service Provider to make such alterations or amendments to the said procedures and documents, plans and other matters as the Authority may reasonably require, for the purpose of ensuring that the same are effective to achieve their purpose.

36.5 The Authority may carry out audits of the security of the Removal Centre and/or Site periodically and the Service Provider shall supply any information requested for that purpose to the Authority.

36.6 The Authority shall at its discretion (not to be unreasonably exercised) conduct inspections of the Removal Centre to ascertain the number of Available Detainee Places for the purpose of Clause 39 (*Price*) and Clause 40 (*Variation of Operating Fee*). Representatives of the Authority may carry out the said inspections without giving prior notice to the Service Provider. The right to conduct such inspections is without prejudice to the obligation of the Service Provider to inform the Authority in the event of a place becoming unavailable under Clause 42 (*Available Detainee Places*).

36.7 The Authority may monitor the performance of the Services by the Service Provider

36.8 The Authority may increase the extent to which this monitoring is conducted if the quality of the Services is degraded in any way. The Authority shall give the Service Provider prior notification of its intention to increase the level of monitoring.

36.9 The Service Provider shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority in carrying out the monitoring referred to in Clause 36.7 at no additional charge to the Authority.

36.10 If the Service Provider believes that the Authority's monitoring of the Services is unreasonable the Service Provider may escalate the issue with the Authority

Quality Plans

36.11 The Service Provider shall develop, before the Full Operation Date Quality Plans that:

36.11.1 ensure that all aspects of the Services are the subject of quality management systems;
and

36.11.2 are consistent with any applicable Standards.

- 36.12 The Service Provider shall obtain the Authority Representative's written approval of the Quality Plans developed pursuant to this Clause 36.12 before beginning to implement them, which approval shall not be unreasonably withheld or delayed. The Service Provider acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Service Provider of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 36.13 The Service Provider shall procure that the Services are carried out in compliance with the Quality Plans.
- 36.14 Any changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Quality Monitoring

- 36.15 The Representative of the Authority may carry out audits of the Service Provider's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) at regular intervals. The Parties anticipate that these audits will be carried out at intervals of approximately three months, but the Representative of the Authority may carry out other periodic monitoring or spot checks at any other time. In each case, the Service Provider shall co-operate, and shall procure that its Sub-contractors co-operate, with the Authority Representative, including by providing the Representative of the Authority with all information and documentation, and access to any relevant Service Provider Staff and/or to the Site, which he reasonably requires in connection with his rights under this Clause 36 at no additional charge to the Authority.

37. CONTRACT MANAGEMENT

Representatives of each of the Service Provider and the Authority shall attend meetings with the frequency noted in Schedule R (Contract Management) to discuss the Service Provider's compliance with and performance of its obligations under this Contract.

38. SERVICE IMPROVEMENTS AND COST SAVINGS

The Service Provider shall comply with the provision of Schedule S (*Service Improvements and Cost Savings*).

PART 4 - FINANCIAL MATTERS

39. PRICE

- 39.1 The Authority shall pay the Service Provider the Operating Fee which shall be payable in accordance with Schedule F (*Operating Fee*).
- 39.2 The payment by the Authority to the Service Provider of the Operating Fee shall, together with any sums determined pursuant to Clause 13 (Changes), be the total amount payable by the Authority for the performance by the Service Provider of its obligations under the Contract.

40. VARIATION OF OPERATING FEE

- 40.1 The Operating Fee is fixed and is not subject to revision except as provided in Clause 13 (*Changes*).
- 40.2 Any variation to the Operating Fee pursuant to Clause 13 (*Changes*) shall for
- 40.2.1 changes in the nature of the Services; and/or
 - 40.2.2 the incorporation of any works,

be fair and reasonable and agreed between the Authority and the Service Provider.

- 40.3 In the event of delay of more than twenty-one (21) days in agreeing such adjustments in the Operating Fee and terms of payment or any part thereof, a fair and reasonable provisional amended Operating Fee and terms of payment shall be fixed by the Authority, (and the Authority reserves the right to alter the same from time to time) pending agreement of an amended Operating Fee and terms of payment or the fixing of such Operating Fee and terms of payment pursuant to the provisions of Clause 77 (*Dispute Resolution*).
- 40.4 The Authority shall pay to the Service Provider the amount by which any sum payable on the basis of the Operating Fee and payment terms finally fixed exceeds any sum paid on the basis of provisional prices and payment terms, and the Service Provider shall pay to the Authority the amount by which any sum paid on the basis of provisional prices and payment terms exceeds the sum payable on the basis of prices and payment terms finally fixed.
- 40.5 For the avoidance of doubt, failure to reach agreement on any issue relating to any part of this Clause will be subject to Clause 77 (*Dispute Resolution*).

41. **PERFORMANCE EVALUATION**

- 41.1 The accrual of Performance Measures in accordance with Schedule G (*Performance Evaluation*) shall be without prejudice to the Authority's rights under Clause 46 (*Default by the Service Provider*) and Clause 49 (*Termination for Default*).
- 41.2 The Service Provider shall notify the Monitor (or in his absence, any person carrying out the duties of a Monitor) in writing in accordance with Paragraph 3.1 of Schedule G (*Performance Evaluation*) as soon as practicable and, in any event, within twenty-four (24) hours of its occurrence of any event or circumstance which constitutes a Performance Measure setting out (so far as the Service Provider is reasonably able) in reasonable detail the relevant event or circumstance.
- 41.3 The Monitor shall be entitled (but shall not be obliged) to notify the Service Provider in writing if the Monitor believes that a Performance Measure may have occurred and has not been notified by the Service Provider in accordance with Clause 41.2 and Paragraph 1.3 of Schedule G (*Performance Evaluation*). If the Service Provider has not within seven (7) days of receipt of the Monitor's notice given notice in writing to the Monitor (together with details or evidence in support of the Service Provider's said notice) that it does not agree that such Performance Measure has occurred, the Service Provider shall not thereafter be entitled to dispute that such Performance Measure has occurred.
- 41.4 The Monitor and the Service Provider shall comply with the provisions of Schedule G (*Performance Evaluation*) with respect to monthly performance reporting

42. **AVAILABLE DETAINEE PLACES**

- 42.1 In the event of a Detainee Place on any day failing to constitute an Available Detainee Place, the Service Provider shall notify the Authority in writing as soon as that Detainee Place subsequently complies with the requirements of Paragraph 3.1 of Schedule G (*Performance Evaluation*) (an "**Available Detainee Place Notice**"), provided that for the purposes of Schedules F (*Operating Fee*) and G (*Performance Evaluation*) such Detainee Place shall not constitute an Available Detainee Place (if it would otherwise do so) until the day following the day the Authority receives such Available Detainee Place Notice.
- 42.2 The Service Provider shall on each day following the commencement of the Full Operation Period produce the Daily Report and deliver a copy thereof to the Monitor within twenty-four (24) hours.
- 42.3 Notwithstanding any other provision of this Clause 42, a Detainee Place shall not be an Available Detainee Place if the Service Provider refuses to accept a Detainee to occupy such Detainee Place. The Service Provider agrees that it will not refuse to accept a Detainee for a Detainee Place.

42.4 The Service Provider shall inform the Authority (and shall record the same in the Daily Report) promptly if any event occurs which renders an Available Detainee Place no longer an Available Detainee Place, for whatever reason.

42.5 Nothing in this Clause 42 shall relieve the Service Provider of its responsibilities to operate the Removal Centre in accordance with the terms of the Contract.

43. **PAYMENT**

43.1 No payment of the Operating Fee shall become due to the Service Provider until after the commencement of the Full Operation Period and then only in accordance with the provisions of Clause 42.3 (*Available Detainee Places*).

43.2 Unless otherwise provided herein, all undisputed payments by the Authority to the Service Provider shall become due and payable (subject to Clause 45 (*Amount Due and Set-Off*)) thirty (30) days after the receipt by the Authority of a demand in writing in the form specified in Appendix 2 to Schedule F (*Operating Fee*) (such demand to contain reasonable details of amounts outstanding) or, if that payment is a payment under Clause 54 (*Payment for Termination*), thirty (30) days after determination of the amount payable under the relevant Clause.

43.3 Payment of the Operating Fee shall be claimed in respect of each Performance Month and in arrears, by means of an invoice in the form specified in Appendix 2 to Schedule F (*Operating Fee*), together with such other documentation as the Authority may reasonably require, submitted to the Authority and shall be subject to any reduction pursuant to the terms of the Contract. The first invoice shall be presented to the Authority by the Service Provider following the last day of the first Performance Month. Payment will be made in sterling in immediately available funds to such bank account of the Service Provider in England as the Service Provider shall designate in writing from time to time for the purpose.

43.4 Payment of the Operating Fee, subject to Clause 45 (*Amount Due and Set-Off*), will be made within thirty (30) days from the presentation by the Service Provider to the Authority in accordance with Clause 43.2 of a valid monthly invoice and such other documentation as is referred to in Clause 43.2 (or, in the case of the operation of Clause 41.1 (*Performance Evaluation*), thirty (30) days from the determination of the amount of the reduction in the Operating Fee).

43.5 If one of the Parties hereto does not pay any sum payable under the Contract on the relevant due date, it shall pay interest on the amount from time to time outstanding in respect of that overdue sum for the period beginning on the due date and ending on the day of receipt (both before and after judgment or arbitration) in accordance with this Clause 43. Interest payable by either Party under this Clause 43.5 shall be calculated at a rate per annum which is equal to LIBOR from time to time plus one (1) per cent.

