



Contract for the Delivery of Youth Detention Accommodation

VERSION CONTROL

| VERSION | DATE | COMMENTS |
|---------|------------|-------------------|
| V1.0 | 01/10/2015 | EXECUTION VERSION |

Dated

2015

(1) Secretary of State for Justice acting as part of the Crown

(2) MTCnovo Limited

Contract for the Delivery of Youth Detention Accommodation

Rainsbrook Secure Training Centre

Onley, Willoughby, Rugby, CV23 8SY



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Schedule 5 Payment Mechanism

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Schedule 25 Authority Third Party Contracts

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THIS CONTRACT is made on

2015

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** acting as part of the Crown (the **"Authority"**);
and
- (2) **MTCNOVO LIMITED**, registered in England and Wales as company number 9284837 and having its registered office at The Sherard Building, Edmund Halley Road, Oxford OX4 4DQ (the **"Contractor"**),

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

BACKGROUND

- (A) The Authority wishes to enter into a contract for the provision of the Custodial Service at Rainsbrook STC.
- (B) Accordingly, the Authority invited tenders from interested persons for the provision of custodial services and advertised this competition in the Official Journal of the European Union as number 2014/S 090-157408.
- (C) Proposals were submitted on behalf of the Contractor in response to the Authority's invitation. The Authority wishes to enter into this Contract with the Contractor for the purpose of, or in connection with, the provision of custodial, welfare and educational services.

PART I – PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Abscond" means an event irrespective of duration where a Young Person:

(a) while outside the STC:

i) without lawful authority removes himself or herself from detention, when at the time the Young Person is in the legal custody of a Custody Officer or other competent authority by virtue of a lawful commitment to official detention;

ii) removes himself or herself from the Contractor's Staff or any

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| | other party or organisation supervising the Young Person whilst on Temporary Release; or |
| | (b) fails to return to official detention at the end of a period of Temporary Release; |
| “ACSDP Approval Certificate” | has the meaning given to it in clause 30.2.1.1 (Approval of Annual Custodial Service Delivery Plan) ; |
| “ACSDP Notice of Non-Compliance” | has the meaning given to it in clause 30.2.1.2 (Approval of Annual Custodial Service Delivery Plan) ; |
| “ACSDP Reports” | has the meaning given to it in clause 30.3.1 (Updates to the Annual Custodial Service Delivery Plan) ; |
| “Affected Party” | has the meaning given to it in the definition of Force Majeure Event; |
| “Affiliate” | means in relation to any person, any Holding Company or Subsidiary of that person or any Subsidiary of such Holding Company and, in relation to the Contractor, includes each Contractor Shareholder and any Holding Company or Subsidiary of such Contractor Shareholder and any Subsidiary of any such Holding Company; |
| “Annual Custodial Service Delivery Plan” | has the meaning given to it in clause 30.1.1 (Delivery of Annual Custodial Service Delivery Plan) ; |
| “Annual Resourcing Plan” | means a plan produced by the Contractor complying with the requirements of clause 30 (Annual Custodial Service Delivery Plan) showing sufficient resourcing levels for delivering the Custodial Service over a Contract Year to ensure that the STC is a safe, secure and decent environment which will contribute to reducing the risks of reoffending by Young People and promoting their welfare; |
| “Approved Purposes” | has the meaning given to it in clause 75.1 (Custodial Service Data) ; |
| “Approved Sub-Contract” | means any Sub-Contract identified as such in Appendix 3 to Schedule 2 (Contractor's Proposals) ; |
| “Arbitration” | means an arbitration conducted under clause 74.14 (Arbitration) ; |
| “Arbitrator” | has the meaning given to it in clause 74.14 (Arbitration) ; |

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| "Asbestos" | has the meaning given to it in the Control of Asbestos Regulations 2012; |
| "ASBO" | means anti-social behaviour order (as defined in the Crime and Disorder Act 1998); |
| "Asset and Contract Transfer Contract" | means the contract between a Previous Contractor and the Contractor (or such other parties which may be relevant with respect to the Legacy Contracts and Legacy Assets) in the form set out in Schedule 30 (Asset and Contract Transfer Contract) dealing with the identification and transfer of Legacy Contracts and Legacy Assets; |
| "Asset Condition Schedule" | means the document maintained by the Contractor (which shall initially be based upon the Asset Management Records) identifying the standard of the Built Environment and M&E Assets; |
| "Asset Condition Verification Report" | means the report to be agreed between the Authority and the Contractor describing the condition of the assets pursuant to clause 25.1.3 (Asset Condition Schedule and Asset Condition Verification Review) ; |
| "Asset Forward Maintenance Plan" | means the plan relating to the Built Environment and M&E Assets for the Site to be prepared by the Contractor pursuant to Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification)) as referred to in clause 25.1.9 (Asset Condition Schedule and Asset Condition Verification Review) ; |
| "Asset Forward Replacement Plan" | means the plan to be prepared by the Contractor pursuant to Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification)) as referred to in clause 25.1.9 (Asset Condition Schedule and Asset Condition Verification Review) ; |
| "Asset Management Records " or "AMRs" | means the records scheduling the condition of the STC and the Site (Built Environment and M&E Assets) maintained by the Authority or the Previous Prime Contractor prior to the Commencement Date; |
| "Asset Refresh Plan" | means the Controlled Document with this title to be maintained by the Contractor and reviewed annually in accordance with clause 21.7.2 (Maintenance of Assets and Asset Refresh Plan) which, for the avoidance of doubt, is in addition to the Asset Forward Maintenance Plan; |

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| "Assets" | means Authority Assets and/or Contractor Assets; |
| "Authority" | means the Secretary of State for Justice acting in this Contract as part of the Crown; |
| "Authority Assets" | means the physical assets owned by the Authority or other Government Department or other third party and which are made available by the Authority to the Contractor on the terms set out in clause 21.6 (Contractor's Use of Authority Assets) ; |
| "Authority Change" | means a Change to the Custodial Service or the scope thereof or to the manner in which they are provided or to any of the terms of this Contract proposed by the Authority pursuant to Schedule 8 (Change Protocol) , and which is not required by a Change in Law; |
| "Authority Contamination" | means Contamination which is present in or under the Site at or before the Commencement Date except for Contractor Contamination; |
| "Authority Damage" | means any damage to the STC the cost of which is the responsibility of the Authority pursuant to clause 73.1 (Responsibility for Damage) ; |
| "Authority Default" | means one of the following events: <ul style="list-style-type: none"> (a) an expropriation, sequestration or requisition of a material part of the Contractor Assets by the Authority or other Relevant Authority; (b) a failure by the Authority to make payment of any amount of money exceeding £REDACTED (Indexed) that is due and payable by the Authority under this Contract within thirty (30) Days after service of a formal written demand by the Contractor, where that amount fell due and payable two (2) (or more) Months prior to the date of service of the written demand; (c) a breach by the Authority of its obligations under this Contract which substantially frustrates or renders it impossible for the Contractor to perform its obligations under this Contract for a continuous period of two (2) Months; or (d) a breach by the Authority of clause 76.1 (Restrictions on |

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Transfer of this Contract by the Authority) occurs;

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| “Authority Policies” | means those policies of the Authority referred to in Schedule 12 (Authority Policies) , in the form in force on the Commencement Date; |
| “Authority Related Party” | means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Authority acting in the course of his or her office or employment or appointment (as appropriate), but excluding in each case the Contractor and any Contractor Related Party; |
| “Authority’s ICT System” | means any part of the ICT System owned by the Authority and/or licensed to the Authority by a third party and which interfaces with the Contractor’s ICT System or which is provided by the Authority to the Contractor in connection with this Contract; |
| “Authority’s Representative” | means the representative appointed by the Authority pursuant to clause 83.1 (Representatives of the Authority) ; |
| “Authority’s Requirements” | means the requirements of the Authority in respect of the Custodial Service set out in all Parts of Schedule 1 (Authority’s Requirements) ; |
| “Authority Third Party Contracts” | means the contracts between the Authority and specified third parties as set out in Schedule 25 (Authority Third Party Contracts) ; |
| “Available Place” | means a Young Person Place in respect of which an Available Place Certificate has been issued by the Authority as referred to in paragraph 5.2 of Schedule 5 (Payment Mechanism) ; |
| “Available Place Certificate” | means a certificate issued in accordance with clause 17 (Existing Available Place Certificates and Bedroom Certificates) or paragraph 6 of Schedule 5 (Payment Mechanism) ; |
| “Available Place Certificate Requirements” | means: <ul style="list-style-type: none"> (a) the Bedroom Certificate Requirements; and (b) the STC Minimum Requirements; |
| “Available Place Non-Compliance Notice” | means a notice from the Authority to the Contractor stating that a Young Person Place does not comply with the Available Place Certificate Requirements and specifying any outstanding matters that must be attended to before a an Available Place Certificate and |

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(if applicable) a Bedroom Certificate can be issued or re-issued in respect of the relevant Young Person Place;

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| “Base Case” | means the financial model agreed between the Parties set out in the electronic folders entitled "MTCnovo - Lot 2 Rainsbrook - Financial Proforma v1.0" dated 3 September 2015 and "MTCnovo – Lot 2 Rainsbrook – Bidder Financial Model v1.0" dated 30 September 2015 and contained in the CD-ROM entitled "MTCnovo - Lot 2: Rainsbrook – Schedule 2: Contractor's Proposals, Financial Proforma v1.0 and Employment Spreadsheet" signed by the Parties and dated at the Commencement Date (as updated from time to time in accordance with the terms of this Contract) for the purpose of, amongst other things, calculating the Contract Price; |
| “Bedroom” | means a bedroom in the STC for a Young Person to sleep and store their personal items in and for which the Authority has granted a Bedroom Certificate; |
| “Bedroom Certificate” | means a certificate issued in accordance with clause 17 (Existing Available Place Certificates and Bedroom Certificates) or paragraph 6 of Schedule 5 (Payment Mechanism) ; |
| “Bedroom Certificate Requirements” | means the requirements set out in Appendix 3 to Part 1 of Schedule 1 (Authority’s Requirements (Custodial Service Specification)) ; |
| “Breach of Tax Compliance Obligations” | means the occurrence of any one or more of the following: <ul style="list-style-type: none">(a) the warranty given by the Contractor pursuant to clause 5.1.11 (Contractor Warranties) being or becoming materially untrue;(b) the Contractor committing a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by clause 5.2.2 (Contractor Undertakings); or(c) the Contractor failing to provide details of steps being taken and mitigating factors pursuant to clause 5.2.2 (Contractor Undertakings) which are acceptable in the reasonable opinion of the Authority; |
| “Building” | means any building or other erection at the Site; |

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| "Built Environment and M&E Assets" | means any plant, building fabric, grounds, hard standings, security systems, street furniture, alarms, lighting and systems and like assets relating to the STC and the Site; |
| "Business Day" | means a Day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London; |
| "Capital Expenditure" | means any expenditure which falls to be treated as capital expenditure in accordance with generally accepted accounting principles in the United Kingdom from time to time; |
| "Capital Works" | means any construction works and/or replacement of items of plant or equipment in respect of which the Contractor has included Planned Capital Expenditure in the Base Case, where the relevant construction works and items of plant or equipment are expressly itemised and identified in Tab 3 Key Model Outputs, Row 206 in the Base Case; |
| "Case Summary" | means a summary of each Party's position prepared for the purpose of any Mediation called by the Authority to seek to resolve a Dispute; |
| "CDM Regulations" | means the Construction (Design & Management) Regulations 2007; |
| "Change" | has the meaning given to it in Schedule 8 (Change Protocol) ; |
| "Change in Costs" | <p>in respect of any Relevant Event, the effect of that Relevant Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Contractor including, as relevant, the following:</p> <ul style="list-style-type: none">(a) the reasonable costs of complying with the requirements of clauses 15 (Compensation Events), 62 (Changes in Law), 63 (Financial Adjustments), and/or 64.4 (Step-In without Contractor Breach), including the reasonable costs of preparation of design and estimates;(b) the costs of continued employment of, or making redundant, staff who are no longer required;(c) the costs of employing additional staff;(d) reasonable professional fees;(e) the costs to the Contractor of financing any Relevant Event (and the consequences of it) including commitment fees |

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and capital costs, interest and hedging costs, lost interest on any of the Contractor's own capital employed and any finance required pending receipt of a lump sum payment or adjustments to the Contract Price;

- (f) the effects of costs on implementation of any insurance reinstatement in accordance with this Contract, including any adverse effect on the insurance proceeds payable to the Contractor (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;
- (g) operating costs, or life cycle, maintenance or replacement costs;
- (h) Capital Expenditure;
- (i) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and
- (j) Direct Losses, including reasonable legal expenses on an indemnity basis;

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

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

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| | changes a binding precedent; or |
| | (d) a change to the Authority Policies; |
| “Change of Control” | means: |
| | (a) a Contractor Change of Control; and/or |
| | (b) a Contractor Parent Change of Control; |
| “Change Notice” | has the meaning given to it in Schedule 8 (Change Protocol) ; |
| “Commencement Date” | means the date of this Contract; |
| “Commercial Conditions” | means the Standard Commercial Property Conditions (Second Edition); |
| “Commercial Insurer” | has the meaning given to it in clause 72.14.3.2 (Riot (Damages) Act 1886) ; |
| “Commercially Sensitive Information” | means the sub-set of Confidential Information listed in column 1 of Part 1 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 (Commercially Sensitive Material) of Schedule 14 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 14 (Commercially Sensitive Information) ; |
| “Compensation Event” | means: |
| | (a) a breach by the Authority of any of its obligations under this Contract; or |
| | (b) a postponement of the Services Commencement Date pursuant to clause 19.3 (Services Commencement) , |
| | which shall be dealt with in the manner set out in clause 15 (Compensation Events) ; |
| “Comptroller and Auditor General” | means the head of the National Audit Office; |

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| “Computer-Aided Facilities Management System” | means the computer-aided facilities management system used by the Contractor; |
| “Conditions Precedent” | has the meaning given to it in clause 1.9.1 (Conditions Precedent) ; |
| “Confidential Information” | means: <ul style="list-style-type: none"> (a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and sensitive personal data within the meaning of the DPA; and (b) Commercially Sensitive Information; |
| “Consents” | means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor’s obligations under this Contract, whether required in order to comply with Legislation or as a result of the rights of any third party; |
| “Contamination” | means any and all pollutants or contaminants, including any chemical or industrial, radioactive, dangerous, toxic or hazardous substance, waste or residue (whether in solid, semi-solid or liquid form or a gas or vapour); |
| “Contract” | means this contract (including its Schedules and the Controlled Documents); |
| “Contract Delivery Indicator” | has the meaning given to it in paragraph 1 of Schedule 6 (Performance Management and Management Information Reporting) ; |
| “Contract Delivery Management Information” | has the meaning given to it in paragraph 1 of Schedule 6 (Performance Management and Management Information Reporting) ; |
| “Contract | means the objectives set out in clause 1.10.1 (Contract |

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| Objectives | Objectives); |
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| “Contract Price” | means the fee payable by the Authority in consideration of the obligations performed by the Contractor under this Contract calculated in accordance with Schedule 5 (Payment Mechanism) ; |
| “Contract Review Meeting” | means the meetings described in clause 34 (Contract Review Meetings) ; |
| “Contract Year” | means a period of twelve (12) Months commencing on 1 April, provided that: <ul style="list-style-type: none"> (a) the first Contract Year shall be the period commencing on the Services Commencement Date and ending on the immediately following 31 March; and (b) the final Contract Year shall be the period commencing on 1 April immediately preceding the Expiry Date or the Termination Date (as the case may be) and ending on the Expiry or Termination Date (as the case may be), whichever is earlier; |
| "Contractor Assets" | means all physical assets owned by the Contractor or any Sub-Contractor and used in connection with the Contract, including: <ul style="list-style-type: none"> (a) any equipment, hardware, cabling and other infrastructure; (b) any books and records (including Operating Procedures, the Operating Manual, the Prescribed Documentation operating and maintenance manuals, health and safety manuals and other know how); and (c) any consumables, spare parts, tools, vehicles and other assets; |
| “Contractor Breakage Costs” | means: <ul style="list-style-type: none"> (a) loss of profits limited to an amount equivalent to the Contractor’s projected loss of profits for the period from the Termination Date to the earlier of the Expiry Date and the date falling twelve (12) Months after the Termination Date; (b) Direct Losses that have been or will be reasonably and properly incurred by the Contractor as a direct result of the |

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termination of this Contract, but only to the extent that:

- (i) the Direct Losses are incurred in connection with the Contract and in respect of the provision of the Custodial Service, including:
 - i) any materials or goods ordered or sub-contracts placed that cannot be cancelled without such Direct Losses being incurred;
 - ii) the cost of demobilisation including the cost of any relocation of equipment used in connection with the Contract;
 - iii) statutory redundancy payments or Relevant Enhanced Redundancy Payments; and
 - iv) Relevant Employment Notice Costs (provided that the Contractor or relevant Sub-Contractor has used its best endeavours to expedite and complete any applicable collective consultation obligations and to serve due notice of termination of employment to members of the Contractor's Staff to expire before the Termination Date and has used its reasonable endeavours to mitigate the need to serve notice by redeploying members of the Contractor's Staff to alternative employment);
- (ii) the Direct Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms;
- (iii) the Direct Losses do not include loss of profits of any Holding Company or Subsidiary of the Contractor;
- (iv) the Contractor and any relevant Sub-Contractor has used its reasonable endeavours to mitigate

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the Direct Losses; and

- (c) an amount equal to the Contractor's Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition and Transformation Costs if and to the extent that:
- (i) all relevant Capital Works have been carried out and completed at the Termination Date;
 - (ii) such Restructuring Costs, Planned Capital Expenditure and Mobilisation, Transition and Transformation Costs have not been recovered through the Monthly Payments as at the Termination Date or as Direct Losses under (b) above; and
 - (iii) in respect of Restructuring Costs, the Contractor or relevant Sub-Contractor has used its best endeavours to expedite and complete any applicable collective consultation obligations and to serve due notice of termination of employment to members of the Contractor's Staff to expire before the Termination Date and has used its reasonable endeavours to mitigate the need to serve notice by redeploying members of the Contractor's Staff to alternative employment;

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

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

"Contractor Contamination" means:

- (a) Contamination in any buildings, structures or other man

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made infrastructure at, on, in or under the Site; and/or

- (b) Contamination which is first present in or under the Site after the relevant Services Commencement Date; and/or
- (c) any Contamination of which the Contractor or any Sub-Contractor is aware or of which it or a Sub-Contractor ought reasonably to have been aware and which is exacerbated or disturbed by the Contractor or a Sub-Contractor or any person acting for or on behalf of the Contractor or such Sub-Contractor;

**“Contractor
Default”**

means any one or more of the following:

- (a) a breach by the Contractor of any of its obligations under this Contract which materially and adversely affects the performance of the Custodial Service;
- (b) a Persistent Breach occurs;
- (c) the Contractor or a Contractor Shareholder has a petition presented for its winding up (which is not dismissed within fourteen (14) Days of service) or has an application made for the appointment of a provisional liquidator or has a creditors' meeting convened pursuant to section 98 of the Insolvency Act 1986;
- (d) the Contractor or a Contractor Shareholder is dissolved or goes into liquidation or passes a resolution for voluntary winding up, or its directors convene a meeting of shareholders to consider passing such a resolution (except for the exclusive purpose of a bona fide solvent reconstruction or amalgamation);
- (e) the Contractor or a Contractor Shareholder has an administrator appointed (by court order or otherwise (including without limitation by its directors or by a floating charge holder)) or has an application made either for the appointment of an administrator or for an administration order or has a notice of intention to appoint an administrator given;
- (f) the Contractor or a Contractor Shareholder commences negotiations with all or any class of its creditors with a view

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- to rescheduling any of its debts, or it has proposed in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986 or any other composition or scheme or arrangement with or assignment for the benefit of any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or its solvent reconstruction);
- (g) an administrative receiver or receiver or similar officer is appointed over substantially all of the assets or undertaking of the Contractor or a Contractor Shareholder;
- (h) the Contractor or a Contractor Shareholder is the subject of any judgment or order made against it which is not complied with or discharged within thirty (30) Days;
- (i) the Contractor or a Contractor Shareholder has an encumbrancer or creditor attach or take possession of, or the Contractor or a Contractor Shareholder is the subject of any execution, distress, sequestration or other process levied upon or enforced against all or a substantial proportion of its assets;
- (j) the Contractor or a Contractor Shareholder suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or otherwise;
- (k) the Contractor or a Contractor Shareholder has a moratorium come into force in respect of it pursuant to Schedule A1 of the Insolvency Act 1986;
- (l) any of the events mentioned in paragraphs (c) to (k) occurs with respect to a Guarantor and within ten (10) Business Days of such event the Authority has not entered into a replacement guarantee, on the same terms as the Parent Company Guarantees, with a suitable replacement guarantor (the suitability of which shall be decided in the Authority's absolute discretion);
- (m) any event occurs, with respect to the Contractor, a Contractor Shareholder or a Guarantor, in any relevant

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jurisdiction that has a similar or analogous effect to any of the events in paragraphs (c) to (k), and, where the event relates to a Guarantor, within ten (10) Business Days of such event the Authority has not entered into a replacement guarantee, on the same terms as the Parent Company Guarantees, with a suitable replacement guarantor (the suitability of which shall be decided in the Authority's absolute discretion);

- (n) failure to comply with **clause 76.2 (Restrictions on Transfer of this Contract by the Contractor)**;
- (o) failure by the Contractor to provide the Parent Company Guarantees in favour of the Authority substantially in the form set out in **Schedule 20 (Parent Company Guarantees)** or, in circumstances where a Guarantor ceases to be a Holding Company of the relevant Contractor Shareholder, a new Holding Company of the Contractor Shareholder does not execute a Parent Company Guarantee in the prescribed time where required to do so under **clause 3.2 (Parent Company Guarantees)**;
- (p) failure to provide any one (1) or more Available Place for a continuous period exceeding thirty (30) Days at any time after the Services Commencement Date;
- (q) failure by the Contractor to submit, carry out or complete an acceptable Rectification Plan pursuant to **paragraph 13 (Rectification) of Schedule 6 (Performance Management and Management Information Reporting)**;
- (r) the accumulation of one thousand four hundred and twenty five (1,425) or more Performance Points in any Performance Quarter or the accumulation of one thousand nine hundred (1,900) or more Performance Points in any Contract Year;
- (s) the death of a Young Person in the STC where the death was due to the Default of the Contractor;
- (t) a breach of **clause 72.1 (Obligation to Maintain)** occurs;
- (u) the Contractor committing a material breach of its obligations under this Contract (other than as a

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consequence of a breach by the Authority of its obligations under this Contract) which results in the criminal investigation, prosecution and conviction of the Contractor or any Contractor Related Party or the Authority under the Health and Safety Regime (for the purposes of this paragraph (u) an “**H&S Conviction**”) provided that an H&S Conviction of a Contractor Related Party or the Authority shall not constitute a Contractor Default if, within forty (40) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Contract of each relevant Contractor Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Contractor Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Contractor in accordance with **clause 76 (Sub-Contracting and Assignment)** provided always that in determining whether to exercise any right of termination or right to require the termination of the engagement of a Contractor Related Party under this paragraph (u), the Authority shall:

- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
 - (ii) give all due consideration, where appropriate, to action other than termination of this Contract;
- (v) a Change of Control occurs without the Authority's prior written consent where the Authority in good faith and acting reasonably determines that the Change of Control has resulted, may result or may have resulted in a person who is an Unsuitable Third Party Controlling the Contractor or any Contractor Parent;
- (w) a Contractor Default occurs under any other Custodial Service Contract (as defined in such agreement);
- (x) the termination by the Authority of any other Custodial Service Contract due to Contractor Default (as defined in

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such agreement); or

(y) a Breach of Tax Compliance Obligations occurs.

"Contractor Parent" means any Contractor Shareholder and/or any Guarantor;

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

"Contractor Related Party" means:

- (a) an officer, servant or agent of the Contractor, or any Affiliate of the Contractor and any officer, servant or agent of such a person;
- (b) any Sub-Contractor and any of their officers, servants or agents; and
- (c) any person on or at the STC at the express or implied invitation of the Contractor (other than the Authority or any Authority Related Party);

"Contractor Shareholder" means any holder of shares in the Contractor;

"Contractor Termination Notice" has the meaning given to it in **clause 48.1.1 (Termination on Authority Default)**;

"Contractor's ICT System" means any part of the ICT System which is owned by the Contractor and/or licensed to the Contractor by a third party and which is operated by the Contractor or its Sub-Contractors in connection with the provision of the Custodial Service, but excluding the Authority's ICT Systems;

"Contractor's Key Staff" means the Contractor's Staff specified in **Schedule 21 (Contractor's Key Staff)**;

"Contractor's Proposals" means the proposals of the Contractor for satisfying the Authority's Requirements, as set out in **Schedule 2 (Contractor's Proposals)** and as amended pursuant to the provisions of this Contract,

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including:

- (a) the Contractor's proposals for the Custodial Service;
- (b) the Contractor's operational proposals for the providing the Custodial Service;
- (c) the Contractor's resourcing proposals; and
- (d) the Contractor's proposals for innovations and improvements,

but not including the Operating Procedures;

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| "Contractor's Representative" | means a representative appointed by the Contractor pursuant to clause 83.2 (Representatives of the Contractor) ; |
| "Contractor's Staff" | means all persons used by the Contractor, including its employees, agents, any Sub-Contractors and their employees and agents, or and anyone acting on its or their behalf and whether full-time or part-time to provide the Custodial Service and including the Director and any Custody Officer; |
| "Contractor's Staff Information" | has the meaning given to it in clause 16.6.1 (Contractor's Staff Information) ; |
| "Control" | means possessing (i) an interest or interest in shares carrying in aggregate 30% or more of the voting rights that are generally exercisable at a general meeting or (ii) control over the right to appoint or remove a majority of the directors or (iii) the right to receive 30% or more of the profits available for distribution and "Controlled" and "Controlling" shall be construed accordingly; |
| "Controlled Document" or "CD" | means a document (which may be held on CD-ROM or in any other format) which is identified in this Contract as a "Controlled Document" and that may only be amended through the Document Change Procedure; |
| "Conviction" | means, other than in relation to any minor road traffic offences, any prosecutions, convictions, cautions and binding-overs in any jurisdiction (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023); |

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| “co-operate” | has, in connection with its use within clause 59.3 (Duty to Co-operate) , the meaning given to it in such clause; |
| “COSHH” | means the Control of Substances Hazardous to Health Regulations 2002; |
| “Crown” | means Her Majesty’s Government which shall be deemed to include any government department, office or agency and any Secretary of State; |
| “Custodial Duties” | means “custodial duties” at the STC as defined in the 1994 Act; |
| “Custodial Service” | means the service required to satisfy the Authority’s Requirements; |
| “Custodial Service Contract” | means any agreement between the Authority and a Custodial Service Provider for the provision of custodial and education services at a secure training centre (including this Contract); |
| “Custodial Service Data” | means: <ul style="list-style-type: none"> (a) all Operational Data; (b) any other materials, documents or data acquired or brought into existence or used in relation to the Custodial Service or this Contract, in each case that is used by or on behalf of the Contractor and/or its Sub-Contractors in connection with the provision of the Custodial Service or the performance of the Contractor’s obligations under this Contract; |
| “Custodial Service Period” | means the period from the Services Commencement Date until and including the earlier to occur of the Termination Date and the Expiry Date; |
| “Custodial Service Provider” | means a person providing custodial services to the Authority or the Secretary of State, including (as the context so requires) the Contractor; |
| “Custodial Service Specification” | means the custodial service specifications contained in Part 1 of Schedule 1 (Authority’s Requirements (Custodial Service Specification)) ; |
| “Custody Officer” | means a person in respect of whom a certificate is for the time being in force certifying that he or she has been approved by the Crown for |

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the purpose of performing Custodial Duties or Escort Functions or both in relation to Young People, and that he or she is accordingly authorised to perform them, as defined in the 1994 Act and in accordance with **clause 40 (Certification of Custody Officers)**;

“Daily Report” means the daily report as specified in **paragraph 9 of Schedule 5 (Payment Mechanism)** which shall be substantially in the form set out in **Appendix 2 of Schedule 16 (Daily Reports)**;

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

“Data Protection Legislation” Data Protection Act 1998 and all applicable laws and regulations relating to the processing of personal data and privacy to which a Party is subject, including where applicable the guidance and codes of practice issued by the Information Commissioner;

“Day” means a calendar day, unless otherwise specified;

“Deductions” means any or all (as the case may be) Unavailability Deductions and Service Credit Deductions;

“Default” means any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach, a fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:

- (a) in the case of the Authority, of its employees, servants or agents; or
- (b) in the case of the Contractor, of its Sub-Contractors or any Contractor's Staff,

in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other;

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

“Director” means the person appointed by the Contractor and approved by the Authority under section 8 of the 1994 Act;

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| "Disclosed Data" | means information relating to the delivery of the Custodial Service disclosed to the Contractor and its advisers before the date of this Contract, including: <ul style="list-style-type: none"> (a) the Stage 1 ITPD; (b) the Stage 2 ITPD; (c) the information provided with the Stage 1 and Stage 2 ITPD; (d) information provided via the Emptoris portal / electronic data room; (e) the results of any investigations and surveys carried out at the Site or any Buildings, whether carried out by or on behalf of the Contractor or the Authority; and (f) Reports on Title; |
| "Disclosure and Barring Service" | means the public body established pursuant to the Protection of Freedoms Act 2012; |
| "Discriminatory Change in Law" | means a Change in Law, the terms of which apply expressly to: <ul style="list-style-type: none"> (a) the Custodial Service and not to similar services; and/or (b) custodial services providers in the contracted out STCs sector and not to other persons; and/or (c) the Contractor and not to other persons; |
| "Dispute" | means any disagreement between the Parties arising in relation to their respective rights or obligations under this Contract; |
| "Disputed Amount" | has the meaning given to it in clause 44.5.2 (Disputed Amounts) ; |
| "Dispute Resolution Procedure" | means the procedure for the resolution of disputes set out in clause 74 (Dispute Resolution) ; |
| "Document Change Procedure" | has the meaning given to it in Schedule 8 (Change Protocol) ; |
| "Documents" | includes any written or printed work, videos, CCTV, images, |