44. **VALUE ADDED TAX**

44.1 All amounts stated to be payable by the Authority in respect of the Services pursuant to and in accordance with this Contract shall be exclusive of any Value Added Tax properly chargeable on any amount. The Authority shall pay to the Service Provider any such Value Added Tax on receipt from the Service Provider of a valid tax invoice in respect of those Services.

44.2 The Service Provider shall, if so requested by the Authority, furnish such information as may be reasonably required by the Authority as to the amount of Value Added Tax chargeable in accordance with the Contract and payable by the Authority to the Service Provider in addition to the Operating Fee. For the avoidance of doubt, any overpayment by the Authority to the Service Provider of an amount in respect of Value Added Tax shall be a sum of money recoverable from the Service Provider (including, without limitation, for the purposes of Clause 45 (*Amount Due and Set-Off*)).

45. **AMOUNT DUE AND SET-OFF**

In addition and without prejudice to any rights of set-off the Authority may have as a matter of law or otherwise, whenever any sum or sums of money shall be recoverable from or payable by the

Service Provider under the Contract, the same may be set off against, by applying the same in or towards satisfaction of, any sum then due, or which at any time thereafter may become due, to the Service Provider under the Contract or under any other contract which the Service Provider has with the Authority or with the Crown so that the sum due to the Service Provider shall be the net amount after the exercise of any such set-off.

PART 5 - DEFAULT AND TERMINATION

46. DEFAULT BY THE SERVICE PROVIDER

46.1 Without prejudice to any right of the Authority to claim damages in respect of any breach of the Contract by the Service Provider and without prejudice to any other rights of the Authority to terminate the Contract, but subject to Clause 46.2, each and any of the following events shall constitute an Event of Default entitling the Authority, if it so elects, to terminate the Contract in accordance with the terms hereinafter set out:

- 46.1.1 failure to complete any work required by a report referred to in Clause 7.2.1 (*Reporting Requirements*) as a result of which the Full Quota is not provided within four (4) months after the relevant Re-instatement Date; or
- 46.1.2 failure to provide the Full Quota at any time after the Full Operation Date for a continuous period exceeding thirty (30) days except in circumstances where Clause 52 (*Force Majeure*) applies or where:
 - (a) such failure results from matters entirely outside the Service Provider's control (including, without limitation, a breach by the Authority of its obligations under the Contract); and
 - (b) the Service Provider is using best endeavours to restore the Full Quota as soon as practicable; or
- 46.1.3 (without limitation to any other Event of Default) any failure by the Service Provider to perform, keep, observe, meet or comply with any of the terms of the Contract where:
 - (a) such failure has a material effect on the performance of any part of the Contract;
 - (b) such failure either by itself or in addition to any other failure or failures (whether or not remedied), has occurred persistently and occurs again following notice to the Service Provider that the continued occurrence or reoccurrence might lead to termination of the Contract; or
 - (c) such failure either by itself or in addition to any other failure or failures (whether or not remedied), casts in the Authority's opinion serious doubt on the competence or suitability of the Service Provider to provide the Services; or
- 46.1.4 if the Service Provider refuses or neglects to comply with a written notice or instruction from the Authority requiring it to remove any work, materials or goods not in accordance with the Contract and by such refusal or neglect the Services are materially affected;
- 46.1.5 failure by the Service Provider to comply with the provisions of Clause 10 (*Subcontracting*) and/or its obligations under Clause 36 (*Monitoring, Inspection and Access*);
- 46.1.6 any failure by the Service Provider to maintain or procure insurances in accordance with its obligations under Clause 5 (*Insurance*) or to make payment in accordance with Clause 4.1 (*Service Provider Indemnity*) where such failure is material and has not been remedied in full within thirty (30) days of notice to the Service Provider; or
- 46.1.7 any failure to perform, keep, observe, meet or comply with any of the provisions of the Leases and/or the provisions of Clause 22 (*Land Provisions*) where such failure is material; or

- 46.1.8 if any statement, representation or warranty contained in the Contract or in any documentation furnished pursuant to the Contract or in connection with the Contract (including without limitation the Guarantee) is incorrect in any material respect when made or deemed to be made; or
- 46.1.9 if:
- (a) a Court makes an order that the Service Provider or the Guarantor be wound up; or
 - (b) any receiver or manager is appointed in respect of the Service Provider or the Guarantor or any part of its assets (other than for the purpose of a bona fide internal reorganisation or amalgamation consented to by the Authority) or the Service Provider or the Guarantor seeks any other form of protection from its creditors in any other insolvency jurisdiction; or
 - (c) a meeting of creditors of the Service Provider or the Guarantor passes, or a meeting of any class of shareholders of the Service Provider or the Guarantor is convened for the purposes of considering, a resolution for the winding-up of the Service Provider or the Guarantor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority); or
 - (d) a petition for an administration order in respect of the Service Provider or the Guarantor is presented and such petition is not withdrawn within thirty (30) days; or
 - (e) a petition is presented or other steps are taken for the purposes of the winding up of the Service Provider or the Guarantor (other than for the purposes of a bona fide internal reorganisation or amalgamation consented to by the Authority) and any such petition is not, or such other steps are not, discharged or withdrawn within thirty (30) days of receiving notice of such petition; or
 - (f) anything analogous to any of the events specified in Clauses 46.1.9(a) to 46.1.9(e) above occurs with respect to the Service Provider or the Guarantor under the laws of any applicable jurisdiction; or
- 46.1.10 if distress or execution is levied against, or an encumbrancer takes possession of, any of the Service Provider's or Guarantor's assets and is not paid or discharged within twenty-eight (28) days, or a judgment against the Service Provider's or the Guarantor remains unsatisfied for more than twenty-eight (28) days, except in either case where the Service Provider or the Guarantor has lodged a bona fide appeal against such levy or judgment; or
- 46.1.11 if the Service Provider or the Guarantor fails to pay any amount due from it hereunder or under the Guarantee within fifteen (15) days of a written demand which refers to either a previous invoice or other written demand for the same sum which is unpaid (unless the relevant amount is disputed in good faith); or
- 46.1.12 if a change of control of the Service Provider (within the meaning of Clause 51 (*Change of Control*)) occurs without the prior written consent of the Authority or as otherwise permitted in Clause 51.2 (*Change of Control*); or
- 46.1.13 if a person that the Authority reasonably believes it is against the public interest to permit to be associated with the operation of removal centres in the United Kingdom becomes a parent undertaking (within the meaning of Section 1162 of the Companies Act 2006) of the Service Provider; or
- 46.1.14 if the Service Provider fails to obtain a Permit to Operate by the Cut-off Date for whatsoever reason; or

46.1.15 if the Service Provider incurs in excess of 30,000 Performance Points in a Performance Month on three (3) or more occasions during any six (6) Performance Months in the Full Operation Period; or

46.1.16 the Guarantee is not (or is claimed by the Guarantor thereunder not to be) in full force and effect; or

46.1.17 if the Service Provider fails to comply with the provisions of Schedule K (Financial Distress), Clause 4.1 (Termination Rights).

46.2 No right of termination shall arise under this Contract by reason of any failure by the Service Provider to perform any of its Obligations of the Contract to the extent that such failure to perform occurs because of the occurrence of any loss or damage to the Removal Centre for which, pursuant to Clause 7.1.1. (*Service Provider Liability for Loss, Damage and Reinstatement*), the Service Provider is not liable (a "**Clause 7.1 Event**"). For the avoidance of doubt, it is hereby acknowledged that, unless expressly stated to the contrary in this Contract, all other rights and obligations of the Parties under this Contract remain unaffected by the occurrence of a Clause 7.1.1 (*Service Provider Liability for Loss, Damage and Reinstatement*) Event and in particular (but without limitation) the occurrence of a Clause 7.1.1 (*Service Provider Liability for Loss, Damage and Reinstatement*) Event shall not entitle the Service Provider to any compensation.

47. **AUTHORITY'S RIGHTS ON TERMINATION**

Any exercise by the Authority of its rights pursuant to Clause 46 (*Default by the Service Provider*) above or any other right to terminate the whole or part Contract shall be without prejudice to any other rights and remedies the Parties may have against each other including, without limitation, rights to claim damages in respect of any breach of the Contract and any other rights under or in respect of the Contract that may have arisen or be related to anything that may have arisen prior to any such exercise (whether or not any formal claim may have been made at the time of such exercise in respect of any such rights). Subject to the foregoing, the exercise of a right of termination of the Contract shall discharge both Parties from their obligations thereunder.

48. **RECTIFICATION**

48.1 Where an Event of Default has occurred by reason of any matter occurring which is referred to in Clause 46.1.2 (*Default by Service Provider*) or sub-clause 46.1.3(a) of Clause 46.1.3 (*Default by Service Provider*) (but not if such matter is also referred to in any of Clause 46.1.1 (*Default by Service Provider*) or Clause 46.1.4 to 46.1.6 (*Default by Service Provider*) (inclusive)), the Authority shall (if the breach or the matter giving rise to the breach is capable of remedy) give notice to the Service Provider in writing (the "**Rectification Notice**"), and the Service Provider shall either propose a programme of rectification or remedy such Event of Default. If no such proposal for rectification is received by the Authority within twenty (20) days of the date of the Rectification Notice, the Authority may proceed to terminate the Contract in accordance with Clause 49 (*Termination for Default*) unless such Event of Default has been remedied within the said period of twenty (20) days, in which case no further action will be taken and the Contract will continue.