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photographs or any work produced by electronic means, including any tapes, disks, CD-ROMs or other recorded matter;

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| "DOTAS" | means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under section 132A Social Security Administration Act 1992; |
| "DPA" | means the Data Protection Act 1998; |
| "eAsset" | means the YJB's electronic case management system as at the Commencement Date; |
| "Education and Training" | means a minimum of 25 hours (as described in the STC Rules) of educational engagement including assessments on entry or induction period, education, training and priority Interventions per week excluding offending behaviour programmes and enrichment activities. Training can include vocational, social, physical or apprenticeship training. Temporary Release for Resettlement purposes can count towards this time; |
| "Emergency Place" | means a unit of accommodation for occupation by a Young Person in a Bedroom at the STC at the request of the Authority pursuant to paragraph 7.4.1 (Emergency Places) of Schedule 5 (Payment Mechanism) ; |
| "Emergency Services" | has the meaning given to it in clause 21.3.1 (Disclosure of Information to Emergency Services) ; |
| "Employment Notice Costs" | means, in relation to a member of the Contractor's Staff, the amount of any payment in lieu of: <ul style="list-style-type: none"> (a) the statutory notice period required to be given by the Contractor or relevant Sub-Contractor on termination of employment by reason of redundancy; or (b) (if the member of the Contractor's Staff transferred to the Contractor or relevant Sub-Contractor under TUPE from a |

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Previous Contractor with a contractual entitlement to receive notice greater than statutory notice and that contractual term has not been varied by the Contractor or relevant Sub-Contractor since the TUPE transfer) the contractual notice period required to be given by the Contractor or relevant Sub-Contractor on termination of employment by reason of redundancy;

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| “Environmental Information Regulations” | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations; |
| “Equality Impact Assessment (EIA)” | means any required assessment made by the Contractor in accordance with guidance issued by the Authority that will permit the Authority to comply with its legal obligations in furnishing EIAs for any change in policy delivered by, or affected by the Custodial Service delivered by the Contractor; |
| “Equipment Register” | means the register of assets used by the Contractor to provide the Custodial Service, including the Authority Assets and the Contractor Assets, to be provided by the Authority in the form set out in Schedule 4 (Equipment Register) and thereafter maintained by the Contractor in accordance with clause 25 (Maintenance of the STC) ; |
| “Escape” | means an event where a Young Person, without lawful authority, removes himself or herself from lawful custody. Where an escape is from the STC this includes overcoming a physical security barrier such as that formed by the STC buildings, fences, vehicle lock, electronic doors, gates and other perimeter security mechanisms; |
| “Escort Functions” | means escort functions for Young People placed at the STC as defined in the 1994 Act; |
| “Escorted Absence” | <p>means absences for which Young People (regardless of their legal status (there are no exclusions that apply)) are to be escorted including for the following reasons:</p> <ul style="list-style-type: none">(a) Court, Tribunal or Inquiry Proceedings;(b) where the Young Person is to be assessed by children’s services as a ‘child in need’ under section 17 of the Children Act 1989); |

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- (c) medical out-patient appointments or in-patient requirements;
- (d) support for drug and alcohol misuse including universal services or counselling;
- (e) specialist health treatment;
- (f) bed watches;
- (g) visits to terminally ill or dying close relatives;
- (h) funerals of close relatives and other tragic personal circumstances;

"Exit Plan" means the Controlled Document with this title to be maintained by the Contractor in accordance with **Schedule 28 (Exit Management)**;

"Expiry Date" means midnight on the day before the fifth anniversary of the Services Commencement Date, subject to the provisions of **clause 2 (Duration of Contract)**;

"Final Warning Notice" has the meaning given to in **clause 49.1.2 (Persistent Breach)**;

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act 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 legislation;

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

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

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

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this Contract;

"Force Majeure Termination Sum" has the meaning given to it in **clause 50.2.1 (Compensation on Termination on Force Majeure)**;

"FReM" means the Financial Reporting Manual published by the Government from time to time (or its replacement);

"Full Search" means when a Young Person is required to remove all clothing including their underwear for the purpose of detecting the conveyance and possession of prohibited items on the person or contained in the Young Person's clothing or other related offences under Section 45 of the Crime and Security Act 2010;

"General Anti-Abuse Rule" means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

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

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

"Government Buying Standards" means the mandatory standards for purchasing products in the categories of construction, construction projects, cleaning products and services, electrical goods, food and catering services, furniture, horticulture and park services, office ICT equipment, paper and paper products, textiles, transport, water using products and wood products as made available by the Department for the Environment, Food and Rural Affairs from time to time;

"Governor" means a Crown servant appointed by the Secretary of State for Justice under Section 10 of the 1994 Act;

"Guaranteed" means the obligations of the Guarantors pursuant to the Parent

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| Obligations" | Company Guarantees; |
| "Guarantors" | means the Contractor's guarantors under the Parent Company Guarantees, being at the Commencement Date Amey UK PLC (registered under company number 4736639) and Management & Training Corporation (registered in the state of Utah USA under company number 09004454) and " Guarantor " means either of them; |
| "Guarantor Change of Control" | means, in relation to a Guarantor, any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the capital of such Guarantor which results in that body corporate being Controlled by a person who does not (or persons acting in concert who do not), at the Commencement Date, have such Control, or any other arrangement or arrangements that have or may have or which result in the same effect; |
| "Guidance" | means any applicable guidance or directions with which the Contractor is bound to comply, which for the purposes of this Contract shall exclude the Authority Policies; |
| "Halifax Abuse Principle" | means the principle explained in the CJEU Case C-255/02 Halifax and others; |
| "Harm" | <p>means in relation to a Young Person, emotional harm comprising maltreatment (which will constitute significant harm where the emotional maltreatment is persistent so as to cause severe and persistent adverse affects on the Young Person's emotional development) and in addition:</p> <ul style="list-style-type: none"> (a) physical harm; and (b) sexual harm comprising forcing or enticing a Young Person to take part in sexual activities whether or not he or she is aware of what is happening (which may involve physical contact – including penetrative or non-penetrative acts such as rape, buggery or oral sex – or non-contact activities such as involving a Young Person in looking at or producing sexual images or encouraging a Young Person to behave in inappropriate ways), <p>and "Harms" shall be construed accordingly;</p> |
| "Health and Safety File" | has the meaning given to it in the CDM Regulations; |

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| “Health and Safety Regime” | means the Corporate Manslaughter and Corporate Homicide Act 2007 (and associated regulations), Food Safety Act 1990 (and associated regulations), the Health & Safety at Work etc Act 1974 (and associated regulations), the Regulatory Reform (Fire Safety) Order 2005, the Environmental Protection Act 1990, the Water Industry Act 1991, the Water Resources Act 1991 and any similar or analogous health, safety or environmental legislation in force from time to time; |
| “Healthcare Provider” | means the provider appointed by NHS England from time to time to provide the Healthcare Services at the STC; |
| “Healthcare Services” | means the healthcare services commissioned by NHS England and provided by the Healthcare Provider; |
| “Holding Company” | shall have the meaning given to it in section 1159 of the Companies Act 2006 and, for the purposes only of the membership requirement in subsections 1159(1)(b) and (c), a company (the "first company") shall be treated as a member of another company (the "second company") if the shares in the second company are registered in the name of (a) another person (or its nominee), where the shares are held by such other person (or its nominee) by way of security or in connection with the taking of security from the first company, or (b) a nominee for the first company; |
| “ICSDP Approval Certificate” | has the meaning given to it in clause 16.3.1.1 (Approval of the Initial Custodial Service Delivery Plan) ; |
| “ICSDP Notice of Non-Compliance” | has the meaning given to it in clause 16.3.1.2 (Approval of the Initial Custodial Service Delivery Plan) ; |
| “ICSDP Reports” | has the meaning given to it in clause 16.4.1.1 (Approval of the Initial Custodial Service Delivery Plan) ; |
| “ICT System” | means the computing environment (consisting of hardware, Software, telecommunications and/or data networks, interfaces, devices, equipment, infrastructure, ducts, cabling and ancillary fixtures and fittings and power supplies) used by the Authority and/or the Contractor in connection with this Contract; |
| “Improvement Notice” | has the meaning given to it in Schedule 6 (Performance Management and Management Information Reporting) ; |

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| “Indemnified Party” | has the meaning given to it in clause 70.4 (Notification of Claims) ; |
| “Indemnifying Party” | has the meaning given to it in clause 70.4 (Notification of Claims) ; |
| “Indexation Base Month” | means April 2015; |
| “Indexed” | has the meaning given to it in clause 1.4 (Indexation) ; |
| “Indirect Losses” | means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature, but excluding any of the same that relate to loss of revenue or other income committed from third parties; |
| “Information” | has the meaning given to it under section 84 of the FOIA; |
| “Initial Availability Requirements” | means the requirements set out in Schedule 3 (Initial Availability Requirements) , provided that: <ul style="list-style-type: none"> (a) the ICSDP Approval Certificate has been issued in accordance with clause 16.3 (Approval of Initial Custodial Service Delivery Plan); and (b) an Operating Procedure Approval Certificate has been issued in respect of each Operating Procedure in accordance with clause 18.2 (Initial Availability Requirements and Operating Procedures); |
| “Initial Custodial Service Delivery Plan” | has the meaning given to it in clause 16.2.1 (Initial Custodial Service Delivery Plan) ; |
| “Initial Operating Procedures” | means the initial Operating Procedures provided by the Contractor in accordance with clause 18.1 (Initial Availability Requirements and Operating Procedures) ; |
| “Initial Service Delivery Documents” | means: <ul style="list-style-type: none"> (a) the Initial Custodial Service Delivery Plan; and (b) the Initial Operating Procedures; |
| “Intellectual | means any and all patents, trade marks, service marks, copyright, |

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| Property Rights" | database rights, moral rights, rights in a design, know-how, confidential information, discovery, invention, process, formula, specification, improvement, technique and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto which is created, brought into existence, acquired, used or intended to be used by the Contractor or any Contractor Related Party for the purposes of providing the Custodial Service and/or otherwise for the purposes of this Contract; |
| "Interventions" | means the direct work undertaken with Young People to promote desistance factors and address risk factors, with the ultimate aim of reducing reoffending and promoting their safety and wellbeing; |
| "Irrecoverable VAT" | has the meaning given to it in clause 62.8 (Payment of Irrecoverable VAT) ; |
| "Joint Insurance Account" | means the joint bank account (in accordance with clause 72.13.2 (Reinstatement)) in the names of both the Authority and the Contractor; |
| "Lease" | means the lease relating to the Site to be granted by the Authority to the Contractor substantially in the agreed form as set out in Schedule 23 (Leases) together with such amendments to the agreed form as are agreed between the Parties (acting reasonably); |
| "Lease Declaration" | has the meaning given to it in clause 7.4.2 (Exclusion of Security) ; |
| "Legacy Assets" | means the assets belonging to a Previous Contractor that are to be transferred to the Contractor or its Sub-Contractor pursuant to an Asset and Contract Transfer Contract for the purposes of this Contract; |
| "Legacy Contracts" | means the contracts to which a Previous Contractor is a party that are to be transferred to the Contractor or its Sub-Contractor pursuant to an Asset and Contract Transfer Contract for the purposes of this Contract; |
| "Legal Proceedings" | has the meaning given to it in clause 5.2.1.1 (Contractor Undertakings) ; |
| "Legislation" | means any one or more of the following: |

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- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978 including the STC Rules;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972,

in each case in the United Kingdom;

"Local Safeguarding Children Board(s) (LSCB(s))" means the local safeguarding children boards which were established under the Children Act 2004 to ensure that organisations work together effectively to safeguard children and promote their welfare;

"Longstop Date" has the meaning given to it in **clause 1.9.2 (Conditions Precedent)**;

"Losses" means Direct Losses and Indirect Losses;

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

"Maximum Available Places" has the meaning set out in **paragraph 1 of Schedule 5 (Payment Mechanism)**;

"Maximum Contract Price" means, in respect of a Month, the Contract Price payable during that Month assuming that the Contractor had provided all of the Young Person Places required in that Month and such Young Person Places were Available Places during that Month, before deductions but allowing for Indexation under **clause 1.4 (Indexation)**;

"Mediation" means a mediation conducted under **clause 74.4 (Mediation)**;

"Mediator" has the meaning given to it in **clause 74.8 (Mediation)**;

"Minimum Staffing Levels" means the minimum amount of staff which shall be available at the STC at all times, as detailed in **Appendix 2 to Part 1 of Schedule 1**

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(Authority's Requirements (Custodial Service Specification));

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| "Mobilisation and Transition Plan" | <p>means the Controlled Document with this title specifying the Contractor's obligations, from the Commencement Date, for:</p> <ul style="list-style-type: none"> (a) the ramp-up and mobilisation of its staff and for its preparations to comply with its obligations under this Contract to deliver the Custodial Service from the Services Commencement Date; and (b) the take over of the delivery of the Custodial Service at and from the Services Commencement Date; <p>the version agreed as at the Commencement Date being attached at Appendix A to Schedule 24 (Mobilisation and Transition Plan and Transformation Plan);</p> |
| "Mobilisation Review Meeting" | means a meeting requested by the Authority to review the Contractor's compliance with the Mobilisation and Transaction Plan and/or the Transformation Plan; |
| "Mobilisation, Transition and Transformation Costs" | means the costs arising out of the implementation by the Contractor of its Mobilisation and Transition Plan and/or Transformation Plan that are not included in Restructuring Costs or Planned Capital Expenditure and that are expressly itemised and identified in Tab 3 Key Model Outputs, Row 309 in the Base Case; |
| "Monitor" | means the person or persons from time to time appointed in respect of the STC by the Authority under section 8 of the 1994 Act; |
| "Month" | means a calendar month; |
| "Monthly Contract Price" | has the meaning given to it in Schedule 5 (Payment Mechanism) ; |
| "Monthly Payment" | has the meaning given to it in Schedule 5 (Payment Mechanism) ; |
| "Montreal Protocol Substances" | means the substances listed in Schedule 10 (Montreal Protocol Substances) ; |
| "Monthly Service Payment" | has the meaning given to it in Schedule 5 (Payment Mechanism) ; |
| "New Contractor" | means any person who has entered or who will enter into a new contract with the Authority for the provision of all or any part of the |

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Custodial Service or any similar provision of such a service (and **"New Contractor"** shall include Secretary of State for Justice or any other part of the Crown or any Government Department where such provision will be made by the Secretary of State for Justice, other part of the Crown or such other Government Department);

"NHS Area Team" means the local commissioning body of NHS England which will be the contracting authority for Healthcare Services for the Secure Training Centre, being at the Commencement Date NHS East Midlands;

"Notice of Dispute" has the meaning given to it in **clause 74.2 (Notice of Dispute)**;

"Notice of Arbitration" has the meaning given to it in **clause 74.14.1 (Arbitration)**;

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 giving rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

"Ofsted" means the Office for Standards in Education, Children's Services and Skills;

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| "Operating Manual" | has the meaning given to it in clause 31.1 (Maintenance of Manual) ; |
| "Operating Procedure Approval Certificate" | has the meaning given in clause 18.2.1 (Initial Availability Requirements and Operating Procedures) ; |
| "Operating Procedure Test" | has the meaning given in clause 18.9 (Initial Availability Requirements and Operating Procedures) ; |
| "Operating Procedure Notice of Non-Compliance" | has the meaning given in clause 18.2.2 (Initial Availability Requirements and Operating Procedures) ; |
| "Operating Procedures" | means procedures used by the Contractor to operate the STC in accordance with the requirements of the Custodial Service Specification, and "Operating Procedure" shall be construed accordingly; |
| "Operational Data" | means all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the operation of the STC in each case that is used by or on behalf of the Contractor and/or its Sub-Contractors in connection with the provision of the Custodial Service or the performance of the Contractor's obligations under this Contract; |
| "Order" | has the meaning given to it by clause 7.4.1 (Exclusion of Security) ; |
| "Outstanding Work" | has the meaning given to it in clause 58.4 (Maintenance Work) ; |
| "Parent Company Guarantees" | means the guarantees to be entered into in accordance with the terms of this Contract and detailed in Schedule 20 (Parent Company Guarantees) ; |
| "Performance Point" | means a point accruing on the occurrence of a failure by the Contractor to meet a target applicable to a Contract Delivery Indicator; |
| "Performance Quarter" | means each of the successive four (4) periods of three (3) Months during the Contract Year ending on 30 June, 30 September, 31 December and 31 March, provided that: |

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- (a) in the first Contract Year, if the number of Months is not divisible by three (3), the first Performance Quarter shall start on the Services Commencement Date and shall end on the next to occur of 31 March, 30 June, 30 September or 31 December; and
- (b) in the last Contract Year, if the number of Months is not divisible by three (3), the last Performance Quarter shall be the period commencing on the 1 April, 1 July, 1 October or 1 January immediately preceding the last Day of the Custodial Service Period and ending on the last day of Custodial Service Period;

“Persistent Breach” means, pursuant to **clause 49.1 (Persistent Breach)**, a breach for which a Final Warning Notice has been issued, which has continued for more than fourteen (14) Days or recurred in two (2) or more Months within the six (6) Month period after the date on which such Final Warning Notice is served on the Contractor;

“Personal Data” means personal data (including sensitive personal data) as defined in the DPA which is supplied to the Contractor by the Authority or obtained by the Contractor in the course of providing the Custodial Service and/or any other personal data that is processed under or in connection with the Contract, including the Young Person Data and any personal data relating to the Contractor's Staff;

“Personalised Learning and Skills Plan” means a plan detailing a Young Person's learning activities, pathway, goals and targets;

“Physical Damage Policies” has the meaning given to it in **clause 72.13.1 (Reinstatement)**;

“Plan” means a plan in relation to a Young Person developed as part of their overall case management. It shall be a culmination of all plans that are developed for the Young Person during their time at the STC which may include but not be limited to Intervention plans, Personalised Learning and Skills Plan, any plans regarding their safety and wellbeing and risk to others and will be the basis of the holistic approach to case management;

“Planned Capital means the cost of Capital Works as expressly itemised and identified

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| "Expenditure" | in Tab 3 Key Model Outputs, Row 206 in the Base Case; |
| "Planned Services Commencement Date" | means 5 May 2016; |
| "Police and Crime Commissioner" | has the meaning given to it in clause 72.14.2 (Riot (Damages) Act 1988) ; |
| "Prescribed Documentation" | has the meaning given to it in clause 68.8 (Prescribed Documentation) ; |
| "Prescribed Rate" | means two per cent (2%) above the base rate from time to time of The Royal Bank of Scotland plc; |
| "Previous Contractor" | means the Previous Prime Contractor (or any sub-contractor thereof) and/or any other provider of services that are being replaced by the Custodial Service to be delivered by the Contractor under this Contract; |
| "Previous Contractor Transferring Employees" | means employees who immediately before the Relevant Vesting Day were employees of a Previous Contractor and assigned to carry out the services to be carried out by the Contractor under this Contract; |
| "Previous Prime Contractor" | means G4S Care and Justice Services (UK) Limited; |
| "Prison Officer" | means a custody officer from a prison or young offender institution; |
| "Prisons and Probation Ombudsman" | means the independent individual for the time being appointed by the Secretary of State for Justice to investigate deaths and near-misses in custody and complaints from prisoners, including Young People; |
| "Proceedings" | has the meaning given to it in clause 87 (Governing Law and Jurisdiction) ; |
| "Prohibited Act" | means: <ul style="list-style-type: none"> (a) offering, giving or agreeing to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward: (i) for doing or not doing (or for having done or not |

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having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Crown; or

(ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown;

(b) entering into this Contract or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to the Authority;

(c) committing any offence:

(i) under the Bribery Act 2010 or under the Prevention of Corruption Acts 1889-1916 (before they were revoked);

(ii) under Legislation creating offences in respect of fraudulent acts; or

(iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Crown; or

(d) defrauding or attempting to defraud or conspiring to defraud the Crown;

**“Prohibited
Equality and
Diversity Act”**

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

**“Project
Documents”**

means the agreements entered into by the Contractor for the performance of the obligations under this Contract in the agreed form which are listed in **Schedule 11 (Project Documents)**;

“Provisory

means a certificate issued by the Monitor pursuant to **clause 24.3.2**



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| Available Place Certificate" | (Notification of Events Affecting Available Place Certificates or Availability); |
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| "Qualifying Change in Law" | <p>means:</p> <p>(a) a Discriminatory Change in Law;</p> <p>(b) a Specific Change in Law; or</p> <p>(c) a change to an Authority Policy;</p> <p>which has a material impact on the Contractor's costs of providing the Custodial Service and which was not foreseeable at the date of this Contract;</p> |
| "Recipient" | has the meaning given to it in clause 45.1.2 (Value Added Tax) ; |
| "Rectification Notice" | has the meaning given to it in Schedule 6 (Performance Management and Management Information Reporting) ; |
| "Rectification Period" | has the meaning given to it in Schedule 5 (Payment Mechanism) ; |
| "Reinstatement Plan" | has the meaning given to it in clause 72.13.3.1 (Reinstatement) ; |
| "Reinstatement Works" | has the meaning given to it in clause 72.13.3.1 (Reinstatement) ; |
| "Relevant Amount" | has, for the purpose of clause 70.8 (Limitation of Liability under clause 70.1.5) only, the meaning given to it in clause 70.8.6 (Limitation of Liability under clause 70.1.5) ; |
| "Relevant Authority" | means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union; |
| "Relevant Data" | has the meaning given to it in clause 10.2 (Ownership and Use of Authority ICT System) ; |
| "Relevant Employment Notice" | means such part of the Employment Notice Costs as are not recovered by the Contractor through the Monthly Payments as at the |

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| Costs" | Termination Date; |
| "Relevant Enhanced Redundancy Payments" | <p>means a redundancy payment (which exceeds the entitlement of the relevant member of the Contractor's Staff to a statutory redundancy payment) which the Contractor or relevant Sub-Contractor is obliged to pay on termination of employment by reason of redundancy to a member of the Contractor's Staff who transferred to the employment of the Contractor or relevant Sub-Contractor under TUPE from a Previous Contractor, provided that:</p> <ul style="list-style-type: none"> (a) the obligation on the Contractor or relevant Sub-Contractor to pay the enhanced redundancy payment arises from a contractual obligation, contained in the contract of employment between the relevant member of the Contractor's Staff and the Previous Contractor or relevant Sub-Contractor, which transferred to the Contractor or relevant Sub-Contractor as a result of TUPE; (b) the Contractor or relevant Sub-Contractor has not, since the relevant member of the Contractor's Staff became employed by the Contractor or relevant Sub-Contractor as a result of TUPE, varied that contractual obligation to increase the amount of the enhanced redundancy payment that would be due; (c) the Contractor or relevant Sub-Contractor has used reasonable endeavours to avoid the need to pay the enhanced redundancy payment by seeking alternative employment or redeployment for the relevant member of the Contractor's Staff; and (d) the relevant member of the Contractor's Staff has not unreasonably refused an offer of suitable alternative employment with the Contractor or relevant Sub-Contractor; |
| "Relevant Event" | <p>means any:</p> <ul style="list-style-type: none"> (a) Authority Change; (b) Qualifying Change in Law; (c) Compensation Event; or |

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(d) matter in respect of which the Parties expressly agree in writing to, or there is express provision in the Contract for, an adjustment to the Contract Price in accordance with **clause 63 (Financial Adjustments)**;

"Relevant Incident" has the meaning given to it in **clause 72.13.3 (Reinstatement)**;

"Relevant Organisation" means any of the following (including their successor bodies from time to time):

- (a) the Youth Justice Board;
- (b) Youth Offending Teams;
- (c) Police Forces;
- (d) Local Criminal Justice Board;
- (e) the Department for Education;
- (f) Local Authorities;
- (g) the Department of Health;
- (h) NHS England;
- (i) NHS Area Teams for health;
- (j) Crime and Disorder Reduction Partnerships;
- (k) the UK Border Agency;
- (l) Local Safeguarding Children Boards;
- (m) other Custodial Service Providers; and
- (n) the STC Escort Services Provider.

"Relevant Proceeds" has the meaning given to it in **clause 72.13.3.2.3 (Reinstatement)**;

"Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established;

"Relevant Vesting" has the meaning given to it in **Schedule 17 (TUPE, Employees and**

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| Day” | Pensions); |
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| “Relief Event” | means: |
| | <p>(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute a Force Majeure Event) and earthquakes;</p> <p>(b) riot, acts of concerted indiscipline, public disorder and/or civil commotion provided that the Contractor:</p> <p>(i) has complied in all material respects with all procedures and protocols relating to safety and security at the STC and incidents of riot during a reasonable period before, during and after the incident of riot, act of concerted indiscipline, public disorder and/or civil commotion; and</p> <p>(ii) has not, and a Sub-Contractor has not, by its acts or omissions caused or contributed to such riot, acts of concerted indiscipline, public disorder and/or civil commotion:</p> <p>(aa) unless such acts or omissions are in accordance with the provision of the Custodial Service in accordance with this Contract; or</p> <p>(bb) except to the extent that the Contractor is acting on the written instruction of the Authority;</p> <p>(c) failure by any statutory undertaker, utility company, local authority or other like body to carry out works or provide services;</p> <p>(d) any accidental loss or damage to the Site or any roads servicing it;</p> <p>(e) any failure or shortage of power, fuel or transport;</p> <p>(f) any blockade or embargo which does not constitute a</p> |

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Force Majeure Event;

(g) any:

(i) official or unofficial strike;

(ii) lockout;

(iii) go-slow; or

(iv) other dispute,

generally affecting the custodial service industry (which for the avoidance of doubt shall include contracted-out STCs) and/or the facilities management industry or a significant sector of any of them;

(h) in accordance with **clauses 8.2.2B.2 (Site Matters), 8.2.3.1 (Site Matters), 8.2.3.2 (Site Matters) or 8.2.4.1 (Site Matters)**, any matter referred to as such in those clauses;

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

“Repair Cost”

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

“Request for Information”

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

“Required Action”

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

“Required Condition Standard”

has the meaning given to it in **clause 58.1 (Final Survey)**;

“Required Insurance”

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

“Resettlement”

means the transition of the Young Person from custody back into the

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| | community, and the associated work and processes that take place to support this. "Resettle" shall be construed accordingly; |
| "Restructuring Costs" | <p>means:</p> <ul style="list-style-type: none"> (a) the consultation costs; (b) the notice period and/or Payment In Lieu Of Notice (PILON) costs; and (c) the statutory redundancy costs in respect of Previous Contractor Transferring Employees, <p>arising out of the implementation in the first Contract Year by the Contractor of its Mobilisation and Transition Plan and Transformation Plan, which are expressly itemised and identified in the Base Case Tab 3 Key Model Outputs, Cell I294;</p> |
| "Retention Fund Account" | has the meaning given to it in clause 58.6 (Retention Fund) ; |
| "Review Procedure" | means the procedure set out in Schedule 9 (Review Procedure) ; |
| "Riot" | shall be construed in accordance with sections 1 and 10 (Part 1) of the Public Order Act 1986 and as amended; |
| "RPIx" | means the index published in Table RP05 (RPI all items excluding mortgage interest payments) reference CHMK published by the Office for National Statistics; |
| "Section 10" | means section 10 of the 1994 Act; |
| "Secure Training Centre" (or "STC") | means the buildings and other facilities and equipment to be operated and maintained at the Site in accordance with this Contract; |
| "Self Harm" | means any act by which a Young Person deliberately Harms himself or herself irrespective of the method, intent, or severity of the injury; |
| "Service Credit" | means a service credit accruing on the occurrence of a Contract Delivery Indicator or Key Performance Indicator as defined in Schedule 6 (Performance Management and Management |

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Information Reporting);

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| “Service Credit Deduction” | means a deduction from the Contract Price made in accordance with Schedule 5 (Payment Mechanism) and Schedule 6 (Performance Management and Management Information Reporting) as a result of a failure by the Contractor to meet a target applicable to a Contract Delivery Indicator or Key Performance Indicator; |
| “Service Delivery Documents” | means: <ul style="list-style-type: none"> (a) the Mobilisation and Transition Plan; (b) the Transformation Plan; (c) the Asset Refresh Plan; (d) Asset Forward Maintenance Plan; (e) Asset Forward Replacement Plan; (f) the Annual Custodial Service Delivery Plan; and (g) the Operating Procedures; |
| “Services Commencement Date” | means, subject to the provisions of this Contract, the date on which the Contractor commences provision of the Custodial Service in accordance with the terms of this Contract, which shall be the Planned Services Commencement Date or such other date as is agreed by the Parties in writing; |
| “Services Media” | means all pipes, sewers, drains, mains, ducts, conduits, gutters, water courses, wires, cables, meters, switches, channels, flues and all other conducting media, appliances and apparatus including any fixtures, louvres, cowls and other ancillary apparatus; |
| “Site” | means the area edged red on the Site Plans together with the Buildings and the Services Media for all utilities and services serving the Buildings; |
| “Site Plans” | means the plans of the Site set out in Schedule 18 (Site Plans) ; |
| “Specific Change in Law” | means any Change in Law which specifically refers to the provision of services the same as or similar to the Custodial Service; |

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| “Stage 1 ITPD” | means the invitation to participate in dialogue issued by the Authority dated 9 July 2014 together with all of the documents appended to or referred to within it; |
| “Stage 2 ITPD” | means the further invitation to participate in dialogue issued by the Authority dated 18 December 2014 together with all of the documents appended to or referred to within it and further updated and re-issued by the Authority dated 23 January 2015; |
| "Standard Staffing Level" | means the level of staffing identified as such within section B3 (Standard Staffing Levels) of the Contractor's Proposals; |
| “Statutory Certificates” | <p>means, in respect of the STC:</p> <ul style="list-style-type: none">(a) asbestos register / management plan;(b) COSHH register indexes;(c) registers relating to portable appliance testing (PAT);(d) automatic heat and smoke detector test records;(e) air hygiene risk assessment / LEV report records;(f) fire alarm system test records;(g) emergency generator test log;(h) emergency lighting test records;(i) fire extinguisher inspection sheets;(j) fixed wiring test records;(k) gas system service / test records;(l) insurance inspections;(m) legionella testing records (L8);(n) water hygiene risk assessments;(o) water hygiene test reports;(p) lift maintenance and test results; |

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- (q) lighting protection system and earthing test results;
- (r) pressure vessel inspection records; and
- (s) smoke ventilation and sprinkler test records;

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| “STC Escort Services” | means services contracted by the Authority to escort Young People between STCs and other relevant premises such as courts and other custodial establishments (excluding, for the avoidance of doubt, those escorting services that form part of the Custodial Service or the services under any other Custodial Service Contract) and to provide associated bedwatch services; |
| “STC Escort Services Provider” | means a person providing STC Escort Services; |
| “STC Minimum Requirements” | means the requirements set out in Appendix 4 to Part 1 of Schedule 1 (Authority's Requirements (Custodial Service Specification)) ; |
| “STC Rules” | means such rules as shall be made from time to time pursuant to Section 47 of the Prison Act 1952 for the regulation and management of secure training centres; |
| “Step-Out Date” | has the meaning given to it in clause 64.7.1 (Step-Out) ; |
| “Step-Out Notice” | has the meaning given to it in clause 64.7.1 (Step-Out) ; |
| “Sub-Contract” | means a contract between the Contractor and a Sub-Contractor (or between a Sub-Contractor and its Sub-Contractor); |
| “Sub-Contractor” | means any person engaged by the Contractor or any Sub-Contractor from time to time to procure the provision of the Custodial Service or deliver any other aspect of the Contractor's obligations under this Contract. References to Sub-Contractors means sub-contractors of any tier of the Contractor; |
| “Subject Access Request” | means a request by a person, including any Young Person or any member of the Contractor's Staff, for a copy of his or her Personal Data pursuant to section 7 of the DPA; |
| “Subsidiary” | shall have the meaning given to it in section 1159 of the Companies Act 2006 and, for the purposes only of the membership requirement in subsections 1159(1)(b) and (c), a company (the "first company") shall be treated as a member of another company (the "second |

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company") if the shares in the second company are registered in the name of (a) another person (or its nominee), where the shares are held by such other person (or its nominee) by way of security or in connection with the taking of security from the first company, or (b) a nominee for the first company;

"Suitable Third Party"

means any person other than the Authority or the Contractor who is not an Unsuitable Third Party;

"Supplier"

has the meaning given to it in **clause 45.1.2 (Value Added Tax)**;

"Sustainability Reporting Requirements"

means the completion and delivery of reports by the Contractor which shall be substantially in the form set out in **Schedule 13 (GGC Reporting and FReM)**, containing all sustainability data to be measured and collected by the Contractor and including information as required by the Authority for the Sustainability Reporting Return;

"Sustainability Reporting Return"

means the sustainability information required to be delivered by the Authority by any Relevant Authority;

"Tax"

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

"Temporary Release"

means the temporary release of a Young Person on a licence or with a set of conditions that enables that Young Person to benefit from or participate in necessary activities, outside of the STC, that directly contribute to achieving their Plan objectives and/or their Resettlement into the community. These activities could include (but are not limited to):

- (a) engaging in employment or voluntary work;
- (b) receiving instruction, education or training which cannot reasonably be provided in the Secure Training Centre;
- (c) maintaining family ties; or
- (d) preparing for return to the community;

"Termination Date"

means the date of early termination of this Contract in accordance with **Part X (Expiry and Termination)** of this Contract;

"Termination"

means a notice of termination issued in accordance with this



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| Notice" | Contract; |
| "Termination Sum" | means any compensation payable by either Party to the other Party on an early termination of this Contract under Part X (Expiry and Termination) of this Contract; |
| "the 1994 Act" | means the Criminal Justice and Public Order Act 1994; |
| "the 1998 Act" | means the Crime and Disorder Act 1998; |
| "The Mayor's Office for Policing and Crime" | has the meaning given to it in clause 72.14.2 (Riot (Damages) Acts 1886) ; |
| "Third Party Claim" | has the meaning given to it in clause 70.4 (Notification of Claims) ; |
| "Title Matters" | means the matters relating to the title to the Site referred to in Schedule 19 (Title Matters) ; |
| "Transformation Plan" | means the Controlled Document with this title specifying how the Contractor will take over and transform the provision of the Custodial Service and how the Custodial Service will be delivered during the period from the Services Commencement Date to the date on which the transformation process is scheduled to be completed and "steady state" achieved, as stated in the said plan, the version agreed as at the Commencement Date being attached at Appendix B to Schedule 24 (Mobilisation and Transition Plan and Transformation Plan) ; |
| "TUPE" | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI No 246) as amended from time to time; |
| "Unavailability Deduction" | means any amount not paid to the Contractor as a result of any Young Person Place not being an Available Place; |
| "Unavailable" | has the meaning given to it in Schedule 5 (Payment Mechanism) ; |
| "Uninsured Losses" | has the meaning given to it in clause 70.7.2 (Limitation of Liability) ; |
| "Unsuitable Third Party" | means any person: <ul style="list-style-type: none"> (a) whose activities do or could, in the reasonable opinion of the Authority, pose a threat to national security, provided that the Authority's opinion shall be deemed to be |

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reasonable if personally confirmed to the Contractor by a member of the Authority's staff at grade 5 level (or equivalent grade) or above;

- (b) whose activities are, in the reasonable opinion of the Authority, incompatible with any operations or activities carried out by the Authority for the purposes contemplated by this Contract or any other of the Authority's legal duties or other functions; and/or
- (c) who is, in the reasonable opinion of the Authority, inappropriate because the Authority has received specific information from the Crown, the Serious Fraud Office or the Crown Prosecution Service about the unsuitability of the proposed new third party to act in relation to the Contract;

| | |
|---|--|
| "VAT" | means any value added taxes; |
| "Week" | means seven (7) Days from Monday to Sunday unless otherwise specified; |
| "Year" | means calendar year unless otherwise specified; |
| "YJB Placements Service" | means the placements service within the Youth Justice Board which is responsible for placing Young People who have been remanded or sentenced to secure accommodation into appropriate secure establishments; |
| "Young Person" or "Young People" | means a person sentenced to a Detention and Training Order or sentenced under Section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000 or sentenced under s226B or s228 of the Criminal Justice Act 2003 or remanded pursuant to s102 Legal Aid, Sentencing and Punishment of Offenders Act or given a detention order for the breach of a gang injunction under the Policing and Crime Act 2009 assigned by the Secretary of State for Justice or the YJB to the Secure Training Centre and subject to the Custodial Service (and, for the purposes of this Contract, Young People will normally be between 10 and 18 years of age); |
| "Young Person Data" | means data of any kind and in any format (whether digital or otherwise), including personal data relating to a Young Person or any or all Young People and, for the avoidance of doubt, including CCTV footage created by or for the Contractor in respect of the STC; |

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| | |
|---------------------------------------|---|
| “Young Person Place” | means a Bedroom for occupation as accommodation by a Young Person; and |
| “Youth Justice Board” or “YJB” | means the Youth Justice Board which was established under the Crime and Disorder Act 1998 to oversee the youth justice system in England and Wales, to work to prevent offending and reoffending by children and Young People under the age of 18 and to ensure that custody for them is safe and secure and addresses the causes of their offending behaviour. |

1.2 Interpretation

In this Contract, except where the context otherwise requires:

- 1.2.1 the masculine includes the feminine and vice versa;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference in this Contract to any clause, sub-clause, paragraph or Schedule is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph or schedule of this Contract;
- 1.2.4 save where otherwise provided in this Contract, any reference to this Contract or to any other Document shall include any permitted variation, amendment, or supplement to such Document;
- 1.2.5 any reference to any enactment, order, regulation, code or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- 1.2.6 any references to Documents being “in the agreed form” means such Documents have been initialled by or on behalf of each of the Parties for the purpose of identification;
- 1.2.7 any reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees;
- 1.2.8 headings are for convenience of reference only;
- 1.2.9 words preceding “include”, “including” and “included” shall be construed without limitation by the words which follow those words;
- 1.2.10 any obligation on a Party to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done; and

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- 1.2.11 subject to any express provisions of this Contract to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense.

1.3 Schedules

The Schedules to this Contract form part of this Contract.

1.4 Indexation

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

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

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

- 1.4.2 Any reference to an index (such as RPIx) shall, in circumstances where the index fails to be published or it fundamentally changes, be deemed to be a reference to such other index as the Parties may agree, or shall be deemed to be a reference to the index with such adjustments to the index as the Parties may agree (in each case with the intention of putting the Parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

1.5 Precedence of Documentation

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

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precedence.

1.5.4 Not used.

1.5.5 Any derogations from the Authority Policies which the Authority has approved in accordance with the provisions of **Schedule 8 (Change Protocol)** shall take precedence over the Authority Policies. For the avoidance of doubt, any request for such a derogation by the Contractor shall constitute a Contractor Change.

1.5.6 In the event of any inconsistency between **Schedule 2 (Contractor's Proposals)** and the Initial Service Delivery Documents or the Service Delivery Documents, **Schedule 2 (Contractor's Proposals)** shall take precedence.

1.5.7 In the event of any inconsistency between the provisions of this Contract (excluding the Controlled Documents) and any Controlled Document, the provisions of this Contract (excluding the Controlled Documents) shall take precedence.

1.6 Responsibility for Related Parties

Save where expressly stated otherwise in this Contract, the Contractor shall be responsible for the acts and omissions of the Contractor Related Parties as if they were the acts and omissions of the Contractor and the Authority shall be responsible for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority. The Contractor shall be responsible for the selection of and pricing by any Contractor Related Party.

1.7 Approval

None of the following:

1.7.1 the giving of any approval or consent;

1.7.2 the examination, acknowledgement and/or knowledge of the provisions of any agreement or document; or

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

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

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1.8 Succession

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

1.9 Conditions Precedent

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

1.9.1.1 the Contractor has procured the execution of the Parent Company Guarantees in accordance with **clause 3.1 (Parent Company Guarantees)**; and

1.9.1.2 the Contractor has procured the execution of an opinion letter with respect to the Parent Company Guarantee to be executed by Management & Training Corporation (company number 09004454) in the agreed form.

1.9.2 If the Conditions Precedent have not been satisfied before the date which falls five (5) Business Days following the Commencement Date (the "**Longstop Date**") then either:

1.9.2.1 this Contract shall terminate on the Longstop Date; or

1.9.2.2 the Parties may waive either of the Conditions Precedent in accordance with **clause 1.9.3**.

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

1.10 Contract Objectives

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- 1.10.1 The Parties intend to conduct their relationship and operate this Contract in a manner consistent with an approach that will, for each STC, deliver custodial and educational services and Young Person Places that deliver safe, secure and effective custodial provision at optimum value for money to the Authority for the full period of the Contract. The Custodial Service will be delivered in accordance with the following core principles:
- 1.10.1.1 **Child focused** – the Contractors shall deliver a service that places Young People at its heart and considers their needs, wants, and wishes at all stages of their stay at the STC. Young People should be actively involved in all elements of their treatment and care;
 - 1.10.1.2 **Safe and secure** – the Contractors shall ensure that Young People feel safe during their stay and are protected from harm to themselves or others and from others. The Contractor shall maintain the STC to ensure that it remains safe and secure at all times and is a positive environment for Young People to be accommodated in;
 - 1.10.1.3 **Resettlement focused** – planning for the Young Person's discharge and successful resettlement shall be central to the Custodial Service delivery within the STC. Whilst this responsibility remains with the youth offending team, the Contractor shall ensure that all resettlement pathways are met and contribute to Young People's reduction in risk of reoffending. Young People should feel confident about the next steps following their discharge and have support in place to give them the best chance of successful resettlement;
 - 1.10.1.4 **Individual needs led** – the Custodial Service should be flexible enough to be tailored to the individual needs of each Young Person, to address every Young Person's unique combination of risks, protective factors and needs. This should enable Young People to desist from offending, improve their life chances and reduce their risk of serious harm to self and others;
 - 1.10.1.5 **Effective practice led** – programmes or interventions delivered or developed by the Contractor should be based on robust rationale for achieving the intended outcomes, with evaluation embedded from the beginning in order to continue developing the evidence base for what works in custody for Young People;
 - 1.10.1.6 **Ensure effective communications and partnerships** – the success of Young People's resettlement along with the care,

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support and treatment they receive whilst in custody will be dependent on the development and maintenance of effective partnerships with statutory bodies and other service delivery providers. Young People's holistic needs should be met through a multi-disciplinary approach to the delivery of the service;

1.10.1.7 **Deliver positive progress** – the Custodial Service will be focused on Young People achieving measurable positive progress in all aspects of their individual development;

1.10.1.8 **Flexibility** – the Custodial Service should be flexible enough to meet the changes in the risks, needs and behaviours of Young People, or changing priorities and emerging practices in Youth Justice over the life of the Contract, learning from appropriate quality management systems to ensure continuous improvement;

1.10.1.9 **Deliver value for money** – the Custodial Service will secure the optimum and appropriate risk transfer to the Contractor from the Authority, whilst still offering good value for money,

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

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

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

2. DURATION OF CONTRACT

2.1 This Contract and the rights and obligations of the Parties shall take effect on the date of this Contract and (subject to **clause 2.2 (Duration of Contract)** and the other provisions for early termination set out in this Contract) shall continue until the Expiry Date.

2.2 The term of this Contract may, at the Authority's sole discretion, be extended for one further period of up to twenty-four (24) Months (any such period being a "**Notified Extension Period**"), such extension to be implemented in accordance with the procedure set out in **clause 2.3 (Duration of Contract)**.

2.3 Not more than twenty-four (24) Months and not less than six (6) Months prior to the Expiry Date, the Authority may serve a written notice upon the Contractor the effect of which shall be to extend the term of this Contract by the term of the relevant Notified Extension Period

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and to amend the Expiry Date accordingly.

3. PARENT COMPANY GUARANTEES

- 3.1 The Contractor shall procure the execution on the date of this Contract of Parent Company Guarantees by each of the Guarantors in favour of the Authority in the form set out in **Schedule 20 (Parent Company Guarantees)** to secure the due performance by the Contractor of its obligations to the Authority.
- 3.2 The Contractor shall notify the Authority forthwith in writing if at any time a Guarantor ceases to be a Holding Company of the relevant Contractor Shareholder. In such circumstances, the Contractor shall, within thirty (30) Days of a request by the Authority, procure that a replacement Parent Company Guarantee in the form set out in **Schedule 20 (Parent Company Guarantees)** is executed by a new Holding Company of the relevant Contractor Shareholder approved by the Authority together with, where the new Holding Company is incorporated outside of the United Kingdom, a legal opinion as to the enforceability of the Parent Company Guarantee in a form acceptable to the Authority from an independent legal adviser qualified to practise in the jurisdiction in which such Holding Company is established and has its own office.
- 3.3 If the Authority makes a demand under a Parent Company Guarantee such that either Guarantor requires access to the STC and/or Site in order to comply with the Parent Company Guarantee, the Contractor shall grant a licence to the relevant Guarantor in accordance with the terms set out in clause 6 of the Parent Company Guarantee.
- 3.4 Any dispute under this **clause 3 (Parent Company Guarantees)** may be referred by either Party for determination under **clause 74 (Dispute Resolution)**.

4. DOCUMENTS AND CO-OPERATION

4.1 Delivery of Initial and Changed Project Documents

- 4.1.1 The Contractor has provided to the Authority copies of the Project Documents listed in **Part 2 of Schedule 11 (Project Documents)**.
- 4.1.2 Without prejudice to the provisions of **clause 4.2 (Changes to Project Documents)**, if at any time an amendment is made to any Project Document or the Contractor enters into a new Project Document (or any agreement which affects the interpretation or application of any Project Document), the Contractor shall deliver to the Authority a conformed copy of each such amendment or agreement within ten (10) Business Days after the date of its execution or creation (as the case may be), certified as a true copy by an officer of the Contractor.

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4.2 Changes to Project Documents

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

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

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

4.3 Not Used**4.4 Co-operation**

- 4.4.1 Without prejudice to each Party's own obligations to comply with the Contract, and subject to other co-operation clauses in this Contract, each Party agrees to co-operate at its own expense (but without being compelled to incur material expenditure) with the other Party in the fulfilment of the purposes and intent of this Contract. Neither Party shall be under any obligation to perform any of the other's obligations under this Contract.
- 4.4.2 At the direction of the Authority and in any event as specified in his Contract, the Contractor shall provide to the Youth Justice Board such elements of the Custodial Service as the Authority shall from time to time direct and shall, without limiting the foregoing, provide all reasonable assistance, information and co-operation to the Youth Justice Board and the other Authority Related Parties in connection with the Custodial Service.

5. GENERAL WARRANTIES AND INDEMNITIES

Rainsbrook STC

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5.1 Contractor Warranties

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

- 5.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 5.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Contract and the Project Documents;
- 5.1.3 all action necessary on the part of the Contractor to authorise the execution of and the performance of its obligations under the Contract and the Project Documents has been taken or, in the case of any Project Document executed after the date of this Contract, will be taken before such execution;
- 5.1.4 the obligations expressed to be assumed by the Contractor under the Contract or the Project Documents are, or in the case of any Project Document or any amendment to the Contract executed after the date of this Contract will be, legal, valid, binding and enforceable to the extent permitted by law;
- 5.1.5 each of the Project Documents is or, when executed, will:
 - 5.1.5.1 be in full force and effect;
 - 5.1.5.2 be in the proper form for enforcement in England;
 - 5.1.5.3 constitute or, when executed, will to the extent permitted by law constitute the valid, binding and enforceable obligations of the parties to them, provided that the Contractor does not give the warranty set out in this **clause 5.1.5.3 (Contractor Warranties)** in respect of the obligations of the Authority;
- 5.1.6 the execution, delivery and performance by it of the obligations in the Contract or the Project Documents does not contravene any provision of:
 - 5.1.6.1 any existing Legislation either in force, or enacted but not yet in force binding on the Contractor;
 - 5.1.6.2 the Memorandum and Articles of Association of the Contractor;
 - 5.1.6.3 any order or decree of any court or arbitrator which is binding on the Contractor; or
 - 5.1.6.4 any obligation which is binding upon the Contractor or upon any of

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its assets or revenues;

- 5.1.7 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
- 5.1.8 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under the Contract;
- 5.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor, threatened) for its winding up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 5.1.10 the copies of the Project Documents which the Contractor has delivered or, when executed, will deliver to the Authority are or, as the case may be, will be true and complete copies of such documents and there are not in existence any other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents; and
- 5.1.11 it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance,

and the Authority relies upon such warranties and representations.

5.2 Contractor Undertakings

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

- 5.2.1 it shall:
 - 5.2.1.1 upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or Relevant Authority ("**Legal Proceedings**") may be threatened or pending and immediately after the commencement of such Legal Proceedings; or
 - 5.2.1.2 in respect of Legal Proceedings which are against a Sub-

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Contractor, within twenty (20) Business Days after becoming aware that such Legal Proceedings may be threatened or pending or within twenty (20) Business Days after the commencement of such Legal Proceedings,

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

5.2.2 it shall, if, at any point during the Term an Occasion of Tax Non-Compliance occurs:

5.2.2.1 notify the Authority in writing of such fact within five (5) Business Days of its occurrence; and

5.2.2.2 promptly provide to the Authority:

5.2.2.3 details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

5.2.2.4 such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require;

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

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

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

5.3 Status of Warranties

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

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6. AUTHORITY WARRANTIES**6.1 No Warranty by Authority**

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

6.2 No Liability to Contractor

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

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

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

6.3 Fraudulent Statements

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

6.4 Rights and Remedies

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

6.5 Contractor's Due Diligence

The Contractor shall be deemed to have:

6.5.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Contract, including any Legacy Assets and/or Legacy Contracts to be transferred from a Previous Contractor; and

6.5.2 gathered all information necessary to perform its obligations under this Contract and all other obligations assumed by it, including the quality of existing structures.

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6.6 No Relief

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

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

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

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

7.2 Grant of Lease

- 7.2.1 On the Services Commencement Date, the Authority shall grant to the Contractor, and the Contractor shall accept, the Lease in accordance (including as to timing) with this **clause 7 (Nature of Land Interest)**.
- 7.2.2 The term of the Lease shall commence on the Services Commencement Date.
- 7.2.3 Part 1 of the Commercial Conditions form part of this Contract so far as they are applicable to the letting of the Site and are consistent with the provisions of this Contract. Part 2 of the Commercial Conditions do not form part of this Contract.
- 7.2.4 Subject to **clause 7.2.6 (Grant of Lease)** the Authority has deduced title to the Site to the Contractor in accordance with Commercial Condition 6.1 and (except as referred to in **clause 7.2.6 (Grant of Lease)**) the Contractor is not entitled to raise any requisition or objection to the title.
- 7.2.5 The Site is let subject to and, to the extent that the Authority is able to grant them, with the benefit of the Title Matters.
- 7.2.6 The Contractor is to be treated as accepting the grant of the Lease with full knowledge of the Title Matters and the matters referred to in **clause 7.3 (General**

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Matters) and will not raise any requisition or objection to them except in relation to any new title entries that have been registered after 6 August 2015 at 11:29:48 in relation to title number NN136909 or after 6 August 2015 at 11:35:29 in relation to title number NN76644 and prior to the date of completion of the Lease and which are revealed by the Contractor's Land Registry search carried out immediately prior to completion of the Lease.

7.3 General Matters

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

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

7.4 Exclusion of Security

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

- 7.4.1 the Authority served on the Contractor a notice dated 29 September 2015 in relation to the tenancy created by the Lease (the "**Lease Notice**") in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "**Order**");

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- 7.4.2 the Contractor, or a person duly authorised by the Contractor, in relation to the Lease Notice made a statutory declaration (the **"Lease Declaration"**) dated 30 September 2015 in a form complying with the requirements of Schedule 2 of the Order;
- 7.4.3 where the Lease Declaration was made by a person other than the Contractor, the declarant was duly authorised by the Contractor to make the Lease Declaration on the Contractor's behalf; and
- 7.4.4 the Authority and Contractor agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Lease.

7.5 Delivery of Engrossments

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

7.6 Registration

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

7.7 Provision of Copies

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

7.8 No Compensation

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

7.9 Compliance with the Title Matters

The Contractor shall procure that:

- 7.9.1 the provision of the Custodial Service by or on behalf of the Contractor shall be

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carried out in a manner that complies with and does not result in any breach of the Title Matters; and

- 7.9.2 in providing the Custodial Service, there shall be no action or omission to act by the Contractor or any Contractor Related Party, which shall give rise to a right for any person to obtain title to or any right or interest over the Site or any part of it (except in accordance with the provisions of this Contract).

7.10 Compliance with the Lease

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

8. THE SITE

8.1 Access

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

8.2 Site Matters

- 8.2.1 Subject to the other provisions of this Contract, the condition of the Buildings and maintenance requirements in respect of the Site shall be the sole responsibility of the Contractor and accordingly (but without prejudice to any other obligation of the Contractor under this Contract), the Contractor shall be deemed to have:

- 8.2.1.1 inspected and examined the Buildings and the standard of maintenance of the Site;
- 8.2.1.2 satisfied itself as to the nature of the Site and the risk of injury or damage to property at the Site;
- 8.2.1.3 satisfied itself as to the adequacy of the means and rights of access to and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Contract (such as additional land or buildings outside the Site);
- 8.2.1.4 satisfied itself as to the possibility of interference by persons of any description whatsoever (other than the Authority), with access to or use of, or rights in respect of the Site, with particular regard to the owners of any land adjacent to the Site; and

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- 8.2.1.5 satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference whether public or private, being caused to any third parties.
- 8.2.2 The Contractor accepts full responsibility for all matters referred to in this **clause 8.2 (Site Matters)** and the Contractor shall:
- 8.2.2.1 subject to **clause 6.3 (Fraudulent Statements)** and **clause 8.2.2A** and **8.2.4 (Site Matters)**, not be entitled to make any claim against the Authority of any nature whatsoever on any grounds including the fact that incorrect or insufficient information on any matter relating to the Buildings, the standard of maintenance of the Site, the presence of Contamination in or under the Site as at the Services Commencement Date was given to it by any person; and
- 8.2.2.2 subject to **clause 8.2.4 (Site Matters)** and **paragraph 5.2.3 (Asbestos)** of **Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification))**, be responsible for, and hold the Authority harmless from, cleaning up or otherwise dealing with Contractor Contamination at the Site in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).
- 8.2.2A Subject to **clause 8.2.2B (Site Matters)**, the Authority shall be responsible for and hold the Contractor harmless from cleaning up or otherwise dealing with Authority Contamination and the Authority shall have the right to access the Sites to carry out such surveys, investigations, works and/or monitoring as are required in order to comply with this **clause 8.2 (Site Matters)**. The Authority shall be responsible for any action required in order to comply with any applicable Legislation or any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor) in so far as it relates to such Authority Contamination.
- 8.2.2B Where the Authority is responsible for Authority Contamination then the following provisions shall apply:
- 8.2.2B.1 where any Authority Contamination is identified on or before the Services Commencement Date it shall be deemed to be a Compensation Event and any work which is required or instructed to be done in consequence of it shall, without double counting, be deemed to be an Authority Change;

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- 8.2.2B.2 where any Authority Contamination is identified after the Services Commencement Date it shall be deemed to be a Relief Event and no Deductions may be made which would otherwise arise as a result of such matter arising and any work or changes to the works or Custodial Service required or instructed to be done in consequence of it shall be deemed to be an Authority Change; and
- 8.2.2B.3 the Authority shall indemnify and keep indemnified in full the Contractor in respect of all Direct Losses incurred by the Contractor arising from such Authority Contamination and the Contractor shall in carrying out any works referred to in **clauses 8.2.2B.1 (Site Matters) and 8.2.2B.2 (Site Matters)** do so in accordance with and so that it shall at all times comply with its obligations under this Contract including complying with Good Industry Practice, any applicable Legislation and any Consents, orders, notices or directions of any regulatory body (whether made against the Authority or the Contractor).
- 8.2.3 To the extent that any part or parts of the Site suffer from or are affected by Contractor Contamination which arises from a source off Site (whether or not on adjacent land) except where the source is on land owned by the Authority where **clause 8.2.4 (Site Matters)** shall apply, the Contractor shall be responsible for cleaning up or otherwise dealing with such Contractor Contamination and for preventing the recurrence of such Contractor Contamination on the Site and the following provisions shall apply:
- 8.2.3.1 where any such matter arises on or before the Services Commencement Date, it shall be deemed to be a Relief Event for a reasonable period (to be agreed between the Parties acting reasonably) for the purposes of this Contract;
- 8.2.3.2 where any such matter arises after the Services Commencement Date it shall be deemed to be a Relief Event and no Deductions may be made which would otherwise arise as a result of such matter arising for a reasonable period (to be agreed between the Parties acting reasonably) but any work or change to the Custodial Service required or instructed to be done in consequence of it, shall be the Contractor's responsibility and shall not constitute an Authority Change;
- 8.2.3.3 on or after the Services Commencement Date, the Contractor shall:
- 8.2.3.3.1 clean up, or otherwise deal with such Contractor

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

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

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

8.2.3.4.1 the Authority shall assist and co-operate with the Contractor in respect of such action and shall not, unless the Contractor has failed to resolve such action within a reasonable period, take any action to settle or prosecute such action;

8.2.3.4.2 the Contractor shall give reasonable security to the Authority for any cost or liability arising out of the conduct of such action by the Contractor;

8.2.3.4.3 the Contractor shall not settle such actions without the prior written approval of the Authority; and

8.2.3.4.4 the Contractor shall indemnify and keep indemnified in full the Authority in respect of all costs properly and reasonably incurred by the Authority in respect of such action; and

8.2.3.5 where the Authority takes action under **clause 8.2.3.4 (Site Matters)** (or where it is otherwise obliged to take action against

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

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

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

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

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

8.3 Consents

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

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

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

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obtain;

8.3.1.3 be responsible for implementing each Consent (which it is required to obtain pursuant to this **clause 8.3 (Consents)**) within the period of its validity in accordance with its terms;

8.3.1.4 promptly supply, free of charge, to the Authority a copy of any application for a Consent (with two (2) copies of all accompanying drawings and other documents) and a copy of any Consent or other response obtained;

8.3.1.5 comply with the conditions attached to any Consents and procure that no such Consent is breached by it or any person under its control and use all reasonable endeavours to procure that no Consent is revoked and that all Consents continue in full force and effect for such time as is necessary for the Contractor to provide the Custodial Service;

8.3.1.6 not (and shall use all reasonable endeavours to procure that any other person over whom it has control shall not), without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), apply for or agree to any change, relaxation or waiver of any Consent (whether obtained before, on or after the date of this Contract) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this **clause 8.3 (Consents)**, references in this Contract to Consents shall be construed as referring to the Consents as from time to time varied, relaxed or waived.