48.2 Where a proposal for rectification is received by the Authority within twenty (20) days of the date of the Rectification Notice, and is approved by the Authority (such approval not to be unreasonably withheld in the case of a breach which is capable of remedy) the Service Provider shall carry out such approved rectification and remedy the default within sixty (60) days from the date of the Rectification Notice, save that the Authority may extend the said period if it thinks fit. At the expiry of the sixty (60) days (or any such extended time) if the Service Provider has failed to remedy the Event of Default to the reasonable satisfaction of the Authority, the Authority may proceed to terminate the Contract in accordance with Clause 49 (*Termination for Default*). If at the expiry of such period the Service Provider has so remedied the Event of Default, no further action will be taken and the Contract will continue.

48.3 If the Authority does not approve the proposal for rectification, the Authority may proceed to terminate the Contract in accordance with Clause 49 (*Termination for Default*).

48.4 The Authority shall inform the Service Provider of its decision to approve or reject any rectification proposal as soon as reasonably practicable following receipt by the Authority of the same and in any event within fourteen (14) days of the proposal's submission to the Authority.

49. TERMINATION FOR DEFAULT

49.1 Where an Event of Default has occurred and after the Service Provider's rights (if any) under Clause 48 (*Rectification*) have expired, the Authority may proceed to terminate the whole or part of the Contract by giving notice in writing to the Service Provider, receiver, liquidator or any person in whom the Contract may be vested (the "**Termination Notice**") to expire thirty (30) days from the date of the Termination Notice (or, in the case of an Event of Default under Clause 46.1.2 or Clause 46.1.3(a) (*Default by the Service Provider*), if sooner, thirty (30) days from the date of the Rectification Notice) or such longer period as the Authority shall specify in the Termination Notice (the "**Termination Notice Period**").

49.2 Where:

49.2.1 an Event of Default has occurred other than by reason of any matter occurring which is referred to in Clause 49.3; and

49.2.2 after a Termination Notice has been served but prior to the expiry of the Termination Notice Period, the Authority is satisfied that such Event of Default and each other Event of Default (if any) has been remedied and the Authority is satisfied that the default or defaults that gave rise to such Event of Default and the default or defaults that gave rise to any other Event of Default are unlikely to recur, then the Termination Notice shall be revoked; provided that the Authority may, in its absolute discretion it so elects but shall not be obliged to, revoke more than two Termination Notices in aggregate pursuant to this Clause 49.

49.3 The Service Provider acknowledges and agrees that, unless the Authority decides otherwise, each of the failures set out in Clauses 46.1.1, 46.1.9(a), 46.1.11, 46.1.15, and 46.1.16 (*Default by the Service Provider*) shall be a breach that is incapable of remedy for the purposes of Clause 49.2.

49.4 Following the issuance of a Termination Notice, the Authority or any Person nominated by the Authority shall (if it appears to the Authority that the Services being provided under the Contract are reasonably likely to become materially worse during the Termination Notice Period) have the right (but not the obligation) forthwith upon written notice to the Service Provider to perform as a Sub-contractor of the Service Provider such of the Obligations of the Contract as are imposed upon the Service Provider as are reasonably necessary to ensure that the Services provided by the Service Provider under the Contract are maintained at no worse level than was pertaining at the date upon which the Termination Notice was served.

49.5 The Authority (or as the case may be any such Person nominated by the Authority) shall be entitled to charge a fee for any of such services properly provided by it in exercise of the rights under Clause 49.4, for the period from the date upon which it first provides such services to the earlier of the date upon which it ceases to provide such services, or the Termination Date, of 1.05 times the amount certified by the Authority (or, as the case may be, any such Person nominated by the Authority) as being the cost to it of performing such services, which fee shall be payable from time to time in arrears within thirty (30) days after submission by the Authority (or, as the case may be, any such Person nominated by the Authority) of an invoice therefore). For the avoidance of doubt, the Authority shall, in accordance with Clause 45 (*Amount Due and Set-Off*), but without limitation to the provisions thereof, be entitled to set off all such amounts payable to the Authority (or as the case may be any such Person nominated by the Authority) against any amounts payable to the Service Provider from the Authority under the Contract.

49.6 The Service Provider shall fully and effectively indemnify the Authority against all Losses incurred by the Authority (whether arising directly or indirectly) from the termination of the Contract pursuant to this Clause 49, including, without limitation, all costs of re-tendering the Contract (or any part of it) and any additional cost of procurement above that which would have been paid had the Service Provider not breached the terms of the Contract.

49.7 The provisions of Clauses 49.4 to 49.6 are without prejudice to any other rights and remedies which the Authority may possess.

50. VOLUNTARY TERMINATION

50.1 Service of Voluntary Termination Notice

50.1.1 The Authority may terminate the Contract at will at any time upon giving not less than three (3) months' notice in writing to the Service Provider ("**Voluntary Termination Notice**").

50.1.2 Compensation shall be payable in accordance with Clause 54 (*Payment for Termination*).

50.2 Authority Rights Prior to Expiry

50.2.1 On service of a Voluntary Termination Notice, the Authority shall at any time before the expiry of the notice period be entitled to direct the Service Provider to complete in accordance with this Contract all or any of the Services, or any part or component thereof.

50.2.2 Any powers exercisable pursuant to Clause 50.2.1 shall be exercised as soon as reasonably practicable.

51. CHANGE OF CONTROL

51.1 The Service Provider shall inform the Authority immediately of any change in the ownership of the Service Provider. Change of ownership means for this purpose any material change to the direct or indirect legal or beneficial ownership of any shareholding in the Service Provider. A change in the ownership is material if it relates directly or indirectly to a change of three (3) per cent or more of the issued share capital of the Service Provider.

51.2 The Service Provider shall obtain the Authority's written consent (which may be given subject to conditions) prior to any change of control of the Service Provider, provided that where a Change of Control arises from any change in the beneficial or legal ownership of shares that are listed on the stock exchange, such approval shall be obtained promptly as soon as the Service Provider becomes aware of the same. The Authority has the right to terminate the Contract at its election, if such consent is not so obtained when required by this Clause 51.2, as set out in Clause 46.1.12 (*Default by the Service Provider*). Change of Control of the Service Provider means an event where any single person or group of persons acting in concert (within the meaning of the City Code on Take-Overs and Mergers) acquires control of the Service Provider or any direct or indirect interest in the relevant share capital (as defined in Section 545 of the Companies Act 2006 as if for this purpose the Service Provider was a public company) of the Service Provider as a result of which that person or group of persons has a direct or indirect interest in more than twenty-five (25) per cent of the relevant share capital of the Service Provider.

51.3 If a Relevant Person becomes a parent undertaking of the Service Provider and such event is not an Event of Default then the Authority shall have the right to terminate the Contract at its election under this Clause 51.3 by giving notice in writing to the Service Provider of the Termination Date. For the purposes of this Clause, a "**Relevant Person**" means a person that the Authority reasonably believes it is against the public interest to permit to be associated with the operation of a removal centre in the United Kingdom and "**parent undertaking**" shall bear the meaning given to that expression in Section 1162 and Schedule 7 of the Companies Act 2006.

52. FORCE MAJEURE

52.1 If a Force Majeure Event arises during the Contract Term which directly causes the Service Provider to be materially unable to comply with its obligations hereunder, the Service Provider shall give notice thereof to the Authority.

52.2 The Service Provider and the Authority may, if they so choose, agree such terms as are appropriate for the continued performance of this Contract (including, if such terms are agreed, any

appropriate variation to the Operating Fee), and such terms shall be agreed in accordance with Clause 67 (*Authority to Commit and Variation*).

- 52.3 If no such terms are agreed within sixty (60) days of the commencement of the Force Majeure Event, and such event is continuing or its consequence remain such that the Service Provider is materially unable to comply with its obligations, the Parties hereby agree that both Parties shall be excused performance of any and all obligations imposed upon them and this Contract shall thereupon terminate (unless otherwise agreed).

53. **TERMINATION FOR UNLAWFULNESS**

- 53.1 If performance by either Party of any of its material obligations under this Contract is or becomes unlawful, that Party may give notice thereof, with full supporting reasons, to the other (the "**Notice of Unlawfulness**") where after the Parties will discuss in good faith whether those obligations can be altered in such a way as to render their performance lawful.
- 53.2 In the event that no agreement is reached between the Parties within sixty (60) days of the date of the Notice, either Party may terminate this Contract by notice in writing to the other.
- 53.3 From the date of the Notice of Unlawfulness until any agreement or termination pursuant to this Clause, the Parties shall be excused performance of, and shall not be liable to the other for failure to perform, such material obligations.

54. **PAYMENT FOR TERMINATION**

- 54.1 In the event of termination pursuant to Clause 50 (*Voluntary Termination*), the Authority shall pay to the Service Provider the following:
- 54.1.1 where the period between the Termination Date and the end of the Contract Term is less than one (1) month, a sum equal to the Operating Fee that would have been payable pursuant to Schedule G (*Performance Evaluation*) (assuming no Performance Points or Significant Performance Failures would have been incurred) for the remainder of the Contract Term; or
 - 54.1.2 where the period between the Termination Date and the end of the Contract Term is equal to or greater than one (1) month, a sum equal to the Operating Fee that would have been payable pursuant to Schedule G (*Performance Evaluation*) (assuming no Performance Points or Significant Performance Failures would have been incurred) for a period of one (1) month.
- 54.2 In the event of termination under Clause 6 (*Unavailability of Insurance*), Clause 52 (*Force Majeure*) or Clause 53 (*Termination for Unlawfulness*) the Authority shall pay to the Service Provider the sum of the following:
- 54.2.1 any amount which has fallen due pursuant to Schedule F (*Operating Fee*) but has not yet been paid; and
 - 54.2.2 where termination occurs after the Full Operation Date, an amount representing the value of the Services performed from the end of the previous Performance Month until the Termination Date (assuming no Performance Points or Significant Performance Failures).
- 54.3 In the event of termination under Clause 49 (*Termination for Default*) or Clause 55 (*Corrupt Gifts and Payments*) the Authority shall pay to the Service Provider any amount which has fallen due pursuant to Schedule F (*Operating Fee*) but has not yet been paid.
- 54.4 This Clause 54 contains the Service Provider's sole contractual entitlement to payment or compensation in the event of termination of the Contract not constituting a breach by the Authority of its obligations under the Contract but is without prejudice to any rights or claims it may have arising prior to termination as a result of any breach of the Contract by the Authority. Without prejudice to the generality of the foregoing, the Service Provider shall have no entitlement to any

payment in respect of the Operating Fee or otherwise in the event of termination save as expressly provided in this Clause 54.