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

8.4 No Warranty

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

8.5 Third Party Rights

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



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comprising and adjoining the Site.

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PART III – ICT**9. NOT USED****10. INFORMATION AND COMMUNICATIONS TECHNOLOGY**

10.1 The Parties shall comply with the provisions of **Part 3** of **Schedule 1 (Authority's Requirements (ICT Specification))**.

10.2 Ownership and Use of Authority ICT System

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

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

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

10.3 Responsibility for Security of Authority ICT Systems

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

10.3.2 Notwithstanding **clause 10.3.1 (Responsibility for Security of Authority ICT Systems)**, the Contractor shall take all reasonable steps to ensure that the security of the Authority's ICT System and any other connected or related systems is not jeopardised by controlling access to the Authority's ICT System and mitigating threats from physical and electronic threat sources by following HMG and industry best practice.

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

10.4 **Malicious Software**

10.4.1 The Contractor shall use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for, contain the spread of, minimise the adverse effects of and delete Malicious Software from the Contractor's ICT System.

10.5 **No Warranty**

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

10.6 **Information Assurance**

Notwithstanding **clause 69 (Data Protection)**, the Contractor undertakes that all Young Person Data and visitor data (and any other data as required pursuant to the provisions of **Part 3 of Schedule 1 (Authority's Requirements) (ICT Specification)** shall be stored, processed and accessed within the United Kingdom only.

11. **NOT USED**

12. **NOT USED**

13. **DUTIES UNDER CDM REGULATIONS**

13.1 **Responsibility for Design**

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

13.2 **The Contractor as Client**

In accordance with the CDM Regulations, the Authority and the Contractor have elected that the Contractor shall be, and shall be treated as the only client in respect of the Custodial Service pursuant to Regulation 8 of the CDM Regulations.

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13.3 Duties under CDM Regulations

13.3.1 The Contractor shall observe, perform and discharge and/or shall procure the observance, performance and discharge of the obligations, requirements and duties arising under the CDM Regulations in connection with the Custodial Service (other than those that remain with the Authority pursuant to Regulation 8 of the CDM Regulations).

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

13.4 Authority to Provide Information

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

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

If at any time the Contractor becomes aware that there will be or is likely to be a delay such that the Services Commencement Date may be delayed, the Contractor shall as soon as reasonably practicable, and in any event within ten (10) Business Days of becoming aware of the likely delay, give notice to the Authority to that effect specifying in detail the reason for the delay or likely delay and an estimate of the likely effect of the delay on the provision of the Custodial Service including the achievement of the Services Commencement Date (taking into account any measures that the Contractor proposes to adopt to mitigate the consequences of the delay in accordance with **clause 14.3 (Duty to Mitigate)**).

14.2 Supply of Information

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

14.2.1 is received by the Contractor; or

14.2.2 is reasonably requested by the Authority.

14.3 Duty to Mitigate

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

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

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

15.1.1 be unable to achieve the Services Commencement Date;

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

15.1.3 incur costs,

then the Contractor is entitled to apply for an extension of time to the Services Commencement Date and/or relief from its obligations and/or to claim compensation under this Contract.

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15.2 Procedure for Relief and Compensation

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

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

15.2.1.1 an extension of time to (as appropriate):

15.2.1.1.1 the Services Commencement Date; and/or

15.2.1.1.2 the period specified in paragraph (p) of the definition of Contractor Default; and/or

15.2.1.2 payment of compensation; and/or

15.2.1.3 relief from its obligations under this Contract;

15.2.2 within ten (10) Business Days after receipt by the Authority of the notice referred to in **clause 15.2.1 (Procedure for Relief and Compensation)** give full details of the Compensation Event and the extension of time and/or relief from its obligations under this Contract and/or any Change in Costs claimed; and

15.2.3 demonstrate to the reasonable satisfaction of the Authority that:

15.2.3.1 the Compensation Event was the direct cause of:

15.2.3.1.1 the Change in Costs;

15.2.3.1.2 any delay in achieving the Services Commencement Date; and/or

15.2.3.1.3 any breach of the Contractor's obligations under this Contract; and

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

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15.3 Giving of Relief and Compensation

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

- 15.3.1 in the case of a delay, the Services Commencement Date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of the delay;
- 15.3.2 the period referred to in paragraph (p) of the definition of Contractor Default, shall be extended by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;
- 15.3.3 in the case of:
 - 15.3.3.1 an additional cost being incurred by the Contractor as a result of Capital Expenditure being incurred by the Contractor at any time the Authority shall compensate the Contractor for the actual Change in Costs as adjusted to reflect the actual costs reasonably incurred (to the extent they could not reasonably have been mitigated); or
 - 15.3.3.2 a payment of compensation for the Change in Costs that does not result in Capital Expenditure being incurred by the Contractor as referred to in **clause 15.3.3.1 (Giving of Relief and Compensation)** but which reflects a change in the costs being incurred by the Contractor during the Custodial Service Period;

the Authority shall compensate the Contractor either (at its sole discretion):
 - 15.3.3.2.1 by an adjustment to the Contract Price in accordance with **clause 63 (Financial Adjustments)**; or
 - 15.3.3.2.2 on a lump sum basis; and
- 15.3.4 the Authority shall give the Contractor such relief from its obligations under this Contract as is reasonable for such a Compensation Event.

15.4 Late Provision of Notice or Information

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

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15.5 Failure to Agree

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

16. PREPARATION FOR OPERATION OF THE STC**16.1 Mobilisation, Transition and Transformation**

16.1.1 On and from the Commencement Date and until the Services Commencement Date, the Contractor shall:

16.1.1.1 agree and execute (and/or procure that the relevant Sub-Contractor agrees and executes) an Asset and Contract Transfer Contract (which shall be substantially in the form set out in **Schedule 30 (Asset and Contract Transfer Contract)**) if any Legacy Assets and Legacy Contracts are agreed by the Parties in the Mobilisation and Transition Plan to transfer to the Contractor or any of its Sub-Contractors;

16.1.1.2 comply (and procure that any relevant Sub-Contractor complies) with the provisions of the Asset and Contract Transfer Contracts relating to the transfer of Legacy Assets and Legacy Contracts; and

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

16.1.2 The Contractor shall implement the Transformation Plan to effect the successful transformation of the Custodial Service.

16.1.3 The Contractor shall:

16.1.3.1 within two (2) Weeks following the Commencement Date, agree with the Authority, and adhere to, a schedule of Mobilisation Review Meetings; and

16.1.3.2 ensure that the Contractor is represented at such Mobilisation Review Meetings by staff that are appropriately expert, knowledgeable and senior to participate in a productive meeting with the Authority.

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16.2 Initial Custodial Service Delivery Plan

- 16.2.1 Within one (1) Month following the Commencement Date, the Contractor shall provide to the Authority an initial plan detailing how the Contractor intends to prepare for providing and provide (on and from the Services Commencement Date), the Custodial Service for the period commencing on the Services Commencement Date and expiring twelve (12) Months after the Services Commencement Date (the “**Initial Custodial Service Delivery Plan**”).
- 16.2.2 The Contractor shall ensure that the Initial Custodial Service Delivery Plan shall contain:
- 16.2.2.1 the staff handbook;
 - 16.2.2.2 the public relations procedures;
 - 16.2.2.3 an updated version of the Mobilisation and Transition Plan;
 - 16.2.2.4 an updated version of the Transformation Plan;
 - 16.2.2.5 the dates by which the Initial Operating Procedures and other information necessary for the Initial Availability Requirements to be met, in accordance with **Schedule 3 (Initial Availability Requirements)**, are to be delivered to the Authority;
 - 16.2.2.6 an Annual Resourcing Plan for the period up to the Services Commencement Date and for the first twelve (12) Months following the Services Commencement Date.

16.3 Approval of Initial Custodial Service Delivery Plan

- 16.3.1 Within twenty (20) Business Days after receipt of the Initial Custodial Service Delivery Plan, the Authority shall either:
- 16.3.1.1 issue a certificate (the “**ICSDP Approval Certificate**”) confirming that approval is given on the basis that the Authority is not aware of anything contained in the Initial Custodial Service Delivery Plan that is in conflict with the requirements of the Contract. In giving approval the Authority is not confirming that the contents of the Initial Custodial Service Delivery Plan represent the most effective or efficient method of delivering contractual compliance; or
 - 16.3.1.2 issue a notice (an “**ICSDP Notice of Non-Compliance**”) stating that the ICSDP Approval Certificate has not been issued, specifying the grounds on which the ICSDP Notice of Non-

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Compliance is based (provided that such grounds shall be one or more of those set out in **paragraphs 3.2.3.1 to 3.2.3.6 of Schedule 9 (Review Procedure)**) and specifying any matters that must be attended to before the ICSDP Approval Certificate can be issued.

- 16.3.2 Following receipt of an ICSDP Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the ICSDP Notice of Non-Compliance and shall deliver the revised Initial Custodial Service Delivery Plan to the Authority within ten (10) Business Days after receipt of the ICSDP Notice of Non-Compliance so that the procedure in **clause 16.3.1 (Approval of Initial Custodial Service Delivery Plan)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Initial Custodial Service Delivery Plan are attended to and the ICSDP Approval Certificate can be issued in accordance with **clause 16.3.1.1 (Approval of Initial Custodial Service Delivery Plan)**.
- 16.3.3 If the Parties are unable to agree the Initial Custodial Service Delivery Plan, the Dispute Resolution Procedure shall apply.
- 16.3.4 Without prejudice to the Contractor's obligations pursuant to **clause 19.2 (Services Commencement)**, no Young Person Places shall constitute Available Places until the Authority has approved the Initial Custodial Service Delivery Plan.
- 16.4 **Updates to the Initial Custodial Service Delivery Plan**
- 16.4.1 The Contractor shall:
- 16.4.1.1 produce progress updates ("**ICSDP Reports**") to the Initial Custodial Service Delivery Plan each Month up to the date on which the first ACSDP Approval Certificate is issued;
 - 16.4.1.2 ensure that the ICSDP Reports contain details of the Contractor's progress against the Initial Custodial Service Delivery Plan; and
 - 16.4.1.3 produce an exception report against the Initial Custodial Service Delivery Plan in advance of each Contract Review Meeting.
- 16.4.2 The Parties acknowledge that the production of an ICSDP Report may require the Initial Custodial Service Delivery Plan to be amended.
- 16.4.3 If the Initial Custodial Service Delivery Plan requires amendment, the Contractor shall:

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16.4.3.1 amend the Initial Custodial Service Delivery Plan accordingly; and

16.4.3.2 issue it to the Authority for approval,

and the procedure outlined in **clause 16.3.1 (Approval of Initial Custodial Service Delivery Plan)** shall be repeated until the amended Initial Custodial Service Delivery Plan is approved by the Authority.

16.5 Initial Operating Procedures

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

16.6 Contractor's Staff Information

16.6.1 At least three (3) Months prior to the Services Commencement Date, the Contractor shall submit to the Authority:

16.6.1.1 the names of, and such other information as the Authority may require about, the proposed members of the senior management of the STC and all other persons requiring certification or approval in accordance with this Contract as soon as is reasonably practicable prior to the Services Commencement Date; and

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

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

17. EXISTING AVAILABLE PLACE CERTIFICATES AND BEDROOM CERTIFICATES

17.1 On or before the Services Commencement Date, the Authority shall provide the Contractor with a list of the rooms which are agreed by the Authority to be accepted for use as Bedrooms and have Bedroom Certificates, and the Available Place Certificates, each of which shall be signed by the Monitor.

17.2 In respect of any Bedroom which at the Services Commencement Date is in compliance with the STC Minimum Requirements and the Bedroom Certificate Requirements but for which an Available Place Certificate and/or a Bedroom Certificate has not been issued, the Young Person Place in that Bedroom shall solely for the purposes of **Schedule 5 (Payment Mechanism)** be treated as an Available Place until an Available Place Certificate and/or a

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Bedroom Certificate or an Available Place Non-Compliance Notice is issued for that Bedroom.

18. INITIAL AVAILABILITY REQUIREMENTS AND OPERATING PROCEDURES

18.1 The Contractor shall provide to the Authority each of the Initial Operating Procedures on or before the relevant date for the provision of such procedures as set out in **Schedule 3 (Initial Availability Requirements)** or, if earlier, the date for delivery as specified in the Initial Custodial Service Delivery Plan.

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

18.2.1 issue a certificate (an “**Operating Procedure Approval Certificate**”) confirming that approval is given on the basis that the Authority is not aware of anything contained in the Initial Operating Procedure that is in conflict with the requirements of this Contract. In giving approval the Authority is not confirming that the contents of the Initial Operating Procedures represent the most effective or efficient method of delivering contractual compliance; or

18.2.2 issue a notice (an “**Operating Procedure Notice of Non-Compliance**”) stating that the Operating Procedure Approval Certificate has not been issued, specifying the grounds on which the Operating Procedure Notice of Non-Compliance is based (provided that such grounds shall be one or more of those set out in **paragraphs 3.2.3.1 to 3.2.3.5 of Schedule 9 (Review Procedure)**) and specifying any matters that must be attended to before the Operating Procedure Approval Certificate can be issued.

18.3 Following receipt of an Operating Procedure Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the Operating Procedure Notice of Non-Compliance and shall deliver such revised Initial Operating Procedure to the Authority within five (5) Business Days after receipt of the Operating Procedure Notice of Non-Compliance so that the procedure in **clause 18.2 (Initial Availability Requirements and Operating Procedures)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Operating Procedure are attended to and the Operating Procedure Approval Certificate can be issued in accordance with **clause 18.2.1 (Initial Availability Requirements and Operating Procedures)**.

18.4 Without prejudice to the Contractor’s obligations pursuant to **clause 19.2 (Services Commencement)** and notwithstanding any other provision in this Contract, no Young Person Place shall constitute an Available Place until all of the Initial Availability Requirements have been met (including the approval by the Authority of the Initial Operating Procedures).

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- 18.5 Once so approved, the Initial Operating Procedures shall constitute the Operating Procedures for the purposes of this Contract and:
- 18.5.1 shall be updated no later than six (6) months from the Services Commencement Date to reflect the requirements of the Custodial Specification and other Authority's Requirements; and
- 18.5.2 shall be reviewed on an annual basis on every twelve (12) month anniversary of the relevant date for the provision of such Initial Operating Procedure listed in **Schedule 3 (Initial Availability Requirements)** or as otherwise specified by the Authority in writing.
- If the Contractor proposes to make any changes to the Initial Operating Procedures or Operating Procedures it shall submit the proposed changes to the Authority for approval using the process set out in **clause 18.2 (Initial Availability Requirements and Operating Procedures)**.
- 18.6 If any or all of the Initial Availability Requirements as set out in **Schedule 3 (Initial Availability Requirements)** have not been met in advance of the Services Commencement Date and in accordance with the timescales set out in **Schedule 3 (Initial Availability Requirements)**, including the issuing of an Operating Procedure Approval Certificate, the Authority may by written notice to the Contractor postpone the Services Commencement Date until any or all of the Initial Availability Requirements have been met. If the Authority postpones the Services Commencement Date due to the Contractor's failure to meet any or all of the Initial Availability Requirements, this shall not be considered as a Compensation Event under **clause 15 (Compensation Events)**.
- 18.7 If any or all of the Initial Availability Requirements as set out in **Schedule 3 (Initial Availability Requirements)** have not been met in advance of the Services Commencement Date and in accordance with the timescales set out in **Schedule 3 (Initial Availability Requirements)**, including the issuing of an Operating Procedure Approval Certificate, the Authority may also choose not to postpone the Services Commencement Date, but in this case the payment for Mobilisation, Transition and Transformation Costs to be paid by the Authority will be reduced in accordance with the deductions set out for the failure to meet Initial Availability Requirements as set out in **Schedule 6 (Performance Management and Management Information Reporting)**.
- 18.8 To the extent that the Services Commencement Date does not take place on or before the Planned Services Commencement Date due to the Default of the Contractor, the Authority may, without prejudice to its other rights or remedies, recover from the Contractor the costs reasonably incurred in making other arrangements for the provision of the Services up to the Services Commencement Date provided that in the payment of such compensation by the Contractor only the difference in cost between the amount that would have been paid by the Authority for the provision of the Services by the Contractor and amounts reasonably

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incurred by the Authority for the delivery of the Services by an alternative provider (which the Authority shall take reasonable steps to mitigate) shall be paid by the Contractor to the Authority. The amount which would have been paid to the Contractor shall, for the purposes of this clause, be calculated on the basis of the Monthly Payment as set out at **paragraph 2 of Schedule 5 (Price and Payment Mechanism)**.

- 18.9 The Authority may at any time notify the Contractor that it requires the Contractor to carry out a test of an Operating Procedure (an "**Operating Procedure Test**") whether or not such Operating Procedure has been approved by the Authority.
- 18.10 The Contractor shall:
- 18.10.1 give the Authority five (5) Business Days' notice of the time and location of the Operating Procedure Test;
 - 18.10.2 allow representatives of the Authority to attend the Operating Procedure Test; and
 - 18.10.3 carry out the Operating Procedure Test:
 - 18.10.3.1 in accordance with the Contractor's proposals for testing the Initial Operating Procedures or Operating Procedures set out in respect of each Operating Procedure in **Schedule 2 (Contractor's Proposals)**; and
 - 18.10.3.2 subject to **clause 18.10.1 (Initial Availability Requirements and Operating Procedures)**, as soon as reasonably practicable after the date of any notice pursuant to **clause 18.9 (Initial Availability Requirements and Operating Procedures)**.
 - 18.10.4 Within five (5) Business Days after the completion of such test, the Authority shall either:
 - 18.10.4.1 issue a notice confirming to the Contractor that he or she is satisfied that the Operating Procedure Test has demonstrated that the Initial Operating Procedure or Operating Procedure is satisfactory; or
 - 18.10.4.2 issue a notice stating that the Operating Procedure Test has demonstrated that the Initial Operating Procedure or Operating Procedure is not satisfactory, and specifying any matters that must be attended to.
 - 18.10.5 Following receipt of a notice pursuant to **clause 18.10.4.2 (Initial Availability Requirements and Operating Procedures)**, the Contractor shall attend to the

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matters referred to in such notice and shall re-run the test in accordance with this **clause 18.10 (Initial Availability Requirements and Operating Procedures)** (except that the notice period to the Authority shall be two (2) Business Days instead of the five (5) Business Days) as often as necessary to ensure that all outstanding matters in relation to the Initial Operating Procedure or Operating Procedure in question are attended to and the Initial Operating Procedure or Operating Procedure satisfies the test.

19. SERVICES COMMENCEMENT

- 19.1 On the Services Commencement Date the Authority shall subject to and in accordance with the terms and conditions of this Contract hand over control of the STC to the Contractor and the Contractor shall commence provision of the Custodial Service in accordance with this Contract.
- 19.2 Subject to the provisions of **paragraph 7 of Schedule 5 (Payment Mechanism)**, the Contractor shall on the Services Commencement Date provide to the Authority no less than the Maximum Available Places.
- 19.3 Subject to **clause 15 (Compensation Events)**, the Authority may by written notice to the Contractor postpone the Services Commencement Date until the date specified in such notice.
- 19.4 The Authority shall procure that any necessary Statutory Certificates in respect of the STC are current and valid at the Services Commencement Date, insofar as the Authority is required by law to ensure that such certificates are current and valid.

20. WORKING WITH THE HEALTHCARE PROVIDER

- 20.1 The Contractor shall provide such access to the STC as the Healthcare Provider may reasonably require in order to provide the Healthcare Service as set out in the Interface with Healthcare Provider section within **Part 1 of Schedule 1 (Authority's Requirements (Custodial Service Specification))**.
- 20.2 The Contractor shall cooperate with the Healthcare Provider so as to ensure that the Healthcare Provider is able to discharge its functions at the STC.
- 20.3 The Contractor shall, at least four (4) months prior to the Services Commencement Date, agree and enter into partnering agreements with the Healthcare Provider, which shall address amongst other things, interface issues, ICT provision by the Contractor and dispute resolution.
- 20.4 The Contractor shall comply with the requirements on working with the Healthcare Provider detailed in **Part 1 of Schedule 1 (Authority's Requirements (Custodial Service Specification))**.
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PART V - THE CUSTODIAL SERVICE**21. CONDUCT OF OPERATION****21.1 Standard of Performance**

- 21.1.1 The Contractor shall provide the Custodial Service in accordance with, and at all times ensure that the Custodial Service complies with and meets all the requirements of:
- 21.1.1.1 this Contract;
 - 21.1.1.2 the Authority's Requirements;
 - 21.1.1.3 the Contractor's Proposals;
 - 21.1.1.4 the Initial Service Delivery Documents or the Service Delivery Documents (as relevant);
 - 21.1.1.5 the Operating Procedures;
 - 21.1.1.6 Good Industry Practice;
 - 21.1.1.7 all applicable Guidance;
 - 21.1.1.8 all applicable Authority Policies; and
 - 21.1.1.9 all applicable Legislation,
- with effect from the Services Commencement Date.
- 21.1.2 The Contractor shall ensure that any necessary Statutory Certificates in respect of the STC are current and valid throughout the Contract from the Services Commencement Date.
- 21.1.3 The Contractor shall, at all times, ensure that the Custodial Service is performed by appropriately qualified and trained Contractor's Staff.
- 21.1.4 The Contractor shall, at all times, ensure that the Custodial Service is performed in such a manner that it does not cause, contribute to or otherwise give rise to any breach by the Authority of any of its duties or the exercise of its powers under the 1994 Act or any breach by the Authority or the YJB of any of their respective duties or the exercise of their respective powers under the 1998 Act.
- 21.1.5 The Authority's Requirements shall at all times have priority over the Contractor's Proposals, the Operating Procedures, the Initial Service Delivery Documents and

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the Service Delivery Documents, and the Contractor shall comply with the Authority's Requirements and provide the Custodial Service in accordance with the Authority's Requirements and shall ensure that the outcomes specified in the Authority's Requirements are met.

- 21.1.6 Subject to the provisions of **paragraph 7 of Schedule 5 (Payment Mechanism)**, the Contractor shall at all times on and from the Services Commencement Date provide to the Authority no less than the Maximum Available Places.

21.2 Performance Management

Schedule 6 (Performance Management and Management Information Reporting) sets out the manner in which the Contractor's performance of the Custodial Service shall be measured and reported.

21.3 Disclosure of Information to Emergency Services

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

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

- 21.3.3 The Authority shall not be obliged to:

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

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

21.4 Business Continuity and Disaster Recovery

Prior to the Services Commencement Date, the Contractor shall create an overarching business continuity and disaster recovery plan that will be maintained and implemented throughout the Custodial Service Period in order to:

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- 21.4.1 fulfil its obligations under **Schedule 1 (Authority's Requirements)** including those set out in **paragraphs 5.1.4 and 5.1.9 of Schedule 1 (Authority's Requirements (Property Service Specification))** and **paragraph 6 of Schedule 1 (Authority's Requirements (ICT Specification))**; and
- 21.4.2 otherwise, in accordance with Good Industry Practice, anticipate and manage disasters and other events that may affect the Custodial Service or the health, safety or security of the Young People, Contractor's Staff or any other person at the Site.
- 21.5 **Not Used**
- 21.6 **Contractor's use of Authority Assets**
- 21.6.1 During the Custodial Service Period, the Authority shall permit the Contractor to have access to and use the Authority Assets upon the terms set out in this **clause 21.6 (Contractor's use of Authority Assets)**.
- 21.6.2 Title to the Authority Assets shall remain with the Authority or other owner at all times and, subject to the permissions granted under this **clause 21.6 (Contractor's use of Authority Assets)**, the Contractor shall have no right or interest in them and shall not obtain title to the Authority Assets.
- 21.6.3 The Contractor shall:
- 21.6.3.1 only use, and permit its Sub-Contractors to use, the Authority Assets to the extent necessary in order to provide the Custodial Service;
- 21.6.3.2 be responsible for taking delivery of the Authority Assets at the location where they are situated and not move such Authority Assets unless permission has been granted by the Authority in writing (and provided that the Contractor shall be responsible for meeting any associated delivery, off-loading and packaging costs related to the move and, at the request of the Authority, their return);
- 21.6.3.3 take reasonable and proper care of the Authority Assets in its or a Sub-Contractor's possession or control;
- 21.6.3.4 not use or permit any of the Authority Assets to be used in contravention of any Legislation;
- 21.6.3.5 be responsible for risk of loss of or damage to the Authority Assets provided that the Contractor shall not be liable for loss or damage

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caused by fair wear and tear resulting from normal and proper use in connection with the provision of the Custodial Service;

- 21.6.3.6 ensure that any instructions or manuals supplied by the manufacturer of the Authority Assets for their use and which are made available to the Contractor shall be followed by the Contractor's Staff;
- 21.6.3.7 not permit or assert any lien over, sell, offer for sale, assign, mortgage, encumbrance, pledge, sub-let or lend out any of the Authority Assets and ensure that no lien claims are made in respect thereof;
- 21.6.3.8 where the Authority Assets are leased to the Authority, ensure that these are used only in accordance with the terms of any relevant leasing agreement (to the extent that such terms have been notified to it); and
- 21.6.3.9 deliver the Authority Assets back to the Authority (where still extant) in accordance with **Schedule 28 (Exit Management)**.

21.7 Maintenance of Assets and Asset Refresh Plan

- 21.7.1 Save in relation to Assets that are comprised within the Built Environment and M&E Assets (which are dealt with in **clause 25 (Maintenance of the STC)**), the Contractor shall:
 - 21.7.1.1 operate, manage, repair, maintain and (to the extent approved within the Asset Refresh Plan) dispose of them in order to maintain their condition for use in delivering the Custodial Service and in accordance with Good Industry Practice;
 - 21.7.1.2 replace and upgrade them on a regular basis and in any event in accordance with the Asset Refresh Plan; and
 - 21.7.1.3 catalogue them accurately on the Equipment Register in accordance with **clause 68.3 (Maintenance of Records)** and **Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification))**.
- 21.7.2 The Asset Refresh Plan shall be created by the Contractor no later than thirty (30) days before the Services Commencement Date and updated on an annual basis (and in any event within thirty (30) Days of the end of each Contract Year) and submitted to the Authority for review and approval in accordance with **Schedule 9 (Review Procedure)**.

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22. WORKS

- 22.1 Where the Contractor is required to carry out any major construction or maintenance works, be it as part of the solution proposed in the Contractor's Proposals, as an agreed Change Notice during the term of the Contract or as part of the maintenance or replacement of any Assets, the Contractor shall comply with all the requirements of **Schedule 1 Part 2 (Authority's Requirements) (Property Service Specification)**.
- 22.2 The Contractor shall procure that in respect of any construction works to be carried out by a Sub-Contractor, the relevant Sub-Contractor shall validly execute and deliver to the Authority, as a condition precedent to the appointment, a collateral warranty in favour of the Authority in the form set out in **Schedule 15 (Collateral Warranty from Sub-Contractor to the Authority)**. The delivered collateral warranty shall be accompanied by a certified true copy of the fully executed relevant building contract entered into by the Contractor and the relevant Sub-Contractor.
- 22.3 The Contractor shall be fully responsible for all construction works.

23. RIOT DAMAGES ACT

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

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24. AVAILABLE PLACE CERTIFICATION AND ACCEPTANCE OF YOUNG PEOPLE**24.1 Compliance with Available Place Certificate Requirements and Bedroom Certificate Requirements**

Subject to **clause 17 (Existing Available Place Certificates and Bedroom Certificates)**, the Contractor shall ensure that it complies with the Available Place Certificate Requirements during the Custodial Service Period (which shall include an obligation to ensure that each and every Bedroom, and any other living accommodation to be occupied by a Young Person, shall comply with the Bedroom Certificate Requirements during such period).

24.2 Inspection and Non-Compliance

24.2.1 The Authority may, at its discretion, carry out inspections during the Custodial Service Period from time to time in order to assess the certification of any Bedroom.

24.2.2 If the Authority identifies during any such inspection that a Bedroom does not comply with the Bedroom Certificate Requirements and/or that the STC Minimum Requirements are not being met in whole or in part, it shall issue to the Contractor an Available Place Non-Compliance Notice. The Available Place Certificate and, in the case of non-compliance with the Bedroom Certificate Requirements, the Bedroom Certificate in respect of that Bedroom shall be deemed to be revoked on the date of the Available Place Non-Compliance Notice and any affected Young Person Place shall be treated as an Unavailable Place pursuant to **paragraph 6 of Schedule 5 (Payment Mechanism)**.

24.3 Notification of Events Affecting Available Place Certificates or Availability

24.3.1 The Contractor shall inform the Monitor promptly (and record details of such event in the Daily Reports) if:

24.3.1.1 for any Bedroom the Bedroom Certificate Requirements are no longer met; or

24.3.1.2 any event occurs which could reasonably be expected to result in an Available Place Certificate and/or Bedroom Certificate being withdrawn if the Authority were to exercise its rights pursuant to **clause 24.2 (Inspection and Non-Compliance)**; or

24.3.1.3 there is a failure to comply in all respects with the STC Minimum Requirements.

24.3.2 If the Contractor fails to comply with the Available Place Certificate

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Requirements, then:

24.3.2.1 the provisions of **paragraphs 5 and 6 of Schedule 5 (Payment Mechanism)** shall apply; and/or

24.3.2.2 the Monitor may inspect the Young Person Places in respect of which the STC Minimum Requirements and/or the Bedroom Certificate Requirements are not met and, where the Monitor in his or her sole discretion believes that the needs of a Young Person are best met by being accommodated in an affected Bedroom, issue a certificate ("**Provisory Available Place Certificate**") notifying the Contractor that a Young Person may be accommodated in the relevant Bedroom notwithstanding the other provisions of this Contract (including **paragraph 5 of Schedule 5 (Payment Mechanism)**) provided that certain conditions which the Monitor deems are necessary to ensure the wellbeing of the Young Person concerned are met (such conditions to be specified in the certificate);

24.3.2.3 the Contractor shall comply with the conditions set out in the Provisory Available Place Certificate; and

24.3.2.4 any such Provisory Available Place Certificate may be revoked at any time at the Monitor's discretion and shall, in any event, be deemed revoked upon any failure by the Contractor to comply with the conditions set out in the Provisory Available Place Certificate or upon the subsequent issue of an Available Place Certificate.

24.3.3 The Contractor shall notify the YJB Placements Service if for any Bedroom the Available Place Certificate Requirements are no longer met or if Available Place Non-Compliance Notice is issued and an Available Place Certificate and/or a Bedroom Certificate is withdrawn and consequently any Young Person Place becomes an Unavailable Place.

24.4 Acceptance of Young People

The Contractor shall not refuse to accept a Young Person who has been placed by the Authority at the STC for an Available Place where there is capacity to do so at the STC.

25. MAINTENANCE OF THE STC

25.1 Asset Condition Schedule and Asset Condition Verification Review

25.1.1 The Authority will make available asset condition survey data, related reports and indicative lifecycle replacement information (including in the form of the Asset

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Management Records) which may assist the Contractor in compiling its own list and priorities and developing the Asset Forward Replacement Plan. Included within the Asset Management Records shall be a plan of the repairs and maintenance the Authority or its contractor proposed to carry out if the Contractor had not been appointed under this Contract. The Authority shall have no liability for any existing surveys, reports and lifecycle replacement information or the Asset Management Records in this regard and any such data is for information purposes only, with the Contractor being under no obligation to implement the plans set out in the Asset Management Records.

- 25.1.2 The asset condition survey data forms the basis of the Asset Condition Schedule and the Contractor's Asset Forward Replacement Plan.
- 25.1.3 During the period between the Commencement Date and the Services Commencement Date, the Contractor shall inspect the Built Environment and M&E Assets to confirm their condition status and shall no later than thirty (30) Days prior to the Services Commencement Date provide the Authority with an asset verification report in such format as is specified by the Authority (the **"Asset Condition Verification Report"**).
- 25.1.4 The Contractor shall, within the Asset Condition Verification Report, notify the Authority in writing of any discrepancies or variations from the Built Environment and M&E Assets described in the Asset Management Records found during their inspections of the Site. The Contractor shall update the Asset Condition Schedule to reflect such discrepancies or variations and issue the revised Asset Condition Schedule to the Authority at the same time as the Asset Condition Verification Report.
- 25.1.5 Where the Authority does not agree with the revised Asset Condition Schedule, it shall provide the Contractor within twenty (20) Business Days of receipt of the revised Asset Condition Schedule with a written statement of the grounds of its disagreement, and the Contractor shall review its revisions and issue a further revised Asset Condition Schedule.
- 25.1.6 If the Authority still does not agree with the Asset Condition Schedule as so revised, the matter shall be resolved pursuant to **clause 74 (Dispute Resolution)**.
- 25.1.7 The Contractor shall remedy any defects, failures or malfunctions identified as part of the Asset Condition Verification Report process as soon as practicable following the Services Commencement Date as part of the Contractor's normal repair process at no additional cost to the Authority provided that if, upon inspection following the Commencement Date, the Contractor notifies the Authority of significant issues that could not have been anticipated, then any

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work that is required or instructed by the Authority to be done as a consequence shall, without double counting, be deemed to be an Authority Change.

- 25.1.8 Where a testing and inspection certificate is not available for an item, the Contractor shall undertake the necessary test within ninety (90) Days following the Services Commencement Date and any remedial works identified during the test shall be included within the Asset Forward Maintenance Plan and acted on by the Contractor as necessary.
- 25.1.9 At the same time as the Contractor provides to the Authority the Asset Condition Verification Report, it shall also provide to the Authority detailed proposals for maintaining, repairing and, where necessary, replacing or renewing the relevant equipment within the STC during the period of the Contract so as to ensure that all such equipment is at all times fully operational and in good working order, such proposals to be included within the Asset Forward Maintenance Plan and the Asset Forward Replacement Plan. The Authority shall be entitled to propose changes to the Asset Forward Maintenance Plan and Asset Forward Replacement Plan and the final form of the plans shall be such as is agreed between the Authority and the Contractor, each acting reasonably.
- 25.1.10 The Contractor shall conduct an annual review of the contents of the Asset Condition Verification Report and every twelve (12) Months shall issue an updated version of the Asset Condition Verification Report, including the Asset Forward Replacement Plan and the Asset Forward Maintenance Plan each reviewed and updated as required, to the Authority on the anniversary of the Asset Condition Verification Report.
- 25.1.11 The Asset Condition Schedule shall constitute the agreed statement of the condition of the Built Environment and M&E Assets at the Services Commencement Date.
- 25.1.12 The Contractor shall ensure that the Asset Condition Schedule is maintained and at all times kept up-to-date to reflect any changes to the condition of the STC and, to the extent not included in the STC, the Site, as the result of maintenance, repair, replacement and/or renewal of the fabric of the STC and the equipment within the STC.
- 25.1.13 The Contractor shall be responsible for maintaining a comprehensive Equipment Register for the STC and for ensuring that all Assets are to be suitably labelled with a unique asset code. The Contractor should review the Equipment Register provided by the Authority within the first three (3) Months of the Contract and identify any anomalies and make any required changes and thereafter should regularly review the Equipment Register for any anomalies.

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- 25.1.14 The Contractor shall maintain and update the Equipment Register, ensuring that any changes or modifications to the Assets are captured and recorded in the Equipment Register in a manner that the Contractor shall agree with the Authority, and the Contractor shall report any changes and updates to the Equipment Register to the Authority.

25.2 Maintenance

- 25.2.1 The Contractor shall maintain and operate the STC in accordance with this Contract, the Authority's Requirements, the maintenance and operating procedures set out in the Contractor's Proposals, the Contractor's Operating Manual, Asset Forward Maintenance Plan and Asset Forward Replacement Plan, and shall ensure on a continuing basis that at all times the said maintenance and operating procedures are and remain sufficient to ensure that:
- 25.2.1.1 the Custodial Service is continuously available as required by this Contract and the Authority's Requirements;
 - 25.2.1.2 the STC and, to the extent relevant not included in the STC, the Site, is kept in good structural and decorative order (subject to fair wear and tear) and as a minimum to the standard identified in the Asset Condition Schedule and in accordance with this Contract, the Authority's Requirements, the Contractor's Operating Manual, the Asset Forward Maintenance Plan and Asset Forward Replacement Plan;
 - 25.2.1.3 it can provide the Custodial Service in accordance with this Contract and the Authority's Requirements;
 - 25.2.1.4 it maintains an up to date Equipment Register and Asset Condition Schedule of all equipment (including the Authority Assets and Contractor Assets) used by it in the performance of the Custodial Service; and
 - 25.2.1.5 the STC and, to the extent relevant not included in the STC, the Site, is handed back to the Authority on the Termination Date or Expiry Date in no worse a condition than that identified in the Asset Condition Schedule and in any event in a condition that is no worse than the condition at the Commencement Date and that complies with the other provisions of this Contract (including this **clause 25.2.1 (Maintenance)**).

25.3 Repair

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- 25.3.1 The Contractor shall carry out repairs to plant and buildings as required to comply with **Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification))**, Asset Forward Maintenance Plan and Asset Forward Replacement Plan.
- 25.3.2 The Contractor shall be responsible for the cost of all repairs required to be carried out in order to comply with **Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification))**, Asset Forward Maintenance Plan and Asset Forward Replacement Plan. For the avoidance of doubt, any repair which is required as a result of the Contractor's failure to complete the works in accordance with the requirements of this Contract together with the cost of any temporary services required to be implemented during the period in which any such repair work is completed will also be for the account of the Contractor.
- 25.3.3 The Contractor shall not carry out any structural alterations to the Site nor any non-structural alterations which would materially affect the layout of the Site or the Contractor's ability to provide the Custodial Service in accordance with this Contract. The Contractor shall comply with **clauses 22.1 to 22.3 (inclusive) (Works)** in respect of any alterations carried out by it to the Site, to the extent applicable to the works in question.
- 25.3.4 The Contractor shall implement recommendations made by the Crown Premises Inspection Group (CPIG) in respect of the STC in a timely manner and shall indemnify the Authority in respect of any Losses incurred as a result of its failure to act on such recommendations. The Authority shall not be required under this Contract to implement those recommendations or meet any of the Contractor's costs of implementation.

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

- 26.1.1 If the Authority reasonably believes that the Contractor is in breach of its obligations under **clause 25 (Maintenance of the STC)** or **Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification))** then it may carry out (or procure the carrying out of) a survey of the STC and, to the extent relevant not included in the STC, the Site, to assess whether they have been and are being maintained by the Contractor in accordance with its obligations under **clause 25 (Maintenance of the STC)** and **Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification))**.
- 26.1.2 The Authority shall notify the Contractor in writing a minimum of ten (10) Business Days in advance of the date on which it wishes to carry out the survey. The Authority shall consider in good faith any reasonable request by the

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Contractor for the survey to be carried out on a different date if such request is made at least five (5) Business Days prior to the notified date and the Contractor (acting reasonably) is able to demonstrate that carrying out the survey on the notified date would materially prejudice the Contractor's ability to provide the Custodial Service.

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

26.2 Results of Survey

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

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

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

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

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

27. RIGHTS OF ACCESS AND INSPECTION

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

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

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- 27.3 The Authority and any representative of the Authority may enter upon any part of the STC to carry out major maintenance works (including replacement of major maintained assets) where the Authority undertakes to carry out such works or to procure the carrying out of such works.
- 27.4 The Contractor shall procure that satisfactory facilities are made available to the Authority and any representative of the Authority and that reasonable assistance is given for the purposes of **clauses 27.1, 27.2 and 27.3 (Rights of Access and Inspection)** subject to the Contractor's operational requirements not being adversely affected.
- 27.5 If the Authority is or becomes aware of a breach by the Contractor of its obligations under **clause 21.7 (Maintenance of Assets and Asset Refresh Plan)** or **clause 25 (Maintenance of the STC)**, then the Authority and any representative of the Authority may exercise its right of access and remedy such breach and shall be entitled to recover from the Contractor any costs or expenses incurred as a debt.
- 27.6 The Authority and any representative of the Authority shall comply with any health and safety requirements when exercising its rights under this **clause 27 (Rights of Access and Inspection)**.
- 27.7 If the Authority or any representative of the Authority causes material damage to the STC in exercising any right under this **clause 27 (Rights of Access and Inspection)**, then the Authority shall reimburse the Contractor for its reasonable documented costs directly caused by such damage.
28. **NOT USED**
29. **PERFORMANCE MONITORING**
- 29.1 **Contractor Audits**
- 29.1.1 The Contractor shall audit its performance in the delivery of the Custodial Service.
- 29.1.2 The Contractor shall resource, undertake and provide to the Authority a programme of self audits applied to the day to day performance of the Custodial Service. The Contractor shall provide a revised programme on or before 1 April each Contract Year. The objective of the programme is to examine compliance by the Contractor with its obligations, the performance of the Custodial Service against the Contract Delivery Indicators and the management of significant risks to successful provision of the Custodial Service.
- 29.1.3 The Contractor's first annual programme of self audits shall commence on a date to be agreed with the Authority.
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- 29.1.4 The Contractor shall report in writing progress and significant findings on the self audit programme to the Authority at least once a Month and implement any requirements of the Authority. The Contractor shall provide an annual report summarising the findings of the self audit programme and progress made in rectifying any issues identified through the audits.
- 29.1.5 The Contractor shall rectify any incidences of non-compliance that are reported in a timely manner.
- 29.1.6 The Contractor shall provide self audit quality assurance in a manner that is reasonably acceptable to the Authority, including through the Contractor's external auditor's programme in order that the Authority can satisfy himself or herself as to the adequacy and accuracy of the Contractor's self audit arrangements.

29.2 Authority Auditing

- 29.2.1 The Authority may elect to undertake its own performance audit for any purpose, including in order to ensure that the Custodial Service is being provided in accordance with this Contract. The Contractor will use its reasonable endeavours to assist the Authority in such an exercise.
- 29.2.2 The Authority shall be entitled to notify the Contractor of the outcome of the performance audit, and the Contractor shall have due regard to the Authority's comments and shall comply with all the requirements and recommendations of the Authority in relation to the future provision of the Custodial Service, provided that if the recommendations of the audit require a change to the Custodial Service Specification, this shall be deemed to be an Authority Change.
- 29.2.3 Without prejudice to the Authority's rights under **clause 49 (Termination on Contractor Default)** and to any other express rights under this Contract, where the Contractor:
- 29.2.3.1 submits a fraudulent claim for payment under **clause 44 (Payment Provisions)**; or
- 29.2.3.2 has submitted:
- 29.2.3.2.1 Contract Delivery Management Information pursuant to **paragraph 2 of Schedule 6 (Performance Management and Management Information Reporting)** which contains at least three (3) material errors; or
- 29.2.3.2.2 more than one (1) Daily Report containing at least four

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(4) material errors,

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

the Authority may, by notice to the Contractor, require to audit the Contractor's performance and/or (at the Authority's option) require the Contractor to audit its own performance of its obligations under this Contract in respect of any of the Custodial Services at more frequent intervals (as specified by the Authority) until such time as the Contractor has demonstrated to the reasonable satisfaction of the Authority that it is capable of performing and will perform such obligations in accordance with the requirements of this Contract.

29.2.4 For the purposes of **clause 29.2.3 (Authority Auditing)**, the Authority acknowledges that if in the following consecutive three (3) Month period after the date of the Authority's notice there have been no further material errors of any kind, this shall be regarded as sufficient demonstration that the Contractor will perform and is capable of performing its relevant obligations.

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

29.3 NHS Area Team Auditing

The Contractor shall facilitate the NHS Area Team to conduct any audits it wishes to conduct of the Healthcare Services and the Healthcare Provider.

30. ANNUAL CUSTODIAL SERVICE DELIVERY PLAN

30.1 Delivery of Annual Custodial Service Delivery Plan

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

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

30.1.2.1 a business plan detailing the Contractor's main objectives in terms

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of service improvement and development for the coming Year;

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

30.1.2.3 an Annual Resourcing Plan for the next Contract Year, highlighting any departure from the Annual Resourcing Plan for the preceding Contract Year and giving reasons for such departure;

30.1.2.4 the annual needs analysis and the proposed Interventions for the next Contract Year; and

30.1.2.5 a copy of the then current Exit Plan.

30.2 Approval of Annual Custodial Service Delivery Plan

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

30.2.1.1 issue a certificate (the "**ACSDP Approval Certificate**") confirming that approval is given on the basis that the Authority is not aware of anything contained in the ACSDP that is in conflict with the requirements of the Contract. In giving approval the Authority is not confirming that the contents of the ACSDP represent the most effective or efficient method of delivering contractual compliance; or

30.2.1.2 issue a notice (an "**ACSDP Notice of Non-Compliance**") stating that the ACSDP Approval Certificate has not been issued, specifying the grounds on which the ACSDP Notice of Non-Compliance is based (provided that such grounds shall be one or more of those set out in **paragraph 3.2.3 of Schedule 9 (Review Procedure)**) and specifying any matters that must be attended to before the ACSDP Approval Certificate can be issued.

30.2.2 Following receipt of an ACSDP Notice of Non-Compliance, the Contractor shall attend to such outstanding matters referred to in the ACSDP Notice of Non-Compliance and shall deliver the revised Annual Custodial Service Delivery Plan to the Authority within ten (10) Business Days after receipt of the ACSDP Notice of Non-Compliance so that the procedure in **clause 30.2.1 (Approval of Annual Custodial Service Delivery Plan)** is repeated as often as necessary to ensure that all outstanding matters in relation to the Annual Custodial Service Delivery

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Plan are attended to and the ACSDP Approval Certificate can be issued in accordance with **clause 30.2.1.1 (Approval of Annual Custodial Service Delivery Plan)**.

30.2.3 No payment shall be made to the Contractor where the approval of an Annual Custodial Service Delivery Plan (such approval not to be unreasonably withheld or delayed by the Authority) has not occurred on or before the date falling ten (10) Business Days (or such other date as may reasonably be agreed) after the first re-submission of the Annual Custodial Service Delivery Plan pursuant to **clause 30.2.2 (Approval of Annual Custodial Service Delivery Plan)**, provided that, following subsequent agreement of the Annual Custodial Service Delivery Plan pursuant to **clause 30.2.4 (Approval of Annual Custodial Service Delivery Plan)** or otherwise, the Authority shall resume payment to the Contractor and reimburse the Contractor in respect of amounts which would otherwise have been paid to it by the Authority under this Contract but which have been withheld pursuant to this **clause 30.2.3 (Approval of Annual Custodial Service Delivery Plan)**.

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

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

30.3 Updates to the Annual Custodial Service Delivery Plan

30.3.1 The Contractor shall:

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

30.3.1.2 ensure that the ACSDP Reports contain details of the Contractor’s progress against the Annual Custodial Service Delivery Plan; and

30.3.1.3 produce an exception report against the Annual Custodial Service

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Delivery Plan in advance of each Contract Review Meeting.

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

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

30.3.3.1 amend the Annual Custodial Service Delivery Plan accordingly;
and

30.3.3.2 issue it to the Authority for approval,

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

31. OPERATING MANUAL

31.1 Maintenance of Manual

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

31.1.2 The Contractor shall develop a manual setting out the procedures (including the Operating Procedures) for providing the Custodial Service and maintaining the STC (the “**Operating Manual**”) prior to the Services Commencement Date and throughout the Custodial Service Period it shall maintain and update the Operating Manual, including to take into account any lessons learned during the operation of the STC.

31.2 Access to Manual

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

31.3 Copy on Termination

The Contractor shall:

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

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

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

32. QUALITY ASSURANCE**32.1 General Quality Assurance**

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

32.2 Quality Management

The Contractor shall:

32.2.1 ensure the effective operation and implementation of the quality assurance system;

32.2.2 audit any quality assurance system at regular intervals and report the findings of such audit to the Contractor and the Authority; and

32.2.3 review the quality assurance system at intervals agreed with the Authority to ensure its continued suitability and effectiveness.

32.3 Monitoring of Quality Assurance Systems

32.3.1 The Authority may carry out periodic audits of the quality assurance systems.

32.3.2 The Contractor shall procure that the Authority shall have the same right in respect of any relevant Sub-Contractors.

32.3.3 The Contractor shall co-operate and shall procure that any relevant Sub-Contractor co-operates with the Authority including providing it with all information and documentation which it reasonably requires in connection with its rights under this **clause 32 (Quality Assurance)**.

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

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

33.1.1 co-operate with any investigation relating to a breach of safety or security which is carried out by or on behalf of the Authority or the NHS Area Team and with the

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Ofsted and/or Prisons and Probation Ombudsman;

33.1.2 use its reasonable endeavours to make its employees (and other Contractor Related Parties) identified by the Authority available to be interviewed by the Authority or the NHS Area Team or to others acting on their behalf for the purposes of the investigation and/or by Ofsted and the Prisons and Probation Ombudsman; and

33.1.3 subject to any legal restriction on their disclosure, provide all copies of Documents, records or other material of any kind which may reasonably be required by the Authority or the NHS Area Team or others acting on their behalf for the purposes of the investigation and/or by Ofsted and the Prisons and Probation Ombudsman.

33.2 Infectious Diseases

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

34. CONTRACT REVIEW MEETINGS

34.1 The Contractor and the Authority shall hold regular meetings to review the Contractor's performance of the Contract ("**Contract Review Meetings**").

34.2 The Authority may request additional Contract Review Meetings at any time. The Contractor shall comply with any such requests.

34.3 The Contractor shall:

34.3.1 within one (1) Month before the Services Commencement Date, agree with the Authority, and adhere to, a schedule of Contract Review Meetings;

34.3.2 agree with the Authority at or before the first Contract Review Meeting a terms of reference for the Contract Review Meetings;

34.3.3 ensure that the Director or the Director's senior representative attends the Contract Review Meetings;

34.3.4 at least five (5) Business Days prior to any Contract Review Meeting provide a report by the Director and any other information requested by the Authority in respect of that Contract Review Meeting; and

34.3.5 complete any actions which are agreed at the Contract Review Meeting in a timely manner.

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- 34.4 The status of any current Authority Changes or Contractor Changes shall be discussed at each Contract Review Meeting.
- 34.5 The Contractor's Director of the STC shall hold monthly meetings with the Monitor.

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

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

- 35.1.1 comply with any and all Legislation (including any codes of practice prepared and issued from time to time by the Commission for Equality and Human Rights or any other Relevant Authority) relating to discrimination (whether in relation to race, gender, age, disability, religious belief, sexual orientation, marital or civil partnership status, pregnancy, maternity or otherwise) and, in particular, monitor and promote the principle of equal treatment at all times;
- 35.1.2 co-operate fully with the Authority to exchange experiences and good practice; and
- 35.1.3 comply with Authority Policies and the Authority's standards on all equalities issues.

35.2 Promotion and Engagement

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

35.3 Monitoring

The Contractor shall:

- 35.3.1 monitor the representation among the Contractor's Staff of:
 - 35.3.1.1 persons of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics (or any successor of it));
 - 35.3.1.2 persons with disabilities; and
 - 35.3.1.3 the balance of gender,
- having regard to the Authority's procedures for monitoring representation among its own employees which are notified from time to time by the Authority to the

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Contractor;

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

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

35.3.2.2 the use of employment agencies and careers offices;

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

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

35.3.2.5 the monitoring and collection of information on staff in relation to all equalities issues using the race, religion and nationality categories employed by the Office of National Statistics, the monitoring of employment functions in accordance with the Equality Duties, and the supply of such information to the Authority on an annual basis;

35.3.2.6 the monitoring, collection and analysis of information relating to the equality needs of Young People in accordance with the Authority's requirements, and the supply of such information to the Authority on a monthly basis. The Authority shall at its sole discretion be entitled to make such information available to the public;

having regard to the Authority's procedures for monitoring the equality needs of Young People as notified from time to time by the Authority to the Contractor.

35.4 Equality Duties

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

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set out in **clause 35.1 (Compliance)** (the “**Equality Duties**”) and shall not (and shall procure that its Sub-Contractors shall not) by its or their acts or omissions cause, contribute to or otherwise give rise to a breach by the Authority of the Equality Duties in relation to the Contract.

35.5 Provision of Information and Assistance

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

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

35.6 Sub-Contractors

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

35.7 Not used**35.8 Equality and Diversity Reports**

- 35.8.1 The Contractor shall provide a report at least five (5) Business Days in advance of each Contract Review Meeting which shall include:
 - 35.8.1.1 the racial make-up, proportion of persons with disabilities and the gender breakdown of the Contractor’s Staff;
 - 35.8.1.2 details of any complaints and/or investigations in relation to equality and diversity and details of any action taken;
 - 35.8.1.3 any allegations of discrimination and/or harassment relating to race, gender, age, disability, religious belief, sexual orientation or otherwise;

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- 35.8.1.4 details of training provided by the Contractor to the Contractor's Staff in relation to equality and diversity;
 - 35.8.1.5 details of recruitment during the period covered by the report;
 - 35.8.1.6 details and copies of any equal opportunity impact assessments carried out by the Contractor. The Authority shall be entitled at its sole discretion to publish and make such assessments available to the public; and
 - 35.8.1.7 details of any claims, the outcome of any claims and any recommendations made by an employment tribunal or other.
 - 35.8.2 The Contractor shall twelve (12) Months after the Commencement Date of this Contract and on each twelve (12) Month anniversary of such date, submit a report to the Authority demonstrating its compliance with **clauses 35.1 (Compliance) to 35.6 (Sub-Contractors)** (inclusive) and its proposals in respect of equality and diversity for the following twelve (12) Months.
 - 35.8.3 The Contractor shall provide the Authority with Equality Impact Assessments as and when they are completed. The Authority shall be entitled at its sole discretion to make such assessments available to the public.
 - 35.9 **Non-compliance and Investigations**
 - 35.9.1 If, in the reasonable opinion of the Authority, the Contractor fails to comply with its obligations in **clauses 35.1 (Compliance) to 35.6 (Sub-Contractors)** (inclusive), the Contractor shall co-operate fully with the Authority to remedy such non-compliance, provided that the Authority reserves the right to report any non-compliance to any Relevant Authority.
 - 35.9.2 Where any investigation is undertaken by a Relevant Authority and/or proceedings are instituted in accordance with any matter relating to the Contractor's obligations set out in this **clause 35 (Equality and Diversity)**, the Contractor shall (and shall ensure that its Sub-Contractors shall):
 - 35.9.2.1 provide any information requested in the timescale allotted;
 - 35.9.2.2 attend and permit members of the Contractor's Staff to attend any meetings as required;
 - 35.9.2.3 allow itself and any member of the Contractor's Staff to appear as witnesses in any ensuing proceedings; and
 - 35.9.2.4 co-operate fully and promptly in every way required by the person
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or body conducting such investigation during the course of that investigation and/or proceedings.

35.9.3 If any Relevant Authority makes a finding of any unlawful discrimination (whether in relation to race, gender, age, disability, religious belief, sexual orientation or otherwise) against the Contractor or any of its Sub-Contractors the Contractor shall:

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

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

36. **SUSTAINABILITY REPORTING REQUIREMENTS**

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

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

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

37.2 The Contractor shall be responsible for escorting Young People outside of the STC for certain purposes including health-related visits and resettlement planning, in accordance with **Part 1 of Schedule 1 (Authority's Requirements (Custodial Service Specification))**.

38. VISITORS

Notwithstanding any other provision of this Contract, the Contractor shall, during the Custodial Service Period, be responsible for the safety and protection of all visitors to the STC, and for the maintenance of security in the STC when visitors are given access to the STC, for whatever purpose.

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PART VIII - STAFF AND PERSONNEL**39. STAFFING****39.1 General Provisions**

The Contractor shall comply with the requirements of **Part 1 of Schedule 1 (Authority's Requirements (Custodial Service Specification))**, including in particular chapter 11 and **Appendix 2** on staffing and personnel requirements.

39.2 Recruitment and Training

The Contractor shall:

- 39.2.1 be responsible for the recruitment and provision of the Contractor's Staff;
- 39.2.2 ensure that all members of the Contractor's Staff receive proper training and supervision in their functions and duties to ensure the proper performance of the Custodial Service, such training to be subject to the Authority's Representative's written approval (such approval not to be unreasonably delayed).

39.3 Uniforms

The Contractor shall:

- 39.3.1 submit for the Authority's Representative's written approval any and all uniforms to be worn by the Contractor's Staff (including the Custody Officers) at least four (4) Months prior to the Services Commencement Date;
- 39.3.2 not take such uniforms into use and/or implement its required standards of dress for their Contractor's Staff without the Authority's Representative's written approval; and
- 39.3.3 not change the uniforms or standards of dress without the Authority's Representative's written approval.

39.4 Obligation of Confidentiality

The Contractor shall:

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

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- 39.4.2.1 the Sub-Contractors will undertake to the Authority in the same terms as the provisions of this **clause 39.4 (Obligation of Confidentiality)**; and
- 39.4.2.2 the Sub-Contractors shall ensure that all its Sub-Contractors undertake in the same terms as the provisions of this **clause 39.4 (Obligation of Confidentiality)**; and
- 39.4.3 at the Authority's request, provide the Authority with the benefit of a confidentiality undertaking from any Sub-Contractor, the form of such undertaking to be provided by the Authority.
- 39.5 **Section 10**
- The Contractor shall ensure the inclusion in the contract of employment of all members of the Contractor's Staff a condition requiring the Contractor's Staff to co-operate with any Governor who may be appointed to the STC.
- 39.6 **Sufficient Contractor's Staff**
- 39.6.1 The Contractor shall at all times:
- 39.6.1.1 maintain a sufficient number of Contractor's Staff (being not less than the Minimum Staffing Level) with the requisite level of skill and experience engaged in the provision of the Custodial Service to ensure that the STC is a safe, secure and decent environment and that all of the Authority's Requirements are met; and
- 39.6.1.2 ensure that there are sufficient Contractor's Staff to cover for periods of holiday, sickness, other absences and anticipate and actual peaks in demand for the Custodial Service or any part of it.
- 39.6.2 In respect of resourcing:
- 39.6.2.1 the overriding principle shall be that the resourcing levels provided by the Contractor as set out in the Annual Resourcing Plan shall be sufficient to ensure that the STC is a safe, secure and decent environment and enable the Contractor to meet the Authority's Requirements, and the Contractor may not propose changes to such resourcing which would conflict with or adversely affect that principle;
- 39.6.2.2 subject to **clause 39.6.1.1 (Sufficient Contractor's Staff)**, and Annual Resourcing Plan may include such flexibility or resource provision as may be reasonably necessary for the day-to-day

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running of the STC;

39.6.2.3 the Contractor shall give the Authority prior written notification of any significant changes it proposes to make to the resourcing levels set out in the Annual Resourcing Plan for the then-current Contract Year, together with its reasons for such proposed changes provided that where changes to resourcing levels are necessary to comply with **clause 39.6.2.1 (Sufficient Contractor's Staff)**, the Contractor may make such changes without prior notification;

39.6.2.4 if the proposed resourcing changes are not acceptable to the Authority, the Authority's Representative shall so notify the Contractor within twenty (20) Business Days after receipt of the Contractor's notification pursuant to **clause 39.6.2.1 (Sufficient Contractor's Staff)**, in which case the Contractor shall either:

(a) withdraw its proposed changes; or

(b) propose revised changes within ten (10) Business Days;

39.6.2.5 if the revised resourcing changes proposed by the Contractor pursuant to **clause 39.6.2.4(b) (Sufficient Contractor's Staff)**, are not acceptable to the Authority, the Authority's Representative shall so notify the Contractor; and

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

39.6.3 If the Authority considers that the Contractor is not complying with the requirements of **clauses 39.6.1 (Sufficient Contractor's Staff)** or **39.6.2.1 (Sufficient Contractor's Staff)**;

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

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

39.6.4 The Contractor acknowledges that the inclusion of a Standard Staffing Level for

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the purposes of **Schedule 6 (Performance Management and Management Information Reporting)** shall be without prejudice to its obligations under this Contract to provide sufficient resourcing at all times.