- 54.5 The Service Provider shall not take or refrain from taking any action in relation to its contractual arrangements (including, without limitation, pursuant to any Sub-contract) or otherwise that is motivated primarily by a desire to increase the payment that would be due from the Authority on a termination of the Contract rather than by other considerations.

55. **CORRUPT GIFTS AND PAYMENTS**

- 55.1 Neither the Service Provider nor any Sub-contractor, nor anyone employed by any of them or acting on behalf of any of them, shall:

55.1.1 offer to give or agree to give any person in Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other agreement for Her Majesty's Service or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other contract for Her Majesty's Service;

55.1.2 enter into this Contract or any other contract with Her Majesty or any Government Department in connection with which commission has been paid or agreed to be paid by it or on its behalf, or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any contract for the payment thereof have been disclosed in writing to the Authority; or

55.1.3 defraud or attempt to defraud or conspire to defraud the Crown.

- 55.2 The Service Provider shall:

55.2.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (the "**Relevant Requirements**");

55.2.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

55.2.3 have and shall maintain in place throughout the Contract Term its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Clause 55.2.2, and shall enforce them where appropriate;

55.2.4 promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Service Provider in connection with the performance of this Contract;

55.2.5 immediately notify the Authority in writing if a foreign public official becomes an officer or employee of the Service Provider or acquires a direct or indirect interest in the Service Provider, and the Service Provider warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the Date of Contract;

55.2.6 within one month of the Date of Contract, and annually thereafter, certify to the Authority in writing signed by an officer of the Service Provider, compliance with this Clause 55 by the Service Provider and all persons associated with it under Clause 55.3. The Service Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

- 55.3 The Service Provider shall ensure that any person associated with the Service Provider who is performing services or providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those

imposed on the Service Provider in this Clause 55 (the “**Relevant Terms**”). The Service Provider shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.

55.4 For the purpose of this Clause 55:

55.4.1 the meaning of “adequate procedures” and “foreign public official” and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively; and

55.4.2 the purpose of this Clause 55, a person associated with the Service Provider includes but is not limited to any Subcontractor of the Service Provider.

55.5 Any breach of Clause 55.1.1 by the Service Provider or any Sub-contractor or by anyone employed by any of them or acting on their behalf with or without their knowledge or consent, or the commission of any offence by the Service Provider or any Sub-contractor or anyone employed by any of them or acting on their behalf (i) under the Bribery Act, (ii) under Legislation creating offences in respect of fraudulent acts, or (iii) at common law, in relation to this Contract or any other Contract shall entitle the Authority to act as follows:

55.5.1 where the breach or commission of any offence is occasioned by the Service Provider or an employee of the Service Provider, and such person intended thereby to benefit the Service Provider, the Authority shall be entitled to determine the Contract immediately and at the Authority’s option either to recover from the Service Provider the amount of any loss resulting from the breach and/or to recover from the Service Provider the amount or value of any such gift, consideration or commission;

55.5.2 where the breach or commission of any offence is occasioned by any Sub-contractor or an employee of any Sub-contractor, and such person intended thereby to benefit that Sub-contractor, the Authority shall be entitled as set out in Clause 55.5.1 above unless the Service Provider terminates the relevant Sub-contract and procures that all those parts of the Services which were performed by that Sub-contractor are performed by the Service Provider itself or another Sub-contractor to which the Authority has consented in accordance with Clause 10 (*Sub-contracting*) within thirty (30) days of notification to the Service Provider of the breach or commission of an offence or such longer period as the Authority permits in writing; and

55.5.3 where the breach or commission of any offence is occasioned by any Person other than the Service Provider, or a Sub-contractor, and whether or not any benefit to that Person’s employer was intended, the Authority shall be entitled as set out in Clause 55.5.1 above unless within thirty (30) days of notification to the Service Provider of the breach or commission of an offence the Service Provider has procured that the employment of such Person (and, in the case of an individual other than an individual employed by the Service Provider, or a Sub-contractor, of that Person’s employer) in performing parts of the Services has been terminated and the Service Provider has procured that all those parts of the Services as were performed by such Person or Persons are performed by another Person in accordance with Clause 10 (*Sub-contracting*).

55.6 Any dispute relating to this Clause 55 (other than in respect of Clause 55.5.3) may be referred by either Party to dispute resolution in accordance with Clause 77 (*Dispute Resolution*), except that the arbitrator shall be a Queen’s Counsel nominated by the Chairman of the Bar Council, who shall determine any issue on the balance of probabilities.

56. **ARRANGEMENTS ON TERMINATION**

56.1 Upon the termination of the Contract, for whatsoever reason, the Service Provider shall co-operate with the Authority to such extent as may be required for a period of up to nine (9) months from the date of termination, such period to be determined solely by the Authority, to ensure an orderly and efficient transition from the management of the Removal Centre by the Service Provider to the

management of the Removal Centre by the Authority or some other person. The Service Provider shall use its best endeavours to ensure that any Sub-contractor engaged to perform Obligations of the Contract complies with this Clause. The Authority shall reimburse to the Service Provider and the Sub-contractors all reasonable costs and expenses incurred in satisfying the provisions of this Clause, such amount of reimbursement being subject to reduction in respect of any amounts outstanding from the Service Provider or any Sub-contractor to the Authority.

56.2 Save as otherwise expressly provided in this Contract:

56.2.1 termination of this Contract in whole or in part shall be without prejudice to any accrued rights and obligations under this Contract as at the date of termination; and

56.2.2 termination of this Contract shall not affect the continuing rights and obligations of the Service Provider and the Authority under Clauses 3 (*Guarantee*), 4 (*Indemnity*), 5 (*Insurance*), 6 (*Unavailability of Insurance*), 7 (*Liability for Loss and Damage*), 11 (*Assignment*), 22 (*Land Provisions*), 26 (*TUPE*), 43 (*Payment*), 44 (*Value Added Tax*), 47 (*Authority's Rights on Termination*), 49 (*Termination for Default*), 50 (*Voluntary Termination*), 52 (*Force Majeure*), 53 (*Termination for Unlawfulness*), 54 (*Payment for Termination*), 55 (*Corrupt Gifts and Payments*), 56 (*Arrangements on Termination*), 60 (*Public Relations and Publicity*), 61 (*Confidential Information, Use of Documents and Freedom of Information*), 63 (*Intellectual Property Rights*), 64 (*Service Provider's Records*), 65 (*Service Provider's General Warranties*), 68 (*Service of Notices*), 70 (*Law of the Contract and Jurisdiction*), 77 (*Dispute Resolution*) or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

57. NOTICE OF DEFAULT EVENTS

57.1 Without prejudice to the generality of Clause 57.2, the Service Provider shall give the Authority written notice of any proposal to resolve that the Service Provider be wound up, immediately it becomes aware of such proposal.

57.2 The Service Provider shall notify the Authority in writing immediately it has knowledge of any event which constitutes an Event of Default or an event which with the giving of notice and/or lapse of time and/or making of any determination would constitute an Event of Default.

PART 6 - MISCELLANEOUS

58. INTERVENTION BY THE SECRETARY OF STATE UNDER SECTION 151 OF THE IMMIGRATION AND ASYLUM ACT 1999

58.1 The Service Provider will note and comply with any intervention by the Authority pursuant to the provisions of Section 151 of the 1999 Act.

58.2 In the event that the Secretary of State, under Section 151 of the 1999 Act, shall appoint a Crown servant to act as a Controller of the Removal Centre all provisions of the Contract will, without prejudice to the Authority's rights under Clause 46 (*Default by the Service Provider*) or Clause 49 (*Termination for Default*), continue to operate save that all functions which would otherwise be exercisable by the Centre Manager shall be exercised by the Controller for the period.

58.3 Any costs incurred by the Authority as a result of action taken by virtue of Section 151 will be reimbursed to the Authority by the Service Provider and, for the avoidance of doubt, the Authority shall, in accordance with Clause 45 (*Amount Due and Set-Off*), but without limitation to the provisions thereof, be entitled to set off all such amounts due to it against any amounts payable to the Service Provider from the Authority under the Contract.

59. FACILITIES TO BE PROVIDED BY SERVICE PROVIDER

59.1 Following the Full Operation Date, and for the duration of the Contract, the Service Provider shall provide at the Site, at no additional cost to the Authority, dedicated accommodation and facilities for the Monitor, an inspector, a chief immigration officer, four immigration officers and two support

staff. Such accommodation and facilities shall comprise the rooms numbered (as at the Date of Contract) 05 to 09 together with the toilet, shower and kitchen areas within the same or such other rooms (of a size complying with Home Office guidelines) as may be approved by the Authority (in its absolute discretion) and shall be furnished to an appropriate standard approved by the Authority. The dedicated accommodation shall be lighted, heated and ventilated, and be supplied with electric power, to normal office standards. Twelve (12) functioning telephone lines shall be provided. The dedicated accommodation shall be lockable and, save in the case of emergency; the Authority will control access to the dedicated accommodation.