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

39.7 Responsibility for Staff Costs

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

39.8 Offers of Employment

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

39.9 Apprenticeships and Skills

- 39.9.1 The Contractor shall use reasonable endeavours to procure the employment of apprentices, and report to the Authority the numbers of apprentices employed and wider skills training provided, during the delivery of this Contract.
- 39.9.2 The Contractor shall procure the provision of any appropriate further skills training opportunities for employees delivering the Contract.
- 39.9.3 The provisions of **clauses 39.9.1 to 39.9.2 (Apprenticeships and Skills)** above shall not apply in respect of Custody Officers.

39.10 Monitoring and Reporting

The Contractor shall monitor, and report to the Authority when required, the level of training and development undertaken by the Contractor's Staff including the total number of Days spent on training and development per Year and the average number of Days spent on training and development per member of staff per Year.

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

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

- 40.1.1 ensure that all persons carrying out Custodial Duties in the STC shall be subject to and shall have obtained certification as Custody Officers by the Authority or the YJB as required by the 1994 Act; and
- 40.1.2 in order to obtain such certification by the Authority or the YJB submit to the Authority and/or the YJB:
 - 40.1.2.1 the name of any proposed Custody Officer;
 - 40.1.2.2 the results of the applicable check made with the Disclosure and Barring Service (or other relevant body) in respect of each person who it is proposed will be employed as a Custody Officer at the STC; and
 - 40.1.2.3 such other information as the Authority or the YJB may require, to assist in the Authority's decision as to his or her certification or the suspension or revocation of such certification once granted.

40.2 Certification of Previous Contractor Transferring Employees

Notwithstanding **clause 40.1 (Certification)**, the Authority shall ensure that Previous Contractor Transferring Employees transferring to the Contractor or a Sub-Contractor on the Relevant Vesting Day pursuant to **clause 42 (TUPE and Employees)** and **Schedule 17 (TUPE, Employees and Pensions)** who immediately prior to transfer are Custody Officers shall be certified as Custody Officers as required by the 1994 Act on the Services Commencement Date.

40.3 Suspended or Revoked Certificates

- 40.3.1 The Contractor shall ensure that no person certified as a Custody Officer may be employed in that capacity if his or her certification has been revoked or during any period when his or her certificate is suspended.
- 40.3.2 The Contractor shall notify the Authority's Representative immediately of any behaviour of any Custody Officer which would cast doubt on his or her fitness for certification as a Custody Officer, including if any member of the Contractor's Staff receives a police caution, a Conviction or an ASBO.

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40.3.3 The Contractor shall ensure that Custody Officers shall display (or have available for display) their identity cards at all times whilst on duty.

41. CONTRACTOR'S KEY STAFF

41.1 The Contractor shall appoint the persons named in **Schedule 21 (Contractor's Key Staff)** as the individuals who shall be responsible for the role allocated to such Contractor's Key Staff. Such persons shall be appointed on and from the Services Commencement Date unless specified otherwise in such Schedule.

41.2 The Contractor shall not (or shall procure that the relevant Sub-Contractor shall not) remove or replace any of the Contractor's Key Staff unless:

41.2.1 requested to do so by the Authority;

41.2.2 the person is on long-term sick leave;

41.2.3 the person resigns from their employment with the Contractor or Sub-Contractor (as the case may be); or

41.2.4 the Contractor obtains the prior written consent of the Authority.

41.3 The Contractor shall inform the Authority of the identity and background of any replacements for any of the Contractor's Key Staff as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may withhold its consent to any such proposed appointment if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

41.4 Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Contractor's Key Staff whom he or she has replaced.

42. TUPE AND EMPLOYEES

The Parties shall comply with the provisions of **Schedule 17 (TUPE, Employees and Pensions)**.

43. THE MONITOR**43.1 Section 8**

Without prejudice to any other provision of this Contract, the Contractor will note and comply with section 8 of the 1994 Act.

43.2 Unrestricted Access

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The Monitor, or any person performing similar or like obligations on behalf of the Authority or the NHS Area Team, shall be allowed unrestricted access to the STC at any hour of the Day. In accordance with section 8 of the 1994 Act the Contractor shall do all that it reasonably can to facilitate the exercise by the Monitor of its functions, whether such functions are conferred by statute or by the Authority.

43.3 Facilities

The Contractor shall provide the facilities for the Monitor or other representatives or parties specified by the Authority as specified in **Appendix 1 to Part 1 of Schedule 1 (Authority's Requirements (Custodial Service Specification))**.

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

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

44.1.2 The Monthly Payment (as defined in **Schedule 5 (Payment Mechanism)**) for each Month in each Contract Year shall be calculated in accordance with **Schedule 5 (Payment Mechanism)** and paid in accordance with **clauses 44.2 (Report and Invoice) to 44.8 (Determination of Dispute)** inclusive.

44.2 Report and Invoice

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

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

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

44.3 Payment

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

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

44.4 Interest on Late Payment

Except where otherwise specifically provided, where any payment or sum of money due

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

44.5 Disputed Amounts

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

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

44.5.3 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts in accordance with **clause 44.3 (Payment)**.

44.6 Response to Authority Notice

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

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

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

44.7 Dispute

If the Contractor responds (pursuant to **clause 44.6 (Response to Authority Notice)**) that it

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

44.8 Determination of Dispute

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

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

the Authority shall pay such amount to the Contractor or the Contractor shall repay such amount to the Authority within thirty (30) Days of the determination with interest in each case on that amount at the Prescribed Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made (in the case of failure to pay the Authority) or from the date on which over-payment was made (in the case of excessive claims by the Contractor) until all relevant monies have been paid in full and whether before or after judgment.

45. TAXATION**45.1 Value Added Tax**

- 45.1.1 All amounts due under this Contract are exclusive of VAT.
- 45.1.2 If any supply made or referred to in this Contract is or becomes chargeable to VAT then the person receiving the supply (the **"Recipient"**) shall in addition pay the person making the supply (the **"Supplier"**) the amount of that VAT against receipt by the Recipient from the Supplier of a proper VAT invoice in respect of that supply.
- 45.1.3 Where under this Contract any amount is calculated by reference to any sum which has or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group), whether by set off or repayment.
- 45.1.4 The Contractor shall provide the Authority with any information reasonably requested by the Authority in relation to the amount of VAT chargeable in accordance with this Contract and payable by the Authority to the Contractor.

46. SET OFF

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46.1 Rights of Set Off

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

46.2 Set Off and Disputed Amounts

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

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

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

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

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

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

48.1.3 Subject to the provisions of **Schedule 28 (Exit Management)**, this Contract will terminate on the day falling thirty (30) Business Days after the date the Authority receives the Contractor Termination Notice, unless the Authority rectifies the Authority Default within twenty (20) Business Days after receipt of the Contractor Termination Notice.

48.2 Compensation on Termination for Authority Default

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

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

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

49.1.1 If a particular breach (other than any breach for which Performance Points could have accrued and/or for which a Service Credit Deduction could have been

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

- 49.1.1.1 specifying that it is a formal warning notice;
- 49.1.1.2 giving reasonable details of the breach; and
- 49.1.1.3 stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Contract.

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

- 49.1.2.1 specifying that it is a Final Warning Notice;
- 49.1.2.2 stating that the breach specified has been the subject of a warning notice served within the six (6) Month period prior to the date of service of the Final Warning Notice; and
- 49.1.2.3 stating that if the breach continues for more than fourteen (14) Days or recurs in two (2) or more Months within the six (6) Month period after the date of service of the Final Warning Notice, this Contract may be terminated.

49.1.3 A warning notice may be served notwithstanding that the Authority may be entitled to exercise its rights under **Schedule 6 (Performance Management and Management Information Reporting)** to issue an Improvement Notice or Rectification Notice (or may have exercised those rights) in respect of the breach but may not be served in respect of any incident of breach which has previously been counted in the making of a separate warning notice.

49.2 Termination

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

49.2.2 The Termination Notice must specify:

- 49.2.2.1 the type and nature of Contractor Default that has occurred, giving reasonable details; and
- 49.2.2.2 that in the case of any Contractor Default falling within paragraphs

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(a), (n), (o) and (t) of the definition of Contractor Default this Contract will terminate on the Day falling forty (40) Business Days after the date the Contractor receives the Termination Notice, unless:

49.2.2.2.1 in the case of a breach under paragraph (a) of the definition of Contractor Default the Contractor puts forward an acceptable remediation programme within twenty (20) Business Days after the date the Contractor receives the Termination Notice (and implements such programme in accordance with its terms and remedies the Contractor Default in accordance with the programme); or

49.2.2.2.2 in the case of any Contractor Default falling within paragraphs (a), (n) and (t) of the definition of Contractor Default the Contractor remedies the Contractor Default within forty (40) Business Days after the date the Contractor receives the Termination Notice; or

49.2.2.2.3 in the case of any Contractor Default falling within paragraph (o) of the definition of Contractor Default the Contractor remedies the Contractor Default within twenty (20) Business Days after the date the Contractor receives the Termination Notice; or

49.2.2.3 that in the case of any other Contractor Default (not being paragraphs (a), (n), (o) and (t) of the definition of Contractor Default), this Contract will terminate on the date falling forty (40) Business Days after the date the Contractor receives the Termination Notice (and in such circumstances this Contract shall terminate on such date).

49.2.3 If the Contractor either remedies a Contractor Default, falling within paragraphs (a), (n), (o) and (t), within the time period specified in the Termination Notice, or implements the remediation programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and this Contract will continue.

49.2.4 If:

49.2.4.1 in the case of a Contractor Default within paragraph (a) of the definition of Contractor Default, no acceptable remediation

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programme has been put forward pursuant to **clause 49.2.2.2.1 (Termination)** and the Contractor fails to remedy the Contractor Default within the time period specified in the Termination Notice; or

49.2.4.2 in the case of a Contractor Default falling within paragraphs (n), (o) and (t) of the definition of Contractor Default the Contractor fails to remedy the Contractor Default within the time period specified in the Termination Notice,

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

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

49.2.6 Notwithstanding **clauses 49.2.2, 49.2.4 and 49.2.5 (Termination)**, the Authority may extend the Termination Date in accordance with **Schedule 28 (Exit Management)**.

49.3 Notice of Default Events

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

49.4 Compensation on Termination for Contractor Default

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

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

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

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

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

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

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

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

49.5 Transfer of Contractor Assets on Contractor Default

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

50. TERMINATION ON FORCE MAJEURE

50.1 Termination

50.1.1 No Party shall be entitled to bring a claim for a breach of obligations under this Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that a Force Majeure Event

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occurs and it is prevented from carrying out obligations by that Force Majeure Event.

- 50.1.2 The Authority shall not be entitled to terminate this Contract for a Contractor Default if such Contractor Default arises from a Force Majeure Event (but without prejudice to **clauses 50.1.6 (Termination) or 50.1.8 (Termination)**).
- 50.1.3 Nothing in **clause 50.1 (Termination)** shall affect any entitlement to make Deductions in the period during which the Force Majeure Event is subsisting.
- 50.1.4 On the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.
- 50.1.5 As soon as practicable following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Contract.
- 50.1.6 If no such terms are agreed on or before the date falling eighty (80) Business Days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under this Contract for a period of more than one hundred and twenty (120) Business Days, then, subject to **clause 50.1.7 (Termination)**, either Party may terminate this Contract by giving twenty (20) Business Days' written notice to the other Party.
- 50.1.7 If this Contract is terminated under **clauses 50.1.6 (Termination) or 50.1.8 (Termination)**:
- 50.1.7.1 compensation shall be payable by the Authority in accordance with **clause 50.2 (Compensation on Termination on Force Majeure)**; and
- 50.1.7.2 the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 28 (Exit Management)**.
- 50.1.8 If the Contractor gives notice to the Authority under **clause 50.1.6 (Termination)** that it wishes to terminate this Contract, then the Authority has the option either to accept such notice or to respond in writing on or before the date falling twenty (20) Business Days after the date of its receipt stating that it requires this

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Contract to continue. If the Authority gives the Contractor such notice, then:

- 50.1.8.1 the Authority shall pay to the Contractor the Maximum Contract Price for each Month of each Contract Year from the Day after the date on which this Contract would have terminated under **clause 50.1.6 (Termination)** until the Expiry Date or Termination Date (as the case may be) as if the Custodial Service were being fully provided; and
- 50.1.8.2 this Contract will not terminate until expiry of written notice (of at least twenty (20) Business Days) from the Authority to the Contractor that it wishes this Contract to terminate.
- 50.1.9 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavours to prevent and mitigate the effects of any delay and the Contractor shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 50.1.10 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.
- 50.1.11 Notwithstanding **clause 50.1.6 (Termination on Force Majeure)**, the Authority may extend the Termination Date in accordance with **Schedule 28 (Exit Management)**.
- 50.2 **Compensation on Termination on Force Majeure**
- 50.2.1 On termination of this Contract under **clause 50.1 (Termination on Force Majeure)**, the Authority shall pay to the Contractor the “**Force Majeure Termination Sum**” in accordance with **clauses 53 (Gross Up of Termination Payments)** and **54 (Method of Payment)**. The Force Majeure Termination Sum shall be an amount equivalent to the Contractor Breakage Costs provided that for the purposes of the Force Majeure Termination Sum, no loss of profits shall be compensated.
- 50.2.2 If the amount referred to in **clause 50.2.1 (Compensation on Termination on Force Majeure)** is less than zero (0), then, for the purposes of the calculation in **clause 50.2.1 (Compensation on Termination on Force Majeure)** it shall be deemed to be zero (0).

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51. TERMINATION FOR CORRUPT GIFTS AND FRAUD AND PROHIBITED EQUALITY AND DIVERSITY ACT**51.1 Corrupt Gifts and Fraud**

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

51.2 Termination for Corrupt Gifts and Fraud

51.2.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or Affiliates commits any Prohibited Act, then the Authority shall be entitled to act in accordance with **clauses 51.2.2 (Termination for Corrupt Gifts and Fraud) to 51.2.7 (Termination for Corrupt Gifts and Fraud)**.

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

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

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

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

51.2.6 If the Prohibited Act is committed by any other person not specified in **clauses 51.2.2 (Termination for Corrupt Gifts and Fraud) to 51.2.5 (Termination for Corrupt Gifts and Fraud)**, then the Authority may give notice to the Contractor

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of termination and this Contract will terminate unless within twenty (20) Business Days after receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Custodial Service by another person.

51.2.7 Any Termination Notice under this **clause 51.2 (Termination for Corrupt Gifts and Fraud)** shall specify:

51.2.7.1 the nature of the Prohibited Act;

51.2.7.2 the identity of the party whom the Authority believes has committed the Prohibited Act;

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

51.2.7.4 the Authority's chosen option under **clause 51.6.1 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**.

51.3 Notwithstanding **clause 51.2.2 to 51.2.6 (Termination for Corrupt Gifts and Fraud)**, the Authority may extend the Termination Date in accordance with **Schedule 28 (Exit Management)**.

51.4 **Termination for Prohibited Equality and Diversity Act**

51.4.1 If the Contractor or any Sub-Contractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents commits any Prohibited Equality and Diversity Act, then the Authority shall be entitled to act in accordance with **clauses 51.4.2 (Termination for Prohibited Equality and Diversity Act) to 51.4.6 (Termination for Prohibited Equality and Diversity Act)**.

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

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

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- 51.4.4 If the Prohibited Equality and Diversity Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days after receipt of such notice the Contractor terminates the relevant Sub-Contract and procures the performance of such part of the Custodial Service by another person.
- 51.4.5 If the Prohibited Equality and Diversity Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Authority may give notice to the Contractor of termination and this Contract will terminate, unless within twenty (20) Business Days after receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Custodial Service by another person.
- 51.4.6 If the Prohibited Equality and Diversity Act is committed by any other person not specified in **clauses 51.4.2 (Termination for Prohibited Equality and Diversity Act) to 51.4.5 (Termination for Prohibited Equality and Diversity Act)**, then the Authority may give notice to the Contractor of termination and this Contract will terminate unless within twenty (20) Business Days after receipt of such notice, the Contractor procures the termination of such person's employment and of the appointment of their employer (where not employed by the Contractor or the Sub-Contractors) and (if necessary) procures the performance of such part of the Custodial Service by another person.
- 51.4.7 Any Termination Notice under this **clause 51.4 (Termination for Prohibited Equality and Diversity Act)** shall specify:
- 51.4.7.1 the nature of the Prohibited Equality and Diversity Act;
 - 51.4.7.2 the identity of the party whom the Authority believes has committed the Prohibited Equality and Diversity Act;
 - 51.4.7.3 the date on which this Contract will terminate, in accordance with the applicable provision of this **clause 51.4 (Termination for Prohibited Equality and Diversity Act)**; and
 - 51.4.7.4 the Authority's chosen option under **clause 51.6.1 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**.
- 51.5 Notwithstanding **clause 51.4.2 to 51.4.6 (Termination for Prohibited Equality and Diversity Act)**, the Authority may extend the Termination Date in accordance with **Schedule 28 (Exit Management)**.
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51.6 Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act

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

51.6.2 The amount which would have been paid to the Contractor had a Prohibited Act or Prohibited Equality and Diversity Act not occurred shall, for the purposes of this clause, be calculated as:

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

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

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

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

51.6.3.1 all relevant Capital Works have been carried out and completed at

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the Termination Date; and

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

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

51.7 Interpretation

In this **clause 51 (Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act)**, the expression “not acting independently of” (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting with the authority or knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be).

52. VOLUNTARY TERMINATION BY THE AUTHORITY**52.1 Voluntary Termination by the Authority**

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

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

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

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

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

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- 52.1.3 Subject to the provisions of **Schedule 28 (Exit Management)**, this Contract will terminate on the date specified in the Termination Notice referred to in **clause 52.1.2 (Voluntary Termination by the Authority)**.

52.2 Compensation on Voluntary Termination

- 52.2.1 On termination under **clause 52.1 (Voluntary Termination by the Authority)**, the Authority shall pay the Contractor an amount equal to the amount payable under **clause 48.2.1 (Termination on Authority Default)** in accordance with **clauses 53 (Gross Up of Termination Payments)** and **54 (Method of Payment)**.
- 52.2.2 On termination under this **clause 52 (Voluntary Termination by the Authority)**, the Authority shall have the option to require the Contractor to transfer all of its rights, title and interest in and to the Contractor Assets to the Authority or as directed by the Authority in accordance with **Schedule 28 (Exit Management)**.

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

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

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

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

54.2 Late Payment of Termination Sum

If the Authority:

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

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

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

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

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

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55.2 **Conflict**

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

56. **EXCLUSIVITY OF REMEDY**

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

57. **CONTINUING OBLIGATIONS**

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

57.2 Termination (howsoever arising) or expiry of this Contract shall not affect the continuing rights and obligations of the Contractor and the Authority under **clauses 7 (Nature of Land Interest), 42 (TUPE and Employees), 44 (Payment Provisions), 46 (Set Off), 48.2 (Compensation on Termination for Authority Default), 49.4 (Compensation on Termination for Contractor Default), 50.2 (Compensation on Termination on Force Majeure), 51.5 (Compensation on Termination for Corrupt Gifts and Fraud and Prohibited Equality and Diversity Act), 52.2 (Compensation on Voluntary Termination), 58 (Surveys on Expiry or Termination and Retention Fund), 59 (Transition to Another Contractor), 65 (Information and Confidentiality), 66 (Public Relations and Publicity), 68 (Contractor's Records and Provision of Information), 69 (Data Protection), 70 (Indemnities and Liabilities), 72 (Insurance), 74 (Dispute Resolution), 75 (Intellectual Property Rights), 76.1 (Restrictions on Transfer of this Contract by the Authority), 84 (Notices), 87 (Governing Law and Jurisdiction) and 92 (Capacity) or under Schedule 28 (Exit Management) or under any other provision of this Contract which is expressed to survive termination (howsoever arising) or expiry or which is required to give effect to such termination or expiry or the consequences of such termination or expiry.**

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58. SURVEYS ON EXPIRY OR TERMINATION AND RETENTION FUND

58.1 Final Survey

58.1.1 At any time between the date twenty-four (24) Months prior to the Expiry Date and the date three (3) Months prior to the Expiry Date, or, in the case of early termination, no later than eighteen (18) Months following the Termination Notice (or other notice having the effect of termination), the Authority shall be entitled to carry out or procure the carrying out of a final survey of the STC and, to the extent relevant not included in the STC, the Site, to assess whether it and the Assets have been and are being maintained by the Contractor in accordance with its obligations under **clause 21.7 (Maintenance of Assets and Asset Refresh Plan)** and **clause 25 (Maintenance of the STC)** and **Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification))** (the "Required Condition Standard").

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

58.2 Minimisation of Disruption

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

58.3 Results of Survey

If the final survey shows that the Contractor has not complied with or is not complying with its obligations under **clause 21.7 (Maintenance of Assets and Asset Refresh Plan)** or **clause 25 (Maintenance of the STC)**, the Authority shall:

58.3.1 notify the Contractor of the rectification and/or maintenance work which is required to bring the condition of the STC and, to the extent relevant not included in the STC, the Site, and/or as applicable the relevant Assets to the standard they would have been in if the Contractor had complied or was complying with its obligations under **clause 21.7 (Maintenance of Assets and Asset Refresh**

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Plan) and clause 25 (Maintenance of the STC);

- 58.3.2 specify a reasonable period within which the Contractor must carry out such rectification and/or maintenance work; and
- 58.3.3 recover the cost of the survey from the Contractor by means of a deduction from the next payment or payments of the Contract Price.

58.4 Maintenance Work

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

58.5 Licence in Respect of Outstanding Work

If the Contractor is expressly requested by the Authority to conduct Outstanding Work at the Site following the Termination Date or Expiry Date, then, to the extent that the Lease has terminated or expired, the Authority shall permit the Contractor to enter the Site under licence to enable the Contractor to fulfil its obligations under **clause 58.4 (Maintenance Work)**.

58.6 Retention Fund

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

58.7 Costs

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

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Contractor shall bear the balance of such costs itself.

58.8 Failure to Carry Out Work

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

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

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

58.9 Balance of Fund

If:

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

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

58.9.3 no Termination Notice is outstanding,

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

59. TRANSITION TO ANOTHER CONTRACTOR

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

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

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59.3 Duty to Co-operate

Without prejudice to its obligations under **Schedule 28 (Exit Management)**, during the twenty-four (24) Months immediately preceding the Expiry Date and during the period of any Termination Notice, and in either case for the period subsequently as specified in **Schedule 28 (Exit Management)**, the Contractor shall co-operate fully with the transfer of responsibility for the Custodial Service (or any part of the Custodial Service) to the Authority and/or any New Contractor of such services the same or similar to the Custodial Service, and for the purposes of this **clause 59 (Transition to Another Contractor)** the meaning of the term “co-operate” shall include:

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

59.4 Transfer of Responsibility

- 59.4.1 Upon the termination or expiry of the Contract, without prejudice to the other provisions of this Contract, the Contractor shall not at any time knowingly or recklessly do or omit to do anything which may adversely affect:
 - 59.4.1.1 an orderly and prompt transfer of the Services to a New Contractor; and/or
 - 59.4.1.2 an orderly cessation of the Services.

59.5 Handback

- 59.5.1 Upon the termination or expiry of the Contract, the Contractor shall ensure that:
 - 59.5.1.1 all areas which the Contractor has used for storage or operation

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have been left clean and tidy and all rubbish has been removed from the Site;

59.5.1.2 all spares and parts have been stored in good order and protected from any damage of contamination and damp and a comprehensive schedule of such spares and parts has been handed to the Authority, or the Authority's agent; and

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

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

If and to the extent that a Relief Event:

60.1.1 is the direct cause of a failure by the Contractor to achieve the Services Commencement Date; and/or

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

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

60.2 Relief

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

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

60.2.2 within five (5) Business Days after receipt by the Authority of the notice referred to in **clause 60.2.1 (Relief)**, give full details of the relief claimed; and

60.2.3 demonstrate to the reasonable satisfaction of the Authority that:

60.2.3.1 the Contractor and its Sub-Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;

60.2.3.2 the Relief Event directly caused:

60.2.3.2.1 the failure to achieve the Services Commencement Date; and/or

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60.2.3.2.2 the need for relief from other obligations under this Contract;

60.2.3.3 the time lost and/or relief from the obligations under this Contract claimed could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with Good Industry Practice, without incurring material expenditure; and

60.2.3.4 the Contractor is using reasonable endeavours to perform its obligations under this Contract.

60.3 Consequences

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

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

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

60.4 Deductions

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

60.5 Information

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

60.6 Notice

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

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60.7 Disputes

If the Parties cannot agree the extent of the relief required, or the Authority disagrees that a Relief Event has occurred or that the Contractor is entitled to any extension to the Services Commencement Date and/or relief from other obligations under this Contract, the Parties shall resolve the matter in accordance with the Dispute Resolution Procedure.

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PART XIII – VARIATIONS

61. CHANGE TO CUSTODIAL SERVICE

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

62. CHANGES IN LAW

62.1 Occurrence

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

62.2 Qualifying Change in Law

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

- 62.2.1 any necessary change to the Custodial Service;
- 62.2.2 whether any changes are required to the terms of this Contract to deal with the Qualifying Change in Law;
- 62.2.3 whether relief from compliance with obligations is required, including the obligation of the Contractor to:
 - 62.2.3.1 achieve the Services Commencement Date; and/or
 - 62.2.3.2 meet the Authority's Requirements and/or the Contractor's Proposals and/or the Initial Service Delivery Documents or the Service Delivery Documents (as relevant) and/or the Operating Procedures during the implementation of any relevant Qualifying Change in Law;
- 62.2.4 any loss of or increase in revenue that will result from the relevant Qualifying Change in Law;
- 62.2.5 any Change in Costs that directly results from the Qualifying Change in Law; and
- 62.2.6 any Capital Expenditure that is required or no longer required as a result of a Qualifying Change in Law;

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

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and **62.5 (Costs of Implementation)**.

62.3 Parties to Discuss

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

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

62.4 Not used

62.5 Costs of Implementation

- 62.5.1 The Authority shall pay to the Contractor such compensation in respect of the costs of implementation pursuant to **clause 62.2 (Qualifying Change in Law)** as is agreed is payable to it pursuant to **clause 62.3 (Parties to Discuss)**.
- 62.5.2 Any compensation payable under this **clause 62 (Changes in Law)** by means of an adjustment to or reduction in the Contract Price shall be determined and made in accordance with **clause 63 (Financial Adjustments)**.

62.6 Not used.

62.7 Not used.

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62.8 **Payment of Irrecoverable VAT**

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

62.9 **Other Change in Law**

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

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

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

62.9.3.1 the Contractor may give notice to the Authority that it objects to such Change Notice only on the grounds that the implementation of the Change would not implement the relevant General Change in Law;

62.9.3.2 the Authority shall issue a Change Notice in respect of the Change in accordance with the relevant provisions of **Schedule 8 (Change Protocol)**;

62.9.3.3 the provisions of **clause 8.3 (Consents)** shall apply;

62.9.3.4 the Contractor shall not be entitled to payment or other compensation or relief from performance of its obligations under this Contract in respect of any such General Change in Law or

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associated Change (or the consequences of either of them).

63. FINANCIAL ADJUSTMENTS**63.1 Updating the Base Case**

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

63.1.1 any Change in Costs;

63.1.2 reasonable economic assumptions prevailing at the time; and

63.1.3 changes in the prospective technical performance of the Contract arising as a result of the Relevant Event,

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

63.2 Application to the Base Case

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

63.3 No Better and no Worse

Any reference in this Contract to “no better and no worse” or to leaving the Contractor in a

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“no better and no worse position” shall be construed by reference to the Contractor’s:

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

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

so as to ensure that:

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

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

63.4 Replacement of Base Case

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

63.5 Amendments to Logic and/or Formulae

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

63.6 Copies of the Revised Base Case

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

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PART XIV - STEP-IN AND SECTION 10

64. AUTHORITY STEP-IN

64.1 Right to Step-In

Without prejudice to **clause 64.6 (Intervention under Section 10 of The Criminal Justice and Public Order Act 1994)**, if the Authority reasonably believes that it needs to take action in connection with the Custodial Service:

- 64.1.1 because a serious risk exists to the health or safety of persons or property or to the environment; and/or
- 64.1.2 to discharge a statutory duty;
- 64.1.3 following a Contractor Default, and/or
- 64.1.4 pursuant to **clause 39.6.3.2 (Sufficient Contractor's Staff)**,

then the Authority shall be entitled to take action in accordance with **clauses 64.2 (Notice to the Contractor)** to **64.5 (Step-In on Contractor Breach)**.

64.2 Notice to the Contractor

If **clause 64.1 (Right to Step-In)** applies and the Authority wishes to take action, the Authority shall notify the Contractor in writing of the following:

- 64.2.1 the action it wishes to take;
- 64.2.2 the reason for such action;
- 64.2.3 the date it wishes to commence such action;
- 64.2.4 the time period which it believes will be necessary for such action; and
- 64.2.5 to the extent practicable, the effect on the Contractor and its obligation to provide the Custodial Service during the period such action is being taken.

64.3 Action by Authority

- 64.3.1 Following service of such notice, the Authority shall (acting by itself or with or through a third party) take such action as notified under **clause 64.2 (Notice to the Contractor)** and any consequential additional action as it reasonably believes is necessary which may include requiring another Custodial Service Provider to carry out any services or other obligations under this Contract in place of the Contractor (together, the **"Required Action"**) and the Contractor

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shall give all reasonable assistance to the Authority and any such third party while it is taking the Required Action. The Authority shall provide the Contractor with notice of completion of the Required Action and shall use reasonable endeavours to provide such advance notice as is reasonably practicable of its anticipated completion.

- 64.3.2 Where the Required Action has been taken otherwise than as a result of a breach by the Contractor, the Authority shall undertake the Required Action in accordance with Good Industry Practice and shall indemnify and keep indemnified in full the Contractor against all Direct Losses where it fails to do so.

64.4 Step-In without Contractor Breach

If the Contractor is not in breach of its obligations under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Custodial Service:

- 64.4.1 the Contractor shall be relieved from its obligations to provide such part of the Custodial Service; and
- 64.4.2 in respect of the period in which the Authority is taking the Required Action and provided that the Contractor provides the Authority with reasonable assistance (such assistance to be at the expense of the Authority to the extent that incremental costs are incurred), the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Custodial Service affected by the Required Action in full over that period.

64.5 Step-In on Contractor Breach

If the Required Action is taken as a result of a breach of the obligations of the Contractor under this Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Custodial Service:

- 64.5.1 the Contractor shall be relieved of its obligations to provide such part of the Custodial Service; and
- 64.5.2 in respect of the period in which the Authority is taking the Required Action, the Contract Price due from the Authority to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Custodial Service affected by the Required Action in full over that period, less an amount equal to all the Authority's costs of operation in taking the Required Action.

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64.6 Intervention under Section 10 of the 1994 Act

- 64.6.1 Without prejudice to any other provision of this Contract, the Contractor shall note and comply with any intervention by the Secretary of State for Justice pursuant to the provisions of Section 10.
- 64.6.2 If the Secretary of State for Justice shall appoint a Governor of the STC by virtue of his or her powers under Section 10, then:
- 64.6.2.1 this Contract shall continue in force;
- 64.6.2.2 all provisions of this Contract shall, without prejudice to the Authority's rights under **Part X (Expiry and Termination)** of this Contract, continue to operate except that the functions that would otherwise be exercisable by the Director and the Monitor shall be exercised by the Governor; and
- 64.6.2.3 for the period during which a Governor is appointed the Contract Price due from the Authority to the Contractor shall continue to be paid in accordance with **clause 44 (Payment Provisions)**, less an amount equal to all the Authority's costs of operation in respect of any action taken under this **clause 64.6.2 (Intervention under Section 10 of the 1994 Act)** (which amount may be claimed by the Authority at any time during the remainder of the Custodial Service Period).

64.7 Step-Out

- 64.7.1 The Authority may, at any time during the period of the Required Action, provide notice (a "**Step-Out Notice**") to the Contractor stating that the Authority wishes to cease the Required Action with effect from such date as is reasonable in the circumstances (a "**Step-Out Date**").
- 64.7.2 Where the Authority exercised its rights to take the Required Action as a result of a breach of the obligations of the Contractor under this Contract then the Authority shall issue the Contractor with a Step-Out Notice as soon as is reasonably practicable following the Contractor having demonstrated to the Authority, to the Authority's reasonable satisfaction, that:
- 64.7.2.1 the Contractor is capable of resuming the provision of the Custodial Service; and
- 64.7.2.2 the circumstances which gave rise to the Required Action are not continuing and are unlikely to recur.

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64.7.3 On the Step-Out Date:

- 64.7.3.1 the Authority shall be released from all of its obligations and liabilities in relation to the Required Action arising prior to the cessation of the Required Action; and
- 64.7.3.2 the Contractor shall resume the provision of all or any relevant part of the Custodial Service which was the subject of the Required Action.

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PART XV - INFORMATION AND PUBLICITY**65. INFORMATION AND CONFIDENTIALITY****65.1 Section 14 of the 1994 Act**

Without prejudice to any other provisions of this Contract, the Contractor shall note and shall ensure that all of its employees and its Sub-Contractors' employees comply with the provisions of section 14 of the 1994 Act (as amended) on the wrongful disclosure of information acquired by persons who are or have been employed at a STC (whether as a Custody Officer or otherwise).

65.2 Notice of Statutory Provisions

The Contractor shall take all reasonable steps, by instruction, display of notices or other appropriate means, to ensure that all persons including all Contractor's Staff or Sub-Contractors employed on any work in connection with this Contract have notice that these statutory provisions apply to them and shall continue to apply to them after the Expiry Date or Termination Date and after termination of their employment.

65.3 Confidentiality

65.3.1 The Parties agree that the provisions of this Contract and each Project Document shall, subject to **clause 65.3.2 (Confidentiality)**, not be treated as Confidential Information and may be disclosed without restriction provided that prior to such disclosure the Authority may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:

65.3.1.1 national security;

65.3.1.2 the information is Personal Data;

65.3.1.3 the information is protected by intellectual property law;

65.3.1.4 it is not in the public interest to disclose the information (pursuant to FOIA);

65.3.1.5 the information is third party confidential information;

65.3.1.6 IT security; or

65.3.1.7 prevention of fraud.

65.3.2 **Clause 65.3.1 (Confidentiality)** shall not apply to the provisions of this Contract or a Project Document designated as Commercially Sensitive Information and

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listed in **Part 1 of Schedule 14 (Commercially Sensitive Information)** which shall, subject to **clause 65.4 (Permitted Disclosure)**, be kept confidential for the periods specified in that Part.

- 65.3.3 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Contract and the Project Documents and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

65.4 Permitted Disclosure

Clauses 65.3.2 (Confidentiality) and 65.3.3 (Confidentiality) shall not apply to:

- 65.4.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Contract for the performance of those obligations;
- 65.4.2 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this **clause 65 (Information and Confidentiality)**;
- 65.4.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedure or in connection with a dispute between the Contractor and any of its Sub-Contractors;
- 65.4.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 65.4.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 65.4.6 any provision of information to the Parties' own professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor in connection with the carrying out of its obligations under this Contract, or may wish to acquire shares in the Contractor in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

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- 65.4.7 any disclosure by the Authority of information relating to the operation and maintenance of the STC and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed New Contractor and its advisers, should the Authority decide to retender this Contract;
- 65.4.8 any application for registration or recording of the Consents and property registration required;
- 65.4.9 any disclosure of information by the Authority to any other department, office or agency of the Government or their respective advisers or to any person engaged in providing services to the Authority for any purpose related to or ancillary to this Contract; or
- 65.4.10 any disclosure for the purpose of:
- 65.4.10.1 the carrying out of the Authority's or the YJB's public functions (as the Authority or YJB, as the case may be, reasonably deems necessary or appropriate);
 - 65.4.10.2 the examination and certification of the Authority's or the Contractor's accounts;
 - 65.4.10.3 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 65.4.10.4 complying with a proper request from either Party's insurance advisers or insurers on placing or renewing any insurance policies; or
 - 65.4.10.5 (without prejudice to the generality of **clause 65.4.4 (Permitted Disclosure)**) compliance with the FOIA and/or the Environmental Information Regulations,

provided that neither **clauses 65.4.10 (Permitted Disclosure)** nor **65.4.4 (Permitted Disclosure)** shall permit disclosure of Confidential Information otherwise prohibited by **clause 65.3.3 (Confidentiality)** where that information is exempt from disclosure under section 41 of the FOIA.

65.5 Obligations Preserved

Where disclosure is permitted under **clause 65.4 (Permitted Disclosure)**, other than **clauses 65.4.2 (Permitted Disclosure)**, **65.4.4 (Permitted Disclosure)**, **65.4.5 (Permitted Disclosure)**, **65.4.8 (Permitted Disclosure)** and **65.4.10 (Permitted Disclosure)** the Party

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providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.

65.6 Audit

For the purposes of the National Audit Act 1983 the Comptroller and Auditor General may examine such Documents as he or she may reasonably require which are owned, held or otherwise within the control of the Contractor and any Sub-Contractor and may require the Contractor and any Sub-Contractor to produce such oral or written explanations as he or she considers necessary. It is declared that the carrying out of an examination under section 6(3)(d) of the National Audit Act 1983 in relation to the Contractor is not a function exercisable under this Contract.

65.7 Exploitation of Information

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

65.8 Information about Young People

Where the Contractor, in carrying out its obligations under this Contract, is provided with information relating to Young People, the Contractor shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Contractor has sought the prior written consent of that Young Person and has obtained the Authority's approval.

65.9 Expiry and Termination

On or before the Expiry Date or the Termination Date, the Contractor shall ensure that all Documents (including computer records) in its possession, custody or control, which contain information relating to Young People who are or will on the Expiry Date or the Termination Date be accommodated within the STC, including any Documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Authority or as the Authority so directs.

65.10 Disclosure by the National Audit Office

The Parties acknowledge that the National Audit Office has the right to publish details of this Contract (including Commercially Sensitive Information) in its relevant reports to Parliament.

65.11 Official Secrets Acts

The provisions of this **clause 65 (Information and Confidentiality)** are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

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65.12 Freedom of Information

- 65.12.1 The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 65.12.2 The Contractor shall and shall procure that its Sub-Contractors shall:
- 65.12.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information;
 - 65.12.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Business Days (or such other period as the Authority may specify) of the Authority's request; and
 - 65.12.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 65.12.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 65.12.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 65.12.5 The Contractor acknowledges that (notwithstanding the provisions of this **clause 65.12 (Freedom of Information)**) the Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 65.12.5.1 in certain circumstances without consulting the Contractor; or
 - 65.12.5.2 following consultation with the Contractor and having taken their views into account;
- provided always that where **clause 65.12.5.1 (Freedom of Information)** applies the Authority shall take reasonable steps, where appropriate, to give the

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Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

65.12.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

65.12.7 The Contractor acknowledges that the Commercially Sensitive Information listed in **Schedule 14 (Commercially Sensitive Information)** is of indicative value only and that the Authority may be obliged to disclose it in accordance with **clause 65.12.5 (Freedom of Information)**.

66. PUBLIC RELATIONS AND PUBLICITY**66.1 Restriction**

The Contractor shall not by itself, its employees or agents and shall procure that its Sub-Contractors shall not communicate with representatives of the press, television, radio, social media including the internet or other communications media on any matter concerning this Contract without the prior written approval of the Authority.

66.2 Photographs

Without prejudice to any other obligation of the Contractor under this Contract, no facilities to photograph or film in or upon any property used in relation to the Contract shall be given or permitted by the Contractor without the prior written approval of the Authority.

67. ADVERTISEMENTS

The Contractor shall not exhibit or attach to any part of the Site any notice or advertisement without the Authority's approval, except where otherwise required to comply with Legislation.

68. CONTRACTOR'S RECORDS AND PROVISION OF INFORMATION**68.1 Records and Open Book Accounting**

The Contractor shall (and shall procure that each Sub-Contractor shall) at all times:

68.1.1 maintain a full record of particulars of the costs of providing the Custodial Service (which shall include cost detail broken down into the actual cost of providing each element of the Custodial Service), including those relating to the maintenance and operation of the STC;

68.1.2 upon request by the Authority, provide a written summary of any of the costs referred to in **clause 68.1.1 (Records and Open Book Accounting)**, including details of any funds held by the Contractor specifically to cover such costs, in

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such form and detail as the Authority may reasonably require to enable the Authority to monitor the performance by the Contractor of its obligations under this Contract;

- 68.1.3 provide such facilities as the Authority may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this **clause 68 (Contractor's Records and Provision of Information)**;
- 68.1.4 not store any records outside of the United Kingdom without the prior written consent of the Authority; and
- 68.1.5 where the Authority identifies duties to be undertaken by the Contractor under this Contract that are supported directly or indirectly by the European Social Fund, comply with the provisions of **Schedule 28 (European Social Fund)**.

68.2 Books of Account

Compliance with **clause 68.1 (Records and Open Book Accounting)** shall require the Contractor to keep (and where appropriate to procure that each Sub-Contractor shall keep) books of account in accordance with best accountancy practices with respect to this Contract showing in detail;

- 68.2.1 expenditure on wages and salaries;
- 68.2.2 administrative overheads;
- 68.2.3 payments to Sub-Contractors and by Sub-Contractors to their respective Sub-Contractors;
- 68.2.4 expenditure on consumable items;
- 68.2.5 capital and revenue expenditure; and
- 68.2.6 such other items as the Authority may reasonably require from time to time,

and the Contractor shall have (and procure that its Sub-Contractors shall have) the books of account evidencing the items listed in **clauses 68.2.1 (Books of Account) to 68.2.6 (Books of Account)** (inclusive) available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a written report of these to the Authority as and when requested.

68.3 Maintenance of Records

- 68.3.1 The Contractor shall maintain or procure the maintenance of detailed records

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relating to the provision of the Custodial Service, in each case in accordance with Good Industry Practice and any applicable Legislation.

68.3.2 Without prejudice to **clause 68.3.1 (Maintenance of Records)**, the Contractor shall procure that the following are maintained (and where necessary created):

- 68.3.2.1 a full record of all incidents relating to health, safety and security which occur during the term of this Contract;
- 68.3.2.2 full records of all maintenance procedures carried out during the term of this Contract;
- 68.3.2.3 full Site records and log books, including emergency attendances, and relevant notes, calculations and recordings, all such entries to be dated and signed;
- 68.3.2.4 (where plant, or systems, are modified, replaced and recommissioned) full record of all data and drawings in the site operation and maintenance manuals;
- 68.3.2.5 other miscellaneous records, including those detailed in **Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification))**,

and the Contractor shall have the items referred to in **clause 68.3.2** available for inspection by the Authority (and its advisers) upon reasonable notice, and shall present a written report of them to the Authority as and when requested.

68.3.3 Without prejudice to **clause 68.3.1 (Maintenance of Records)**, the Contractor shall provide its own Computer-Aided Facilities Management System to manage, amongst other things, all aspects of maintenance, Equipment Register, tasks, frequencies and history files, in line with the requirements detailed in **Part 2 of Schedule 1 (Authority's Requirements (Property Service Specification))**. The Contractor shall also:

- 68.3.3.1 supply its own IT equipment to operate, file, share and print all necessary activities relating to its Computer-Aided Facilities Management System;
- 68.3.3.2 keep the Authority apprised of the Computer-Aided Facilities Management System and keep records on such system. The data stored on the Computer-Aided Facilities Management System shall become and remain the property of the Authority and as such all such data and information shall be handed back to the Authority on expiry or earlier termination of the Contract, as the case may

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be.

68.3.4 The Contractor shall keep all records in a format which has been approved by the Authority, and store them in such a way that they can be easily accessed for the purposes of auditing or the production for the HSE, EHO, Fire Officer or any other enforcing body.

68.4 Auditor

The Contractor shall permit all records referred to in this **clause 68 (Contractor's Records and Provision of Information)** to be examined and copied by the Monitor and other representatives of the Authority, and by the Comptroller and Auditor General and his or her representatives.

68.5 Retention

The records referred to in this **clause 68 (Contractor's Records and Provision of Information)** shall be retained in accordance with and for the periods specified in **clause 68.10 (Retention of Records)**, or if not so specified for a period of at least six (6) Years after the Contractor's obligations under this Contract have come to an end.

68.6 Termination or Expiry

Prior to the Expiry Date or Termination Date, in accordance with **Schedule 28 (Exit Management)**, the Contractor shall (and shall ensure that any Sub-Contractors) comply with all reasonable requests of the Authority to provide information relating to the Contractor's costs of operating and maintaining the Contract. Such information shall include information relating to the anticipated cost of a transfer of the Secure Training Centre to a New Contractor.

68.7 Confidentiality

All information referred to in this **clause 68 (Contractor's Records and Provision of Information)** is subject to the obligations set out in **clause 65 (Information and Confidentiality)**.

68.8 Prescribed Documentation

During the term of this Contract, certain Documents shall be produced by or for the Contractor. Prescribed Documents shall be defined as any item or document which relates to the performance of the Custodial Service (the "**Prescribed Documentation**") and shall include all plans of the Site and such other Documents which relate to the provision of the Custodial Service, including, whether as hard copy or electronic data:

68.8.1 drawings (including of all Buildings, premises and vehicles);

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- 68.8.2 reports and records;
- 68.8.3 data sheets;
- 68.8.4 schedules;
- 68.8.5 presentation brochures;
- 68.8.6 Young People's records (including records incorporating Young Person Data);
- 68.8.7 photographs; and
- 68.8.8 other information, including models and samples.

68.9 Security and Confidentiality of Prescribed Documentation

- 68.9.1 The Contractor shall be responsible for the security and confidentiality of all Prescribed Documentation. The Contractor shall control and monitor the issue, use and return of the Prescribed Documentation issued by the Contractor to its Sub-Contractors, suppliers and third parties and the security and safe storage of such Prescribed Documentation.
- 68.9.2 The Contractor shall procure that the Prescribed Documentation is managed and controlled by its Sub-Contractors, suppliers and third parties in the manner set out in this **clause 68.9 (Security and Confidentiality of Prescribed Documentation)**.
- 68.9.3 The Contractor shall issue to the Authority and/or the Monitor and/or the YJB a copy of any item of the Prescribed Documentation promptly and in any event within two (2) Business Days of request in such format as is specified by the Authority (or Monitor or YJB as the case may be) including (at the requesting party's option and request) by uploading the data within such documentation onto eAsset or the Authority's or YJB's other systems from time to time and shall ensure that the Prescribed Documentation shall only be issued for review outside the following organisations:
 - 68.9.3.1 the Authority;
 - 68.9.3.2 any Authority Related Party;
 - 68.9.3.3 any coroner (as appointed in accordance with the Coroners and Justice Act 2009);
 - 68.9.3.4 any Relevant Organisation,

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where the Authority has given its prior written consent.

- 68.9.4 The Contractor shall at all times comply with any instructions of the Authority or the YJB relating to security of the Prescribed Documentation.
- 68.9.5 The Prescribed Documentation that is issued to the Contractor by the Authority remains at all times the property of the Authority and on termination or expiry of this Contract shall either be returned to the Authority in accordance with this Contract, or be certified by the Contractor as having been destroyed in a secure manner or shall be retained by the Contractor pursuant to **clauses 68.9 (Security and Confidentiality of Prescribed Documentation) to 68.11 (Alternative Methods of Documentation Storage)** (inclusive).
- 68.9.6 Not used.
- 68.9.7 The Contractor shall prevent information detrimental to the security of the Authority coming into the possession of unauthorised persons and shall establish an audit trail to track the movement and location of the Prescribed Documentation at all times.
- 68.9.8 The Contractor shall be responsible at all times for the security of all Prescribed Documentation in the keeping of the Contractor, whether issued by the Authority or copied or produced by the Contractor, its Sub-Contractors or agents.
- 68.9.9 The Contractor shall notify all Contractor's Staff handling Prescribed Documentation of the requirements imposed by the Authority pursuant to **clauses 68.9 (Security and Confidentiality of Prescribed Documentation) to 68.11 (Alternative Methods of Documentation Storage)** (inclusive) and of the procedures for maintaining security. The Contractor shall notify all others (including its Sub-Contractors) having an interest in this Contract of the particular requirements imposed regarding the security of Prescribed Documentation.
- 68.9.10 The Contractor shall include in all contracts with its Sub-Contractors similar but no less strict conditions of security for the Prescribed Documentation and shall be responsible for their compliance.
- 68.9.11 The Contractor shall arrange for the secure destruction and recording of any Prescribed Documentation which are no longer required, have been superseded or are additional to the requirements of the Authority.
- 68.9.12 The Contractor shall:
- 68.9.12.1 report immediately to the Authority, and to the Monitor, the loss of any Prescribed Documentation stating details of the loss and the actions the Contractor is taking to secure the recovery of such

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Prescribed Documentation;

- 68.9.12.2 use its best endeavours to recover such lost Prescribed Documentation and report the outcome of any action taken to the Authority; and
- 68.9.12.3 record the loss, the action taken by the Contractor and outcome in the Daily Report.

68.10 Retention of Records

- 68.10.1 Notwithstanding **clause 68.10.2 (Retention of Records)**, the Contractor shall retain all Documents held by it or a Sub-Contractor upon the Expiry Date or Termination Date for a period of six (6) Years after the Expiry Date or Termination Date (as the case may be).
- 68.10.2 Subject to **clause 68.10.1 (Retention of Records)**, from the Commencement Date, the Contractor shall retain all Documents for the minimum periods specified as earliest destruction dates in the YJB's Re-tendering Secure Training Centres (STC) Data Retention Guidance. Such guidance shall be provided to the Contractor by the Authority from time to time.
- 68.10.3 The Contractor shall determine (and shall promptly notify the Authority) if there are any requirements of Legislation, Relevant Authorities or otherwise, that would necessitate the retention of any Documents for longer retention periods than those specified in **clause 68.10.2 (Retention of Records)**.
- 68.10.4 The retention periods specified in **clause 68.10.2 (Retention of Records)** apply to the primary source Documents and any electronic or other types of Documents for such records produced.

68.11 Alternative Methods Of Documentation Storage

- 68.11.1 The Contractor may propose alternative means of storing the records, Prescribed Documentation and Documents referred to in this **clause 68 (Contractor's Records and Provision of Information)** storage for the Authority's approval. The Contractor shall ensure that any such proposals:
 - 68.11.1.1 comply with Legislation, including the Public Records Acts 1958 and 1967, the Taxes Management Act 1970, the Value Added Tax Act 1994, the Companies Act 2006, EU Regulations and the Statute of Limitations;
 - 68.11.1.2 state methods of minimising any potential risks of such alternative means of storage that may arise; and

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68.11.1.3 offer no opportunity for the records, Prescribed Documentation and Documents referred to in this **clause 68 (Contractor's Records and Provision of Information)** to be amended.

68.11.2 Without prejudice to **clause 65.10 (Disclosure by National Audit Office)**, the Contractor shall promptly provide the National Audit Office with such Documents including this Contract, the Project Documents and such other contracts, agreements, guarantees and titles to property that the National Audit Office may request from time to time.

68.12 Interpretation

Clauses 68.8 (Prescribed Documentation) to 68.11 (Alternative Methods of Documentation Storage) (inclusive) shall be without prejudice to any other provisions of this Contract.

68.13 Data Loss

The Contractor acknowledges that:

68.13.1 the security of data, including Personal Data is of paramount importance to the Authority; and

68.13.2 loss of such data may have a significant impact on the operation and reputation of the Authority, the Contractor and the STC.

69. DATA PROTECTION**69.1 General**

69.1.1 The terms "Data Controller", "Data Processor", "Data Subject" and "Processing" shall have the meaning given to those terms in the DPA, and "Process" and "Processed" shall be construed accordingly.

69.1.2 The Parties shall each Process Personal Data. The Parties acknowledge that the factual arrangement between them dictates the role of each Party in respect of the Data Protection Legislation. Notwithstanding the foregoing, the Parties anticipate that each Party shall act as a Data Controller in respect of the Processing of the Personal Data, as follows:

69.1.2.1 the Authority shall be a Data Controller of the Personal Data relating to Young Person Data where such data is being Processed for purposes not directly connected with the Custodial Service and/or this Contract;

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- 69.1.2.2 the Contractor shall be a Data Controller of the Personal Data relating to the Contractor's Staff whether or not such Personal Data is Processed pursuant to this Contract;
- 69.1.2.3 the Authority and the Contractor shall each be a joint Data Controller where they Process (or procure the Processing of) the Personal Data in relation to the Custodial Service and/or otherwise performing their respective obligations and/or receiving the benefit of their respective rights under this Contract. The Parties each acknowledge that for so long as such Processing is in accordance with the terms of this Contract and the Data Protection Legislation, the Contractor shall be entitled to determine the precise manner in which the Personal Data is Processed;
- 69.1.2.4 the Contractor shall have no right or authority to Process the Personal Data other than under or in connection with the Custodial Service and this Contract, save in respect of: (i) Personal Data relating to the Contractor's Staff; and (ii) any data retention requirements relating to the Personal Data pursuant to **clause 68.10 (Retention of Records)**, in relation to which it is sole Data Controller; and
- 69.1.2.5 the Parties do not anticipate that the Contractor will Process Personal Data as Data Processor on behalf of the Authority. Notwithstanding the foregoing, if and to the extent that the Contractor is Processing Personal Data on behalf of the Authority (as Data Controller), the Contractor shall act only on the instructions of the Authority, shall not (without the Authority's prior written consent) appoint any sub-processor or transfer any Personal Data to any country or territory outside the European Economic Area and, furthermore, **clauses 69.2 to 69.11** (inclusive) shall apply to such Processing.
- 69.1.3 Where the Parties are Processing (or procuring the Processing of) the Personal Data as joint Data Controllers, the Parties agree that they shall each be responsible for the compliance obligations imposed on a Data Controller by the Data Protection Legislation, as follows:
- 69.1.3.1 in respect of any Personal Data Processed prior to the Services Commencement Date, the Authority shall be responsible for compliance with Data Protection Principles 1, 2 and 3.
- 69.1.3.2 in respect of any Personal Data Processed by either Party on and from the Services Commencement Date, the Contractor shall be

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responsible for compliance with Principles 1, 2, 3, 4, 5, 6 and 8 (where applicable), including, in particular, responding to Subject Access Requests pursuant to **clause 69.6 (Subject Access Requests)**.

- 69.1.4 Each of the Parties shall be responsible for:
- 69.1.4.1 ensuring that its registration or notification with the UK Information Commissioner is valid and up to date; and
 - 69.1.4.2 complying with its respective data security obligations under Principle 7 where the Personal Data has been transmitted by it, or while the Personal Data is in its possession or control.
- 69.1.5 In relation to all Personal Data, the Contractor shall at all times comply with the Data Protection Legislation as a Data Controller, including maintaining a valid and up to date registration or notification under the DPA with the UK Information Commissioner covering the Processing to be performed under or in connection with the Contract.
- 69.1.6 No less than two (2) Months prior to the Services Commencement Date, and if requested to do so by the Authority, the Contractor and the Authority shall agree an information-sharing agreement to cover the sharing of information between them. It shall cover as a minimum information regarding the Personal Data of Young People and the Contractor's Staff, including how it should be transferred and stored and whether and how information may be shared with third parties, for individual persons or for aggregated data.
- 69.1.7 At the request of the Authority at any time, the Contractor shall agree an information-sharing agreement with any third parties (including where the sharing is required by the Authority) with which it shares Personal Data and the terms of such information-sharing agreement shall be substantially the same as, and no less stringent than, the terms contained in this **clause 69 (Data Protection)**.

69.2 No Disclosure

The Contractor shall not disclose Personal Data to any third parties other than:

- 69.2.1 to employees and Sub-Contractors or third parties to whom such disclosure is reasonably necessary in order for the Contractor to provide the Custodial Service; or
- 69.2.2 to the extent required under a court order or as required by law,

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provided that disclosure under **clause 69.2.1 (No Disclosure)** is made only where the Contractor has undertaken thorough due diligence on the proposed sub-contractor, including a risk assessment of the information governance related practices and processes of the sub-contractor and if that proposed sub-contractor is appointed, any such disclosures are subject to written terms substantially the same as, and no less stringent than, the terms contained in this **clause 69 (Data Protection)**. The Contractor shall give notice in writing to the Authority of any disclosure of Personal Data which either the Contractor or a Sub-Contractor is required to make under this **clause 69.2.2 (No Disclosure)** within one (1) Business Day of becoming aware of such a requirement.

69.3 Measures

The Contractor shall bring into effect and maintain all technical and organisational measures sufficient to comply at least with the obligations imposed on a Data Controller by Principle 7 to prevent unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to Personal Data, including to:

- 69.3.1 take reasonable steps to ensure the reliability of any of the Contractor's Staff who have access to the Personal Data;
- 69.3.2 obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-Contractors or other person for the provision of the Services; and
- 69.3.3 ensure that all of the Contractor's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data, have undergone reasonable levels of training in Data Protection Legislation and in the case of handling of Personal Data comply with the obligations set out in this **clause 69 (Data Protection)**.

69.4 The Contractor shall not and shall procure that its Sub-Contractors shall not transfer or otherwise Process any of the Personal Data outside of the United Kingdom.

69.5 Authority Requests

The Authority may, at reasonable intervals:

- 69.5.1 request a written description of the technical and organisational methods employed by the Contractor and/or the Sub-Contractors referred to in **clause 69.3 (Measures)**. Within twenty (20) Business Days after such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the Personal Data, it is compliant with the DPA; and
- 69.5.2 inspect and audit the Contractor's and any Sub-Contractor's Processing activities

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(and/or those of any of the Contractor's Staff) and, in this regard, the Contractor shall (and shall procure that the relevant Sub-Contractor shall) comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract.