59.2 The Service Provider shall comply with the provisions regarding the Hearing Facility and the associated offices.

59.3 Car parking facilities and access to and use of dining facilities and lockable washroom and toilet facilities and a meeting and conference room facility for not less than six (6) people shall be available for the Monitor, any representative of the Authority or any person authorised by the Authority, at all times.

59.4 The Service Provider shall be responsible for the cleanliness, proper use and reasonable care of all such facilities provided subject to the restrictions on access imposed by Clause 59.1.

60. PUBLIC RELATIONS AND PUBLICITY

60.1 The Authority reserves the right to publish information about the performance of the Contract and/or any other information as it may deem appropriate from time to time, other than in respect of the Confidential Matters, which it may only publish in response to enquiries from Parliament, its members and officers and any Person conducting an enquiry on behalf of or appointed by the Authority, whether or not the enquiry is statutory, and to enquiries legitimately made by Persons acting in the public interest.

60.2 The Service Provider shall not by itself, its servants, agents or Sub-contractors communicate with representatives of the press, television, radio or other communications media on any matter concerning the Contract without the prior written approval of the Authority.

60.3 No facilities to photograph or film in or upon the Site or the Removal Centre shall be given or permitted by the Service Provider unless the Authority has given prior written approval.

61. CONFIDENTIAL INFORMATION AND USE OF DOCUMENTS

61.1 The Service Provider will note and comply with the provisions of Section 158 of the 1999 Act on the wrongful disclosure of information acquired by persons who are or have been employed at a removal centre (whether as a Detainee Custody Officer or otherwise).

61.2 The Service Provider will note and comply with the provisions of the Official Secrets Act 1911-1989.

61.3 The Service Provider shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all persons including Staff or any Sub-contractor employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue to apply to them after the completion or earlier termination of the Contract and after termination of their employment.

61.4 The Parties agree that provisions of this Contract shall, subject to Clause 61.5 below, not be treated as Confidential Information and may be disclosed without restriction.

61.5 Clause 61.4 above shall not apply to provisions of this Contract designated as Commercially Sensitive Information and listed in Part 1 of Schedule Q (*Commercially Sensitive Information*) which shall, subject to Clause 61.7, be kept confidential for the periods specified in that Part.

61.6 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract or the Project and shall use all reasonable endeavours to prevent

their employees and agents from making any disclosure to any person of any such Confidential Information.

61.7 Clause 61.6, shall not apply to:

61.7.1 any disclosure of information which is independently developed without access to the other Party's Confidential Information.

61.7.2 any disclosure of information that is reasonably required by persons engaged in the performance of its obligations under the Contract for the performance of those obligations;

61.7.3 any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Clause 61;

61.7.4 any disclosure to enable a determination to be made under Clause 77 (Dispute Resolution) or in connection with a dispute between the Service Provider and any of its Sub-contractors;

61.7.5 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction), or Parliamentary obligation placed upon the Party making the disclosure, or the rules of any stock exchange or governmental or regulatory authority having the force of law, or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

61.7.6 any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

61.7.7 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisors or to any person engaged in providing services to the Authority for any purpose related to or ancillary to the Contract; or

61.7.8 any disclosure for the purpose of:

- (a) the examination and certification of the Authority's or the Service Provider's accounts; or
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (c) complying with a proper request from either Party's insurance adviser, or insurer on placing or renewing any insurance policies; or
- (d) (without prejudice to the generality of 61.7.5) compliance with the FOIA and/or the Environmental Information Regulations,

provided that, for the avoidance of doubt, neither Clause 61.7.8(d) nor 61.7.5 shall permit disclosure of Confidential Information otherwise prohibited by Clause 61.6 where that information is exempt from disclosure under Section 41 of FOIA.

61.8 Where disclosure is permitted under Clause 61.7.7, other than Clauses 61.7.3, 61.7.5, 61.7.6, and 61.7.8, the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

61.9 The Service Provider shall not make use of the Contract or any information issued or provided by or on behalf of the Authority in connection with the Contract otherwise than for the purpose of the Contract, except with the written consent of the Authority.

- 61.10 Where the Service Provider, in carrying out its obligations under the Contract, is provided with information relating to one or more Detainees, the Service Provider shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Service Provider has sought the prior written consent of the relevant Detainee(s) and has obtained the prior written consent of the Authority.
- 61.11 On or before the Expiry Date, the Service Provider shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to Detainees including any documents in the possession, custody or control of a Sub-contractor, are delivered up to the Authority.
- 61.12 The Parties acknowledge that the National Audit Office has the right to publish details of the Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.
- 61.13 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 61.13.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 61.13.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 61.14 The Service Provider may only disclose the Authority's Confidential Information to Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 61.15 The Service Provider shall not, and shall procure that Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 61.16 At the written request of the Authority, the Service Provider shall procure that those members of Staff identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 61.17 The Authority may disclose the Confidential Information of the Supplier:
- 61.17.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
- 61.17.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 61.17.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 61.17.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 61.17 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- 61.17.5 on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 58 (Intervention By The Secretary Of State Under Section 151 Of The Immigration And Asylum Act 1999); or
- 61.17.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 61.

61.18 Nothing in this Clause 61 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

61.19 The provisions of this Clause 61:

61.19.1 are without prejudice to the application of the Official Secrets Acts 1911 to 1989; and

61.19.2 shall survive termination of the Contract for whatever reason.

62. **FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

62.1.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate the Authority's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 62.1.2 to 62.1.7 (inclusive) below.

62.1.2 Where the Authority receives a Request for Information in relation to Information that the Service Provider is holding on its behalf and which the Authority does not hold itself, the Authority shall refer to the Service Provider such Request for Information that it receives as soon as reasonably practicable and the Service Provider shall:

- (a) provide the Authority with a copy of all such Information in the form that the Authority requires as soon as practicable and in any event within five (5) Working Days (or such other period as the Authority acting reasonably may specify) of the Authority's request; and
- (b) provide all necessary assistance as reasonably requested by the Authority in connection with any such Information, to enable the Authority to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority.

62.1.3 Following notification under Clause 62.1.2, and up until such time as the Service Provider has provided the Authority with all the Information specified in Clause 62.1.2(a), the Service Provider may make representations to the Authority as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Authority shall be responsible for determining at its absolute discretion :-

- (a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- (b) whether Information is to be disclosed in response to a Request for Information,

and in no event shall the Service Provider respond directly, or allow its Sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Authority.

62.1.4 The Service Provider shall ensure that all Information held on behalf of the Authority is retained for disclosure for at least twelve (12) years (from the date it is acquired) and shall permit the Authority to inspect such Information as requested from time to time.

62.1.5 The Service Provider shall transfer to the Authority any Request for Information received by the Service Provider as soon as practicable and in any event within two (2) Working Days of receiving it.

- 62.1.6 The Service Provider acknowledges that any lists provided by it listing or outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Regulations.
- 62.1.7 In the event of a request from the Authority pursuant to Clause 62.1.2 above, the Service Provider shall as soon as practicable, and in any event within three (3) Working Days of receipt of such request, inform the Authority of the Service Provider's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Authority under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Authority's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "**Appropriate Limit**") the Authority shall inform the Service Provider in writing whether or not it still requires the Service Provider to comply with the request and where it does require the Service Provider to comply with the request the five (5) Working Days period for compliance may be extended by such number of additional days for compliance as the Authority is entitled to under Section 10 of the FOIA. In such case, the Authority shall notify the Service Provider of such additional days as soon as practicable after becoming aware of them and shall reimburse the Service Provider for such costs as the Service Provider incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.
- 62.1.8 The Service Provider acknowledges that (notwithstanding the provisions of Clause 61 (*Confidential Information and Use of Documents*) the Authority may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Service Provider or the Project:-
- (a) in certain circumstances without consulting with the Service Provider; or
 - (b) following consultation with the Service Provider and having taken their views into account,
- provided always that where Clause 62.1.8(a) above applies the Authority shall, in accordance with the recommendations of the Code, draw this to the attention of the Service Provider prior to any disclosure.
- 62.1.9 The Service Provider shall ensure that any Sub-contract it enters into in relation to this Contract contains a clause in similar terms to this Clause 62 whereby the Sub-contractor acknowledges the Authority's responsibilities under the FOIA and agrees to co-operate with the Authority so that these responsibilities can be discharged.
- 62.1.10 The Service Provider shall ensure that all Information is retained for disclosure in accordance with Clause 64 (*Service Provider's Records*) and shall permit the Authority to inspect such records as requested from time to time.
- 62.1.11 The Service Provider acknowledges that the Commercially Sensitive Information listed in Schedule Q is of indicative value only and that the Authority may be obliged to disclose it in accordance with this Clause 62.

63. INTELLECTUAL PROPERTY RIGHTS

- 63.1 All Intellectual Property Rights in data, reports, drawings, specifications, software, designs, inventions and/or other material produced by the Authority shall vest in and be the property of the Crown.
- 63.2 All Intellectual Property Rights in the Data shall vest in and be the property of the Crown. To the extent that any Intellectual Property Rights in the Data vest in the Service Provider or any Sub-contractor or other third party engaged by the Service Provider in performing the Contract, the

Service Provider hereby assigns to the Authority (or shall procure that the Authority is granted) all such present and future Intellectual Property Rights. By virtue of this Clause 63.2 all Intellectual Property Rights in the Data created by the Service Provider shall vest in the Crown on their creation.

63.3

63.3.1 Subject to Clause 63.1, the Service Provider hereby grants to the Authority, or shall procure that the Authority is granted, a non-exclusive irrevocable licence to use, modify, adapt and enhance Intellectual Property Rights in any data, reports, drawings, specifications, plans, software, designs, inventions, and/or other material used by the Service Provider which relates to the Removal Centre or its operation, maintenance or improvement for any purposes in furtherance of the duties of the Authority (with the right to grant sub-licences for such purpose) whether by a replacement contractor or by any other person. Except as provided at Clause 63.3.3, the licence shall be a perpetual licence and free of charge. Where Intellectual Property Rights in data, reports, drawings, specifications, plans, software, designs, inventions and/or other material used by the Service Provider for the purpose of the operation, maintenance or improvement of the Removal Centre are vested in a third party, including any Sub-contractor, the Service Provider shall ensure that the Service Provider has all rights necessary to enable the Service Provider to carry out its obligations under the Contract. The Service Provider shall ensure that it is a condition of any licence that the Service Provider or any Sub-contractor enters into with a third party that the Authority shall be entitled to a licence or all relevant materials in identical terms to this Clause 63.3.

63.3.2 Where a licence is granted to the Authority by or in consequence of this Clause 63.3, such use shall include access to and copying in whatever form reasonably requested by the Authority of any or all of the said material during the Contract Term, and at any time thereafter.

63.3.3 The Service Provider shall procure (and/or shall procure that any relevant Service Provider Party shall procure) that all licences in respect of software used by the Service Provider in connection with the Removal Centre shall continue (and such licences will permit the Authority to use the same software) for a period of twelve (12) months from expiry or termination of the Contract. The Service Provider shall ensure that all licences for software that is not Commercially Available may be extended at the request of the Authority thereafter on the same terms.

63.3.4 Where the Authority requires an extended right of use of any software used by the Service Provider in connection with the Removal Centre that is not Commercially Available the Authority shall pay or procure the payment of, in accordance with terms agreed between the Parties, a reasonable licence fee for any such use for the extended period. In determining whether or not any licence fee is reasonable, regard shall be had to the nature and use made of the software, the licence fees charged to the Service Provider or Sub-contractor by their licensors for such software, industry practice and the licence fees for the software normally charged by the Service Provider or Sub-contractor in similar circumstances.

63.4 The Service Provider shall not sell, copy or use the Intellectual Property Rights referred to in Clause 63.3 if the same might compromise the security or safety of the Removal Centre and shall notify any proposed assignee of the Contract of the licences granted under or in accordance with the Contract. If the Service Provider wishes to grant a licence to use any of the data, reports, drawings, specifications, plans, software, designs, inventions and/or materials referred to in Clause 63.3 to a third party, it shall obtain the prior written consent of the Authority (not to be unreasonably withheld or delayed).

63.5 Subject to Clause 30 (*Use of Detainees*), if the Service Provider employs or engages a Detainee to work in return for financial consideration, no property or Intellectual Property Rights relating to any item resulting directly from that paid employment or engagement (the "**Detainee's Work Product**") shall vest in the Authority. If a Detainee creates or produces a work, invention or performance, and the said work invention or performance is not a Detainee's Work Product within the meaning of this

Clause 63.5, no Intellectual Property Rights shall vest in the Authority or the Service Provider in relation to the said work invention or performance.

- 63.6 Where the Authority contributes to the development of such material or rights as specified in Clause 63.3 (including where work is jointly created by the Authority and the Service Provider and/or the Authority contributes to development costs), the Authority is entitled to and shall receive ten (10) per cent of the gross sale price from the disposal or use of the said material or rights by the Service Provider to any other party.
- 63.7 The Service Provider warrants and undertakes that any items referred to in Clause 63.3 and used in accordance with the provisions of the Contract or provided to the Authority do not and will not infringe any third party's Intellectual Property Rights and the Service Provider shall fully and promptly indemnify and keep indemnified the Authority, its officers, agents and contractors against all costs, claims, demands, expenses and liabilities which any of them may suffer arising out of or in connection with any claim, action or proceedings alleging that the normal use of any of those items infringes the Intellectual Property Rights of any third party.
- 63.8 Without limitation to Clause 72 (*Data Protection*), the Service Provider agrees to provide to the Authority immediate access to all information in whatever form reasonably requested by the Authority (including without limitation the source code of any software that is not Commercially Available) used in the operation or maintenance of or required for it to take over the operation of the Removal Centre at any time. The Service Provider shall upon the written request of the Authority enter into an information deposit and/or source code escrow agreement with the Authority and a third party nominated by the Authority in respect of such information in such form as the Authority may require.
- 63.9 The Service Provider shall ensure that any Sub-contract imposes obligations, which are identical in effect on the Sub-contractor as are imposed on the Service Provider under this Clause 63.
- 63.10 The Service Provider shall upon the request of the Authority promptly execute all documents and do all acts and things which may be necessary to bring into effect or confirm any assignment or the terms of any of the licences contained or referred to in Clause 63.3.
- 63.11 The Authority hereby grants to the Service Provider for the Contract Term and free of charge a non-exclusive royalty-free licence only for the purpose of, and solely as necessary for, the operation, maintenance or improvement of the Removal Centre to use such of the Authority's data (including the Data), reports, drawings, specifications, plans, software, designs, inventions and/or other material of the Authority as the Authority agrees to provide to the Service Provider for the purposes of this Contract and which relates to the Removal Centre or its operation, maintenance or improvement. To the extent that any modifications or enhancements to materials licensed by the Authority to the Service Provider under this Clause 63.11 are carried out by or on behalf of the Service Provider in performing this Contract the Service Provider hereby assigns (or shall procure that the Authority is granted an assignment of all present and future Intellectual Property Rights in those modifications and enhancements. By virtue of this Clause 63.11 all such Intellectual Property Rights shall vest in the Authority on their creation.
- 63.12 The Service Provider shall, as an enduring obligation throughout the Contract Term, 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 ICT Environment.
- 63.13 Notwithstanding Clause 63.12, 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 Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 63.14 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 63.13 shall be borne by the Parties as follows:
- 63.14.1 by the Service Provider where the Malicious Software originates from the Service Provider Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Service Provider); and

63.14.2 by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

63.15 The Service Provider shall forthwith following termination of the Contract for whatever reason (including effluxion of time) deliver (or procure delivery) to the Authority, any Replacement Service Provider or any person nominated by either of them:

63.15.1 all reports, drawings, specifications, plans, software, designs, inventions, data and other Authority owned material in its possession and all copies thereof;

63.15.2 all Data in its possession on suitable media as specified by the Authority; and

63.15.3 copies of all data, reports, drawings, specifications, plans, software, designs and any material licensed by the Service Provider to the Authority under the Contract.

64. **SERVICE PROVIDER'S RECORDS**

64.1 The Service Provider shall at all times:

64.1.1 maintain a full record of particulars of the costs of performing the Contract, including the maintenance and operation Obligations of the Contract. Such records shall further include without limitation details of any commitments made by the Service Provider for future expenditure and details of any funds held by the Service Provider;

64.1.2 when requested by the Authority, furnish the detail and summary of any of the costs mentioned in this Clause in such form and detail as the Authority may reasonably require; and

64.1.3 without prejudice to any other rights under this Clause 64, comply with the requirements of Schedule T (Financial Reports and Audit Rights).;

and shall procure that any Sub-contractor shall maintain a full record of particulars of the costs of performing its obligations under the Sub-contract between itself and the Service Provider and that the Authority shall on request be furnished with details thereof in such form and detail as the Authority may reasonably require.

64.2 For the duration of the Contract the Service Provider shall:

64.2.1 furnish to the Authority:

(a) as soon as they become available (and in any event within ninety (90) days of the end of each of its financial periods) copies of its audited financial statements for that period which shall contain an income statement and a balance sheet and a cash flow statement and be audited and certified without qualification by a firm of independent accountants; and

(b) as soon as they become available (and in any event within thirty (30) days of the end of each of its financial half-years) copies of its unaudited financial statements for the half-year or year (as the case may be) which shall contain an income statement, a balance sheet and a cash flow statement; and

64.2.2 Prepare the financial statements referred to in Clause 64.2.1 on a basis consistently applied in accordance with generally accepted accounting principles in England and Wales and those financial statements shall give a true and fair view of the results of its operations for the period in question and the state of its affairs as at the date to which the financial statements are made up and shall disclose or reserve against all the liabilities (actual or contingent) of the Service Provider.

64.3 The Service Provider shall keep books of account in accordance with best accountancy practice with respect to the Contract showing in detail:

- 64.3.1 expenditure on wages and salaries and other employment costs;
- 64.3.2 administrative overheads;
- 64.3.3 expenditure on consumable items;
- 64.3.4 payments made to Sub-contractors;
- 64.3.5 resourcing/staffing levels;
- 64.3.6 capital and revenue expenditure; and
- 64.3.7 such other items as the Authority may reasonably require

and the Service Provider shall have the items identified in Clauses 64.3.1 to 64.3.6 above available for inspection by the Authority upon reasonable notice and shall present a report of the same to the Authority as and when requested.

- 64.4 The Authority's right of access to records of account shall include cost audits for verification of cost expenditure, for the purposes of Clause 13 (*Changes*).
- 64.5 The Service Provider shall maintain or produce the following:
 - 64.5.1 a full record of all incidents relating to health, safety and security which occur during the term of the Contract;
 - 64.5.2 full records of all maintenance procedures carried out during the term of the Contract;
 - 64.5.3 an annual report reviewing the medical work and practice carried out at the Removal Centre; and
 - 64.5.4 a Health and Hygiene report to be completed every six (6) months,

and the Service Provider shall have items referred to in Clauses 64.5.1 to 64.5.4 above available for inspection by the Authority upon reasonable notice in a form acceptable to the Authority, and shall present a report of the same to the Authority as and when requested.

- 64.6 The Service Provider shall maintain such other records relating to the Services and the obligations of the Service Provider in accordance with Schedule T (Financial Reports and Audit Rights) and generally under the Contract and make the same available to the Authority as the Authority may reasonably require.
- 64.7 The Service Provider shall permit records referred to in this Clause 64 to be examined and copied by the Monitor and other representatives of the Authority, and by the Comptroller and Auditor General and his representatives.
- 64.8 The records referred to in this Clause 64 shall be retained for a period of at least seven (7) years after the responsibilities of the Service Provider under the Contract have come to an end.
- 64.9 Upon the termination of the Contract, and in the event that the Authority wishes to enter into another contract for the operation, management and maintenance of the Removal Centre, and without prejudice to the identity of any Replacement Service Provider or replacement Sub-contractors, the Service Provider shall (and shall ensure that the Sub-contractors will) comply with all reasonable requests by the Authority to provide information relating to the costs of operating, managing and maintaining the Removal Centre. Such information shall include information relating to the anticipated cost of a transfer of the Removal Centre to a new contractor.

Audit Rights

- 64.10 In addition to any obligations of the Service Provider or rights granted to the Authority in accordance with Schedule T (Financial Reports and Audit Rights) for the purpose of:

64.10.1 the examination and certification of the accounts of the Authority, or

64.10.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency, and effectiveness with which the Authority has used its resources;

(and without prejudice to Clause 64.7) the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Service Provider (including any documents in the possession, custody or control of a Sub-contractor) and may require the Service Provider (including any Sub-contractor) to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of any examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Service Provider is not a function exercisable under this Contract.

64.11 The Authority may conduct audits for the purposes set out in Schedule T (Financial Reports and Audit Rights.):

64.12 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.

65. SERVICE PROVIDER'S GENERAL WARRANTIES

65.1 Without prejudice to any warranties or conditions on the part of the Service Provider implied by law, the Service Provider warrants in favour of the Authority, which warranties shall be given at the Date of Contract and:

65.1.1 (in the case of Clause 65.1.2 repeated (but only in respect of the relevant document) by reference to the circumstances then existing at the time any document referred to in Clause 65.1.2 is entered into, amended or delivered to the Authority; and

65.1.2 in the case of Clause 65.1.9 repeated by reference to the circumstances then existing at the time title to all such plant, machinery, fixtures, fittings, furnishings, vehicles, chattels and other equipment referred to in Clause 32.1 (*Supply of Equipment*) is required by Clause 32.2 (*Supply of Equipment*) to pass to the Authority,

that:

65.1.3 all information, representations and other matters of fact communicated in writing to the Authority or its agents or employees in connection with the Service Provider's response to the Invitation to Tender or subsequently (but prior to the Date of Contract) in respect of the Contract, are true, complete and accurate in all material respects;

65.1.4 each Sub-contract from time to time approved by the Authority in accordance with the Contract is, or will when entered into, be in full force and effect and the obligations of the Parties thereto (other than, if a party thereto, the Authority) is or will when entered into, constitute the valid, binding and enforceable obligations of the parties thereto and (without prejudice to the generality of Clause 65.1.1) the copies of all such documents which the Service Provider has delivered to the Authority are true and complete copies of such documents;

65.1.5 it is a limited liability company, duly incorporated and validly existing under the laws of England, being the jurisdiction of its incorporation;

65.1.6 it has full power and authority to enter into the Contract and to carry out its obligations under the Contract;

65.1.7 the entry into and performance by it of the Contract do not and will not:

(a) conflict with its constitutional documents; or

(b) conflict with any document which is binding upon it or any of its assets to the extent that such conflict would be reasonably likely to have a material adverse

effect on the ability of the Service Provider to perform its obligations under the Contract;

- 65.1.8 there has been no material adverse change in the financial condition of the Service Provider since the date of the Service Provider's last available set of audited accounts; and
- 65.1.9 title to all such plant, machinery, fixtures, fittings, furnishings, vehicles, chattels and other equipment referred to in Clause 31.1 (*Equipment*) shall pass to the Authority as required by Clause 31.2 (*Equipment*) free and clear of any claims, liens, encumbrances (including without limitation any claim for the retention of title) of any kind whatsoever and the Service Provider has not and will not acquire ownership or any proprietary interest in any such equipment.
- 65.1.10 all Staff used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards
- 65.1.11 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Service Provider's obligations under this Contract;
- 65.1.12 it has and will continue to have all necessary rights in and to the Service Provider Software or the Third Party Software and/or the Service Provider's Background IPRs, or any other materials made available by the Service Provider and/or the Sub-contractors to the Authority which are necessary to perform the Service Provider's obligations under this Contract;
- 65.1.13 in performing its obligations under this Contract, all Software used by or on behalf of the Service Provider will:
 - 73.22.4.1 be currently supported versions of that Software; and
 - 73.22.4.2 perform in all material respects in accordance with its specification,
- 65.1.14 the Service Provider System and assets used in the performance of the Services:
 - 73.22.6.1 will be free of all encumbrances
 - 73.22.6.2 will be Date Compliant; and
 - 73.22.6.3 will be Euro Compliant.
- 65.1.15 it shall at all times comply with applicable Legislation in carrying out its obligations under this Contract.

66. **INDEPENDENT CONTRACTOR**

- 66.1 The Service Provider shall at all times be an independent contractor and nothing in the Contract shall be construed as creating the relationship of employer and employee between the Authority and the Service Provider or any of the Service Provider's employees.
- 66.2 Neither the Service Provider nor any of its employees shall at any time hold itself or themselves out to be the employee of the Authority and neither the Service Provider nor any of its employees shall be entitled to any of the benefits provided by the Authority to its established or unestablished officers and staff.
- 66.3 Nothing in this Contract shall be taken to create a legal partnership between the Parties.

67. AUTHORITY TO COMMIT AND VARIATION

- 67.1 There shall be Named Representatives of the Authority, whose names shall appear in Schedule J (*Named Representatives*) and in the event of any change to the Named Representatives, the Authority shall give written notice of the change to the Service Provider. A change in the Named Representatives does not constitute a variation of the Contract.
- 67.2 Only the respective Named Representatives of the Authority and the Service Provider have the power to vary the terms and conditions of the Contract, or to commit the relevant Party to additional expenditure or to sign a Notice of Change.
- 67.3 Any variation of any provision of the Contract must be effected in writing issued by the Authority or its Named Representative(s) and no purported variation by any other means shall bind the Authority.

68. SERVICE OF NOTICES

- 68.1 Any notice, notification, consent, approval, direction or other communication whatsoever which the Authority is required or authorised by the Contract to give or make to the Service Provider shall, without prejudice to any other method of giving or making it, be sufficiently given or made if it is delivered by hand or sent by recorded or registered post addressed to the Service Provider at its registered office and that notice or other communication shall be deemed for the purpose of the Contract to have been given or made at the time of delivery, if delivered by hand, or the time at which the letter would in the ordinary course of post be delivered, if sent by post, save where there is express contractual provision to the contrary.
- 68.2 Any notice or consent which the Service Provider is required to give to the Authority under the terms of the Contract shall be sufficiently given if it is sent by recorded or registered post addressed to the UK Border Agency (marked for the attention of Deputy Director – Detention Services) at Bedford Point, 2nd Floor, 35 Dingwall Road, Croydon, CR9 2EF or such other address as may be notified from time to time). Such notice or consent shall be deemed to have been given at the time at which the letter would in the ordinary course of post be delivered, save where there is express contractual provision to the contrary.

69. WAIVER

- 69.1 Neither the failure of either Party at any one time to enforce any provision of the Contract nor any delay in enforcing any such provision shall in any way affect its right thereafter to require complete performance by the other Party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision, or be a waiver of the provision itself.
- 69.2 The rights of each Party under the Contract:
- 69.2.1 are cumulative and not exclusive of its rights under any other agreement, general law or otherwise howsoever;
 - 69.2.2 may be waived only in writing and specifically; and
 - 69.2.3 are such that any single or partial exercise of any right or remedy shall not prevent any further or other exercise thereof or the exercise of any other right or remedy.

70. LAW OF THE CONTRACT AND JURISDICTION

The Contract is governed by and shall be construed in accordance with the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the English courts.

71. **NON-DISCRIMINATION**

- 71.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 and any other anti-discrimination legislation from time to time in force.
- 71.2 The Service Provider shall take all reasonable steps to secure that all servants, agents and Sub-contractors do not unlawfully discriminate within the meaning and scope of the aforementioned enactments.

72. **DATA PROTECTION**

- 72.1 The Service Provider shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 72.2 The Service Provider shall provide the Authority with such information as the Authority may require, to satisfy itself that the Service Provider is complying with its obligations including (without limitation) a copy of the Service Provider's data protection registration or notification from time to time under the Data Protection Act.
- 72.3 The Service Provider shall comply with all instructions given by the Authority which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Authority to the Service Provider during the Contract Term in relation to the Processing of Personal Data including (without limitation) that the Personal Data is processed in accordance with the Authority's data protection registration or notification from time to time under the Data Protection Act.
- 72.4 Any disclosure or access to Personal Data by the Service Provider on behalf of the Authority shall be carried out in accordance with the Authority's data protection registration or notification under the Data Protection Act; shall be made in confidence and shall extend only so far as necessary for the purpose of the Contract.
- 72.5 The Service Provider shall ensure that it does nothing which shall cause the Authority to contravene any provisions of the Data Protection Act and shall fully indemnify the Authority against the costs of dealing with any civil claims made in respect of information subject to the Data Protection Act, which claims would not have arisen but for some act, omission or negligence on the part of the Service Provider, its servants or agents.
- 72.6 The Service Provider shall, and shall procure that its employees, agents and Sub-contractors or any other person in the control of the Service Provider to whom the Service Provider lawfully discloses Personal Data on behalf of and with the consent of the Authority shall, store and Process the Personal Data in accordance with the Authority's data protection registration or notification from time to time, the Data Protection Act and any other applicable statutory obligations or guidelines relating to the processing of Personal Data.
- 72.7 Without affecting Clause 72.4, the Service Provider shall bring into effect and maintain all such organisational and technical measures as the Authority considers necessary to prevent any unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data (each event being a **"Data Protection Event"**). These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected. The Service Provider recognises that the Services will involve Processing of sensitive data and that the security measures required by the Authority shall reflect this.
- 72.8 The Service Provider shall ensure that all Staff of the Service Provider or any Sub-contractor having access to Personal Data shall be reliable and responsible persons who appreciate the confidentiality of the Personal Data and the need to guard against Data Protection Events.

- 72.9 All Personal Data the subject of this Clause 72 shall be retained at all times in the possession and under the control of the Service Provider at the Removal Centre.
- 72.10 All rights in any compilation or database of Personal Data concerning any Detainee shall vest in and be the property of the Crown.
- 72.11 The Service Provider shall ensure that the Authority at all times has full rights of access to all Personal Data and may take copies thereof.
- 72.12 The Service Provider shall not store or process Personal Data which is the subject of this Clause 72 other than in connection with and to the extent necessary for the performance of the Services.
- 72.13 The Service Provider shall:
- 72.13.1 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by relevant Legislation or any Regulatory Body;
 - 72.13.2 obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
 - 72.13.3 ensure that none of the Service Provider's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
 - 72.13.4 notify the Authority within five Working Days) if it receives:
 - 72.13.4.1 a request from a Data Subject to have access to that person's Personal Data;
or
 - 72.13.4.2 a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
 - 72.13.5 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - 72.13.5.1 providing the Authority with full details of the complaint or request;
 - 72.13.5.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - 72.13.5.3 providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - 72.13.5.2 providing the Authority with any information requested by the Authority;
 - 72.13.6 permit the Authority or the Authority's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 64 (*Service Provider's Records*), the Service Provider's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Service Provider is in full compliance with its obligations under this Contract;
 - 72.13.7 provide a written description of the technical and organisational methods employed by the Service Provider for processing Personal Data (within the timescales required by the Authority); and
 - 72.13.8 not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:

72.13.8.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

72.13.8.2 any reasonable instructions notified to it by the Authority.

73. AUTHORITY DATA

73.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

73.2 The Service Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Service Provider of its obligations under this Contract, or as otherwise expressly authorised in writing by the Authority.

73.3 To the extent that Authority Data is held and/or processed by the Service Provider, the Service Provider shall supply that Authority Data to the Authority as requested by the Authority.

73.4 Upon receipt or creation by the Service Provider of any Authority Data and during any collection, Service Provider shall take all precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.

73.5 The Service Provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Service Provider shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority.

73.6 The Service Provider shall ensure that any system on which the Service Provider holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

73.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of a default by the Service Provider so as to be unusable, the Authority may:

73.7.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of the Authority Data and the Service Provider shall do so as soon as practicable but not later than one month; and/or

73.7.2 itself restore or procure the restoration of the Authority Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so.

73.8 If at any time the Service Provider suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Authority immediately and inform the Authority of the remedial action the Service Provider proposes to take.

74. HEALTH AND SAFETY

74.1 All premises, vehicles, plant, machinery, fixtures, fittings, chattels and other equipment supplied by the Service Provider in performance of the Contract shall comply with all provisions of any Legislation relating to health and/or safety from time to time in force. Crown immunity shall not apply to the Service Provider, who shall be liable for any failure to meet statutory requirements in respect of these items.

74.2 The Service Provider shall be responsible for the observance by itself, its Staff and Sub-contractors of all current and relevant health and safety precautions necessary for the protection of itself, its Staff, Sub-contractors and any other persons invited on to or visiting the Site or whose health, safety or welfare may be affected by performance of the Contract, including all precautions required to be taken by or under any Legislation.

74.3 The Service Provider shall be responsible for the observance by itself, its Staff and Sub-contractors of all current and relevant rules, regulations and requirements of statutory or regulatory authorities concerning building works, operation and maintenance and fire prevention.

74.4 Without prejudice to the generality of the foregoing, the Service Provider shall so perform its obligations under the Contract that all duties placed upon the Authority under the Health and Safety at Work etc. Act 1974 and any regulations thereunder for the time being in force and applicable to the Removal Centre shall be fully discharged.

74.5 The Service Provider shall throughout the life of the Contract immediately notify the Authority of any hazards which may affect the Authority and/or any Detainees.

75. DUTY OF CARE

75.1 The Service Provider shall be responsible for ensuring that the Obligations of the Contract are carried out in accordance with Good Industry Practice.

75.2 The Service Provider shall ensure that all the Services carried out under the Contract are performed by suitably qualified Persons and that British Standards, European specifications or any equivalent where such exist are used, unless otherwise agreed in writing by the Authority.

76. SEVERABILITY

In the event that any term, condition or provision contained herein shall be held to be invalid, unlawful or unenforceable to any extent, such term, Clause or provision shall, to that extent, be omitted from this Contract and the rest of the Contract shall stand without affecting the remaining Clauses.

77. DISPUTE RESOLUTION

77.1 All disputes or differences between the Authority and the Service Provider arising out of or in connection with the Contract whether before or after repudiation or termination of the Contract (a "**Dispute**") shall be determined in accordance with the provisions of Schedule L (*Dispute Resolution Procedure*). Any Dispute relating to Clause 55 (*Corrupt Gifts and Payment*) (other than in respect of Clause 55.3 (*Corrupt Gifts and Payment*) or where the Parties are entitled to refer the Dispute to adjudication under the Housing Grants Act) shall be determined in accordance with paragraph 6 of Part 1 of Schedule L (*Dispute Resolution Procedure*).

77.2 Unless the Contract has already been terminated, the Service Provider shall in every case continue to proceed with the Services and comply with its obligations under the Contract with all due diligence regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under Schedule L (*Dispute Resolution Procedure*) (but without prejudice to the rights and obligations of the Parties in relation to the termination of the Contract and without prejudice to the right of the Authority to serve a Termination Notice pursuant to Clause 49.1 (*Termination for Default*) and any Termination Notice already given by the Authority shall continue to take effect unless the Authority notifies the Service Provider in writing to the contrary).

78. PRECEDENCE

In the event of any discrepancy arising between the provisions of the Clauses of the Contract, and the Schedules, Appendices and any other document forming part of the Contract, the provisions of the Clauses shall prevail, unless the inconsistent provision is expressed to be, or if the Contract indicates it to be, an amendment of the Clauses, in accordance with Clause 67 (*Authority to Commit and Variation*).

79. COUNTERPARTS

The Contract may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

80. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT AND PRIVACY OF CONTRACT**

- 80.1 Subject to Clause 80.2, a person who is not a Party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 80.2 Any police authority in the United Kingdom and the statutory successors of any such police authority may enforce the terms of Clause 5.6 (*Insurance: Authority Payment of Premiums*) and 5.9 (*Insurance: Riot Damages Act 1986*) against the Service Provider and/or its successors or permitted assigns (as appropriate).
- 80.3 Any provisions of the Contract which purport to confer rights upon the Monitor or any other person appointed by or representing the Authority shall be enforceable by the Authority on behalf of such person.
- 80.4 Where any provision of the Contract purports to impose an obligation upon the Monitor, the Authority shall instruct him to perform such obligation, failing which the Authority shall be responsible for such performance, either by performing itself or by arranging performance by another Person as soon as reasonably practicable after the non-performance has been brought to the Authority's attention.

81. **COMPETITION ACT**

- 81.1 In the event that either Party reasonably considers that this Contract infringes or may infringe the Chapter I prohibition contained in the Competition Act 1998 and/or Article 81(1) of the EC Treaty, then each Party will co-operate with the other, each using its respective reasonable endeavours and each bearing its own costs and expenses to persuade and satisfy the Relevant Regulatory Authority of the legality and enforceability of this Contract in its original form and for such purposes shall jointly undertake all such filings, notifications, discussions, negotiations or settlements with the Relevant Regulatory Authority as the Parties agree shall be necessary or desirable. In particular, without prejudice to the generality of the foregoing, the Parties shall consider together whether a joint application shall be made to the Relevant Regulatory Authority for negative clearance or exemption under Regulation 17/62 in relation to Article 81 of the EC Treaty or under Sections 12 to 14 of the Competition Act 1998 in respect of the Chapter 1 prohibition. The Parties shall jointly make any necessary written or oral submissions to the Relevant Regulatory Authority unless requested by the Relevant Regulatory Authority to respond individually.
- 81.2 If any provision of this Contract is deemed unenforceable by operation of Article 81(1) of the EC Treaty or Chapter I of the Competition Act 1998 then the Parties shall in good faith consult with each other to agree an alternative provision which achieves a result as similar as possible to the result which would have been achieved by the provision deemed unenforceable.

82. **ENTIRE AGREEMENT**

Except as expressly provided otherwise in this Contract, the Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

IN WITNESS whereof the Parties have executed this Contract as a deed on the date first above written.

Executed by **HER MAJESTY'S PRINCIPAL**)
SECRETARY OF STATE FOR THE HOME)
DEPARTMENT)
acting by:)

.....
Authorised Signatory

In the presence of:
Full Name:
Address:

Executed by:
acting by:

.....)
.....)
Managing Director Home Affairs
Serco Ltd