69.6 Subject Access Requests

69.6.1 The Contractor shall (and shall procure that its Sub-Contractors shall) be responsible for responding to Subject Access Requests in relation to Personal Data in accordance with the provisions of the DPA.

69.6.2 The Contractor shall (and shall procure that its Sub-Contractors shall) provide the Authority with a copy of each Subject Access Request made to it within five (5) Business Days of receipt by the Contractor or a Sub-Contractor.

69.6.3 Where the Contractor (or any relevant Sub-Contractor) does not hold the Personal Data requested it shall expressly and clearly notify the Authority of the request as soon as possible and in any event within ten (10) Business Days of the date on which the request is made.

69.7 If the Contractor receives any request or correspondence from the UK Information Commissioner in relation to the Processing of the Personal Data, it shall notify the Authority promptly and in any event within forty-eight (48) hours of receipt of any such request or correspondence.

69.8 The Contractor shall promptly, and in any event within twenty-four (24) hours, notify the Authority about any actual or suspected breach of **clause 69.3 (Measures)** and shall:

69.8.1 implement any measures necessary to restore the security of compromised Personal Data; and

69.8.2 support the Authority to make any required notifications to the UK Information Commissioner and affected Data Subjects.

69.9 The Contractor shall not do anything which shall damage the Authority's reputation or its relationship with the Data Subjects.

69.10 Indemnity

The Contractor shall indemnify and keep indemnified in full the Authority, its employees, agents and contractors against all Direct Losses incurred by it in respect of any breach of this **clause 69 (Data Protection)** by the Contractor and/or any act or omission of any Sub-Contractor which causes the Contractor to be in breach of this **clause 69 (Data Protection)**. Nothing in the Contract shall exclude or limit the Contractor's liability under this **clause 69**

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(Data Protection).

- 69.11 Without prejudice to the generality of **Part X (Expiry and Termination)**, on termination or expiry of this Agreement, howsoever caused, save as required pursuant to **clause 68.10 (Retention of Records)**, the Contractor shall immediately cease Processing the Personal Data (other than Personal Data relating to the Contractor's Staff) and, at the Authority's option or direction, arrange for the prompt and safe return and/or secure and permanent destruction of all Personal Data, together with all copies in its possession or control and, where requested by the Authority, certify that such destruction has taken place.

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PART XVI - INDEMNITIES AND INSURANCE**70. INDEMNITIES AND LIABILITIES****70.1 Contractor's Indemnity**

The Contractor shall, subject to **clauses 70.2 (Contractor not Responsible)**, be responsible for, and shall indemnify and keep indemnified in full and on demand the Authority or any Authority Related Party from and against all liability for:

- 70.1.1 death or personal injury;
- 70.1.2 loss of or damage to property (including property belonging to the Authority or for which it is responsible);
- 70.1.3 breach of statutory duty;
- 70.1.4 third party actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis);
- 70.1.5 subject to **clause 70.8 (Limitation of Liability under clause 70.1.5)**, and notwithstanding any Unavailability Deductions, losses suffered or incurred by the Authority in connection with accommodating Young People who should have been accommodated at the STC outside the STC (including the costs of transferring Young People to and from alternative accommodation) due to any failure by the Contractor to fulfil its obligations under this Contract to provide Available Places;
- 70.1.6 any costs, damages or other sums ordered to be paid or otherwise awarded by the Prisons and Probation Ombudsman in connection with any investigations into complaints, incidents or deaths in custody in relation to the STC as a result of the Default of the Contractor,

which may arise out of, or in consequence of, the operation or maintenance of the STC or the performance or non-performance by the Contractor of its obligations under this Contract or the presence on the Authority's property of the Contractor or any Contractor Related Party.

70.2 Contractor not Responsible

The Contractor shall not be responsible or be obliged to indemnify the Authority for:

- 70.2.1 any of the matters referred to in **clauses 70.1 (Contractor's Indemnity)** which arises as a direct result of the Contractor acting on the written instruction of the Authority, provided that the Contractor has implemented the instruction in a

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manner which is not negligent and is in accordance with Good Industry Practice;
or

70.2.2 any injury, loss, damage, cost and expense to the extent caused by the negligence or wilful misconduct of the Authority or any Authority Related Party (other than to the extent such negligence or wilful misconduct would not have occurred but for a breach by the Contractor of its obligations under this Contract) or by the breach by the Authority of its obligations under this Contract.

70.3 Limitation of Indemnity

An indemnity by either Party under any provision of this Contract shall be without limitation to any indemnity by that Party under any other provision of this Contract.

70.4 Notification of Claims

Where either Party (the “**Indemnified Party**”) wishes to make a claim under this Contract against the other (the “**Indemnifying Party**”) in relation to a claim made against it by a third party (a “**Third Party Claim**”), the Indemnified Party shall give notice of the relevant claim as soon as reasonably practicable setting out full particulars of the claim.

70.5 Conduct of Claims

70.5.1 The Contractor agrees (and undertakes to procure that its Sub-Contractors agree) that the Authority has the sole right, on giving written notice to such effect to the Contractor at any time, to control of any proceedings in relation to any Third Party Claim (including any claim by employees of the Parties), to which the Authority is, or is likely to be, a party as a defendant, regardless of whether the Contractor (or any Sub-Contractor) is also a party to such proceedings.

70.5.2 The Authority agrees that it shall not settle or compromise any Third Party Claim giving rise to losses exceeding ten thousand pounds (£10,000) (Indexed) for which the Contractor is liable to indemnify the Authority under **clause 70.1 (Contractor's Indemnity)** without prior consultation with the Contractor. The Authority shall keep the Contractor reasonably informed as to the progress and status of any such Third Party Claim until such Third Party Claim is settled or withdrawn.

70.5.3 If, in contesting, settling or compromising any Third Party Claim, the Authority takes or fails to take any action which prejudices any entitlement of the Contractor to recover any portion of the claim from any insurer under any insurance policy maintained by the Contractor in accordance with this Contract, the liability of the Contractor to indemnify the Authority in respect of such claim shall be reduced by such portion.

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- 70.5.4 The Contractor undertakes that:
- 70.5.4.1 it shall not, without the prior written consent of the Authority, settle or compromise any claim (whether insured or uninsured) to which the Authority is, or is likely to become, a party;
 - 70.5.4.2 where a claim is made against the Contractor and the Authority is not, and is not likely to become, a party to such claim as a defendant, the Contractor shall not settle or compromise any claim exceeding ten thousand pounds (£10,000) (Indexed) without prior consultation with the Authority; and
 - 70.5.4.3 it shall ensure that its Sub-Contractors give undertakings identical to those given by the Contractor to the Authority under this **clause 70.5 (Conduct of Claims)**.
- 70.5.5 If conduct of a claim is so assumed by the Authority pursuant to this **clause 70.5 (Conduct of Claims)**, the Authority shall hold the Contractor and its insurers harmless against all or any Direct Losses which either of them may incur by reason of its conduct of the claim and any settlement of the relevant claim or judgment being given if the settlement is made without their prior written approval (such approval not to be unreasonably withheld or delayed).

70.6 Mitigation

The Indemnified Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the Indemnified Party is entitled to bring a claim against the Indemnifying Party pursuant to this Contract.

70.7 Limitation of Liability

- 70.7.1 Subject to **clauses 70.1.5 (Contractor's Indemnity)** and **70.7.3 (Limitation of Liability)** and unless otherwise expressly provided, the maximum amount for which the Contractor shall be liable to the Authority in respect of Uninsured Losses shall be limited to:
- 70.7.1.1 in respect of an incident arising out of any one event, an amount equivalent to 30% (thirty per cent) of the total of the Monthly Contract Price for the twelve (12) Months preceding the incident or, if greater, £3,000,000 (three million pounds) (Indexed);
 - 70.7.1.2 in respect of a series of incidents arising out of any one event, an amount equivalent to 30% (thirty per cent) of the total of the Monthly Contract Price for the twelve (12) Months preceding the last of the incidents to occur or, if greater, £3,000,000 (three

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million pounds) (Indexed); and

70.7.1.3 in any period of twelve (12) Months, an aggregate amount equivalent to 100% (one hundred per cent) of the total of the Monthly Contract Price for the Months in such period or, if greater, £10,000,000 (ten million pounds) (Indexed).

70.7.2 For the purposes of this **clause 70.7 (Limitation of Liability)**, “**Uninsured Losses**” shall mean any Losses of the Authority against which the Contractor is not required to maintain insurance pursuant to **clause 72 (Insurance)**, including (without limitation) any deductibles and excesses of loss.

70.7.3 For the avoidance of doubt and without prejudice to or limitation of any other liability the Contractor may have under this Contract, this **clause 70.7 (Limitation of Liability)** shall not apply in respect of:

70.7.3.1 any liability the Contractor may have in respect of:

70.7.3.1.1 personal injury or death resulting from the negligence of the Contractor or any Contractor Related Party; or

70.7.3.1.2 fraud;

70.7.3.1.3 the indemnity given at **clause 69.10 (Data Protection)**; or

70.7.3.2 any Deductions.

70.8 Limitation of Liability under clause 70.1.5

70.8.1 The provisions of this **clause 70.8 (Limitation of Liability under clause 70.1.5)** shall apply to claims made by the Authority under **clause 70.1.5 (Contractor’s Indemnity)**.

70.8.2 Not used.

70.8.3 If the Authority has to house Young People who should have been accommodated at the STC outside the STC due to any failure by the Contractor to provide Available Places due to its Default, the Authority shall mitigate the relevant Losses where it is reasonably practicable to do so, for example taking reasonable steps to arrange for such Young People to be housed in alternative accommodation that is not more costly than other suitable accommodation reasonably available to the Authority at the relevant time (having regard to the circumstances from time to time).

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- 70.8.4 In the case of Young People housed in alternative accommodation not managed by the Authority, the Authority shall only be entitled to recover Losses under **clause 70.1.5 (Contractor's Indemnity)** to the extent that the payment by the Authority for such accommodation exceeds the amount that the Authority would pay to the Contractor for providing an Available Place to accommodate each such Young Person if the Contractor were satisfying all its obligations and providing the Custodial Service in full over that period.
- 70.8.5 The amount of Losses recoverable under **clause 70.1.5 (Contractor's Indemnity)** shall be calculated by deducting (to the extent not already taken into account) from the total of the relevant Losses the aggregate of the following:
- 70.8.5.1 any damages for breach of contract received by the Authority in respect of the failure by the Contractor to provide such Available Places (whether pursuant to **clause 19 (Services Commencement)**, **Schedule 5 (Payment Mechanism)** or otherwise);
 - 70.8.5.2 any insurance proceeds received by the Authority in respect of the failure by the Contractor to provide such Available Places; and
 - 70.8.5.3 the amount of the Contract Price the Authority would have paid the Contractor if the Contractor had provided the required number of Available Places.
- 70.8.6 If the Authority recovers any amount (the "**Relevant Amount**") pursuant to **clause 70.1.5 (Contractor's Indemnity)** and subsequently receives amounts of the type described in **clauses 70.8.5.1 (Limitation of Liability under clause 70.1.5)**, or **70.8.5.2 (Limitation of Liability under clause 70.1.5)** in circumstances that amount to double recovery, the Authority shall (subject to the other provisions of this Contract and any rights of set off), to the extent of such double recovery, reimburse the party from whom the Relevant Amount was received within twenty (20) Business Days after written demand for reimbursement.
- 70.9 **No Prejudice to clause 73**
- For the avoidance of doubt, this **clause 70 (Indemnities and Liabilities)** shall take effect without prejudice to the Contractor's obligations under **clause 73 (Liability for Loss and Damage)**.

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71. PRISON ASSISTANCE TO THE STC**71.1 Application**

In the event of a serious disturbance, riot or crisis at the STC which the Contractor is unable to manage, the Authority or the Contractor may request assistance from NOMS to provide Prison Officers to assist in bringing the STC under control in accordance with the protocol between the Authority (including NOMS) and the YJB.

71.2 Prison Officers Reporting to the STC

71.2.1 Subject to **clause 71.2.2 (Prison Officers Reporting to the STC)**, the Authority shall be responsible for and shall release and indemnify and keep indemnified in full and on demand the Contractor from and against all Direct Losses arising as a result of:

71.2.1.1 personal injury to any Prison Officer (other than a member of the Contractor's Staff) sustained during the period when such Prison Officer is reporting to the STC to provide assistance; or

71.2.1.2 injury, loss or damage to a third party (other than the Contractor or any Contractor Related Party) caused or contributed to by the act or omission of such Prison Officer.

71.2.2 The Authority shall not be responsible or be obliged to indemnify the Contractor if any such Direct Loss has arisen in whole or in part as a result of a command given by the Contractor or any Contractor Related Party within the command structure operating at the STC and either:

71.2.2.1 a public duty defence in respect of the claim is unsuccessful; or

71.2.2.2 with the prior written approval of the Authority, such defence is not pursued,

and such Direct Loss shall be the responsibility of the Contractor and the Contractor shall indemnify and keep indemnified in full and on demand the Authority in respect of such Direct Loss.

71.3 Not Used**72. INSURANCE****72.1 Obligation to Maintain**

72.1.1 The Contractor shall take out and maintain or procure the maintenance of the

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insurances described in **Part 1 of Schedule 7 (Required Insurances)** and any other insurances as may be required by law. These insurances must be effective in each case not later than:

- 72.1.1.1 in respect of Property Damage "All Risks" Insurance (as further described in **paragraph 1 of Part 1 of Schedule 7 (Required Insurances)**), of Products Liability Insurance and of Third Party Public Liability (as further described in **paragraph 2 of Part 1 of Schedule 7 (Required Insurances)**), the Services Commencement Date; and
- 72.1.1.2 in respect of Third Party Public Liability Insurance (as further described in **paragraph 2 of Part 1 of Schedule 7 (Required Insurances)**) and Professional Indemnity Insurance (as further described in **paragraph 3 of Part 1 of Schedule 7 (Required Insurances)**), the Commencement Date.

72.2 Obligation on Parties

Neither Party to this Contract shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or an additional insured person.

72.3 Nature of Insurances

- 72.3.1 With the exception of any insurances required by law, the insurances referred to in **clause 72.1 (Obligation to Maintain)** shall:
 - 72.3.1.1 subject to **clauses 72.3.2 (Nature of Insurances)**, name the Contractor as co-insured with any other party maintaining the insurance;
 - 72.3.1.2 provide for non-vitiation protection in respect of any claim made by the Authority as co-insured in accordance with Endorsement 2 in **Part 2 of Schedule 7 (Required Insurances)**;
 - 72.3.1.3 contain a clause waiving the insurers' subrogation rights against the Authority, its employees and agents in accordance with Endorsement 2 in **Part 2 of Schedule 7 (Required Insurances)**;
 - 72.3.1.4 provide for thirty (30) Days' prior written notice of their cancellation, non-renewal or amendment to be given to the Authority in accordance with Endorsement 1 in **Part 2 of Schedule 7 (Required Insurances)**; and

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72.3.1.5 in respect of any of the Physical Damage Policies provide for payment of any proceeds received by the Contractor to be applied in accordance with **clause 72.13 (Reinstatement)**.

72.3.2 Wherever stipulated in **Schedule 7 (Required Insurances)** the insurances referred to in **clause 72.1 (Obligation to Maintain)**, shall name the Authority as a co-insured for its separate interest.

72.4 Evidence of Policies

The Contractor shall provide to the Authority:

72.4.1 evidence of the Required Insurances referred to in **clause 72.1 (Obligation to Maintain)** (together with any other information reasonably requested by the Authority relating to such insurance policies), in a form satisfactory to the Authority, and the Authority shall be entitled to inspect them during ordinary business hours;

72.4.2 evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this **clause 72 (Insurance)** and **Schedule 7 (Required Insurances)**; and

72.4.3 on or before the date of expiry of any insurance required by **clause 72.1 (Obligation to Maintain)**, satisfactory evidence that the relevant insurance has been or is being renewed.

72.4.4 Neither inspection, nor receipt of such evidence, shall constitute acceptance by the Authority of the terms thereof, nor be waiver of the Contractor's liability under this Contract.

72.5 Not Used

72.6 Breach

If the Contractor is in breach of **clause 72.1 (Obligation to Maintain)**, the Authority may pay any premiums, fees, broker's costs or other expenses required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Contractor on written demand.

72.7 Notification of Claims

The Contractor shall give the Authority notification within ten (10) Business Days after any claim in excess of fifty thousand pounds (£50,000) on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the

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Required Insurances accompanied by full details of the incident giving rise to the claim.

72.8 Compliance

Neither failure to comply nor full compliance with the insurance provisions of this Contract shall limit or relieve the Contractor of its other liabilities and obligations under this Contract.

72.9 Premiums

Premiums for the Required Insurances and the amount of any loss that would otherwise be recoverable under any of the Required Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall, at all times, be the responsibility of the Contractor.

72.10 Authority Approval

The Required Insurances shall be effected with insurers of good repute and financial standing in the international insurance market.

72.11 Claims

The Contractor shall, where it is obliged to effect insurance under this **clause 72 (Insurance)**, not bring any claim or action against the Authority or any Authority Related Party in respect of any loss or damage in circumstances where the Contractor is able to recover such loss or damage under such insurance (or where it would have been able to recover such loss had it been complying with its obligations under this Contract).

72.12 Broker's Letter of Undertaking

72.12.1 On or before the relevant date specified in **Clause 72.12.1 (Broker's Letter of Undertaking)**, and within twenty (20) Business Days following each renewal of Required Insurances, the Contractor shall deliver to the Authority a broker's letter of undertaking signed by the insurance broker to the Contractor in the form set out in **Part 3 of Schedule 7 (Required Insurances)**.

72.12.2 For the purposes of **Clause 72.12.1 (Broker's Letter of Undertaking)**, the relevant date shall be the Services Commencement Date.

72.12.3 The Contractor shall procure that any broker(s) appointed during the term of this Contract shall:

72.12.3.1 owe the Authority such obligations and give to the Authority such warranties as are substantially the same as those set out in **Part 2 of Schedule 7 (Required Insurances)** and in **clauses 72.1 (Obligation to Maintain) to 72.11 (Claims)** (inclusive); and

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72.12.3.2 enter into an agreement in substantially the same form as that set out in **Part 3 of Schedule 7 (Required Insurances)**.

72.13 Reinstatement

72.13.1 All insurance proceeds received under the policies referred to in **paragraph 1 of Part 1** and **paragraph 1 of Part 2** (in connection with any relevant risk) of **Schedule 7 (Required Insurances)** (the “**Physical Damage Policies**”) shall be applied to repair, reinstate or replace each part or parts of the relevant insured property in respect of which such proceeds were received.

72.13.2 No later than twenty (20) Business Days prior to the Services Commencement Date, the Contractor shall set up and at all times thereafter maintain an account in the joint names of the Authority and the Contractor. All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or a series of related events) in an amount in excess of two hundred and fifty thousand pounds (£250,000) shall be paid into the Joint Insurance Account.

72.13.3 Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the “**Relevant Incident**”) in an amount in excess of two hundred and fifty thousand pounds (£250,000):

72.13.3.1 the Contractor shall deliver to the Authority as soon as practicable and in any event within twenty (20) Business Days after the making of the claim a plan prepared by the Contractor for the carrying out of the works necessary (the “**Reinstatement Works**”) to repair, reinstate or replace (the “**Reinstatement Plan**”) the assets which are the subject of the relevant claim or claims in accordance with **clause 72.13.4 (Reinstatement)**. The Reinstatement Plan shall set out:

72.13.3.1.1 the identity of the person proposed to effect the Reinstatement Works, which shall be subject to the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed); and

72.13.3.1.2 the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the STC will become fully operational), the final terms of which shall be subject to the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);

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72.13.3.2 provided that the Authority is satisfied that the Reinstatement Plan will enable the Contractor to comply with **clause 72.13.4 (Reinstatement)** within a reasonable timescale:

72.13.3.2.1 the Reinstatement Plan will be adopted;

72.13.3.2.2 the Contractor shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the Reinstatement Plan approved by the Authority;

72.13.3.2.3 before the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the "Relevant Proceeds") (together with any interest accrued) may be withdrawn by the Contractor from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in **clause 72.13.3.2.2 (Reinstatement)**, and to meet any other reasonable costs and expenses of the Contractor for the sole purposes of funding the Reinstatement Works and the Parties shall operate the signatory requirements of the Joint Insurance Account in order to give effect to such payments. Following the earlier to occur of the Termination Date and the Expiry Date, the Authority may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;

72.13.3.2.4 the Authority agrees and undertakes that, subject to compliance by the Contractor with its obligations under this **clause 72.13 (Reinstatement)**, and provided that the Contractor procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in **clause 72.13.3.2.2 (Reinstatement)**, it shall not exercise any right which it might otherwise have to terminate this Contract by virtue of the event which gave rise to the claim for the Relevant Proceeds;

72.13.3.2.5 the Authority undertakes to use reasonable endeavours to assist the Contractor in the carrying out of the Reinstatement Plan;

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72.13.3.2.6 after the Reinstatement Plan has been implemented to the reasonable satisfaction of the Authority and in accordance with **clause 72.13.4 (Reinstatement)**, the Authority shall permit withdrawal by the Contractor of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under **clause 72.13.3.2.3 (Reinstatement)**, in respect of the Relevant Incident, together with any interest accrued; and

72.13.3.2.7 subject to **clause 70 (Indemnities and Liabilities)**, the Contractor shall be solely responsible for the payment of any deficiency.

72.13.4 Where insurance proceeds are to be used in accordance with this Contract to repair, reinstate or replace any part of the STC, the Contractor shall carry out the work in accordance with the Authority's Requirements, the Contractor's Proposals, the Operating Procedures and the Initial Service Delivery Documents or the Service Delivery Documents (as relevant) so that on completion of the work, the provisions of this Contract are complied with.

72.14 Riot (Damages) Act 1886

72.14.1 The Contractor shall not, and undertakes to procure that no:

72.14.1.1 Commercial Insurer;

72.14.1.2 Commercial Insurer's successors or permitted assignees; or

72.14.1.3 other person claiming by or through a Commercial Insurer,

shall bring any claim under the Riot (Damages) Act 1886 (or any successor legislation or compensation scheme established for similar purposes) in respect of any damage to the STC. This undertaking shall be for the benefit of any Police and Crime Commissioner and/or the Mayor's Office for Policing and Crime in the United Kingdom and the statutory successors of any such Police and Crime Commissioner, each of which may enforce the terms of this clause against the Contractor and/or its successors and permitted assignees (as appropriate).

72.14.2 Clause 72.14.1 shall not apply in respect of damage caused to the STC as a direct result of any activity to which the Riot (Damages) Act 1886 (or any successor legislation or compensation scheme established for similar purposes) applies occurring at a prison or young offender institution in the locality of the STC unless the prison or young offender institution is operated by the Contractor

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or such damage is otherwise caused or contributed to by the acts or omissions of the Contractor or any of its Sub-Contractors.

72.14.3 For the purposes of this **clause 72.14 (Riot (Damages) Act 1886)**:

72.14.3.1 **"Police and Crime Commissioner"** and **"The Mayor's Office for Policing and Crime"** shall have the meaning ascribed to those terms in the Police Reform and Social Responsibility Act 2011; and

72.14.3.2 **"Commercial Insurer"** shall mean a person providing commercial insurance in respect of the Contractor or the STC.

72.14.4 **Clause 72.14 (Riot (Damages) Act 1886)** shall be binding upon the Contractor and each of its successors and permitted assignees.

73. LIABILITY FOR LOSS AND DAMAGE

73.1 Responsibility for Damage

Without prejudice to the provisions of **clause 27.7 (Rights of Access and Inspection)** and to the obligations of the Contractor to repair, maintain and replace the STC and subject to **clause 73.5 (Minor Damage)**, as between the Authority and the Contractor:

73.1.1 the Authority will only have any responsibility for the cost of damage to the STC to the extent that:

73.1.1.1 the Contractor is able to prove to the Authority's satisfaction (acting reasonably) that the damage was caused or contributed to by:

73.1.1.1.1 the wilful misconduct or negligence of an Authority Related Party; or

73.1.1.1.2 the Contractor acting on the written instruction of the Authority, provided that the Contractor has implemented that instruction in a manner which is not negligent and is in accordance with Good Industry Practice;

73.1.1.2 such damage:

73.1.1.2.1 does not constitute fair wear and tear; and

73.1.1.2.2 does not arise as a result of the damaged item being

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used for its reasonable and proper purpose or any part of the STC being used for its reasonable and proper purpose; and

73.1.1.3 the cost of such damage is either:

73.1.1.3.1 of a value below the level of the deductible of the Required Insurance (up to the maximum deductible specified in the Required Insurances); or

73.1.1.3.2 is not covered by the insurances taken out, or which should have been taken out by the Contractor in accordance with this Contract,

1.1 provided that the Authority shall be liable for any excess or deductible (up to the amount of any maximum deductible specified in the Required Insurances) which is payable as a result of any Authority Damage which has resulted in a Repair Cost being incurred where such Repair Cost has been funded under any such insurance; and

73.1.2 the Contractor shall be responsible for the cost of all damage on or to the STC that is not the responsibility of the Authority pursuant to **clause 73.1.1 (Responsibility for Damage)**.

73.2 **Obligation to Repair**

Upon the discovery of any damage the Contractor shall:

73.2.1 record any relevant details of the damage (including photographs if necessary); and

73.2.2 as soon as is practicable, reinstate, replace or make good the damage, returning the damaged item to its original standard (or equivalent) in accordance with the relevant provisions of this Contract, including where relevant in accordance with **clause 72.13 (Reinstatement)**.

73.3 **Obligation to Discuss**

73.3.1 The Contractor and the Authority shall, as soon as reasonably practicable following the discovery of any damage in accordance with **clause 73.2 (Obligation to Repair)** meet to discuss whether such damage is Authority Damage and whether there should be an extension of the Rectification Period and, if so, what reasonable extension should be agreed.

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73.3.2 If the Contractor and the Authority:

- 73.3.2.1 agree that the relevant damage constitutes Authority Damage, the Contractor shall be entitled to issue an invoice in respect of its reasonable and demonstrable costs incurred in reinstating the damage, but only in respect of those costs that are the responsibility of the Authority under **clause 73.1 (Responsibility for Damage)**;
- 73.3.2.2 do not agree that the relevant damage constitutes Authority Damage, the matter shall be referred to the Dispute Resolution Procedure for resolution and if the dispute is resolved in the Contractor's favour, the Contractor shall be permitted to submit an invoice in respect of its reasonable and demonstrable costs incurred in repairing the damage, but only in respect of those costs that are the responsibility of the Authority under **clause 73.1 (Responsibility for Damage)**;
- 73.3.2.3 agree an extension to the applicable Rectification Period in accordance with **clause 73.3 (Obligation to Discuss)**, such Rectification Period shall apply in respect of the relevant damage for the purposes of **Schedule 5 (Payment Mechanism)**; or
- 73.3.2.4 do not agree either that there should be an extension to the relevant Rectification Period or what the extension should be, the matter shall be referred to the Dispute Resolution Procedure.

73.4 Supporting Information

Any invoice submitted to the Authority pursuant to **clause 73.3 (Obligation to Discuss)** shall be supported by any relevant information recorded pursuant to **clause 73.2.1 (Obligation to Repair)**, and may be in respect of multiple incidents of damage. The Authority shall pay any such invoice within thirty (30) Days of receipt by the Authority of the invoice and supporting information.

73.5 Minor Damage

If any Authority Damage is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by the Contractor without incurring any additional costs through the use of its site-based resources during their normal working hours and without adversely affecting the ability of the Contractor to perform the Custodial Service, then the cost of rectifying such damage shall be for the account of the Contractor.

73.6 Dispute Resolution

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Any disputes between the Parties arising from this **clause 73 (Liability for Loss and Damage)** shall be referred to the Dispute Resolution Procedure.

73.7 Programmed Maintenance Costs

73.7.1 In relation to any Repair Cost which has been funded or partly funded by the Authority or under any Required Insurance (the "**Damage Funding**"), the Contractor shall take such funding and the timing of such repair or replacement into account when preparing its maintenance schedule for the STC and any savings to the maintenance costs as shown in the Base Case shall be shared equally between the Contractor and the Authority.

73.7.2 At the end of each Contract Year the Contractor shall supply to the Authority an account of any damage and associated Repair Costs and Damage Funding, as well as money spent or saved in accordance with the maintenance costs as shown in the Base Case.

73.7.3 On every fifth (5th) anniversary of the Commencement Date the Contractor shall provide a consolidated and reconciled account of the accounts referred to in **clause 73.7.2 (Programmed Maintenance Costs)**. If such account shows that in respect of the preceding five (5) Year period there was a saving in the costs to the Contractor in complying with its obligations under this Contract because of the Damage Funding then the Contractor shall within thirty (30) Days after submission of the account pay to the Authority half of such saving.

73.8 Time Periods

The Contractor shall perform its obligations under **clause 73.2 (Obligation to Repair)** as soon as practicable and shall use all reasonable endeavours (where practicable and taking account of the nature of the works required) to complete any works required within forty eight (48) hours after becoming aware of the loss or damage occurring.

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PART XVII - DISPUTES**74. DISPUTE RESOLUTION****74.1 Disputes**

- 74.1.1 Save where expressly stated to the contrary in this Contract, any Dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this **Part XVII (Disputes)**.

74.2 Notice of Dispute

- 74.2.1 The Dispute Resolution Procedure shall commence with the service of a Notice of Dispute by either Party on the other Party.
- 74.2.2 The Notice of Dispute shall:
- 74.2.2.1 set out the material particulars of the Dispute; and
 - 74.2.2.2 set out the reasons why the Party serving the Notice of Dispute believes that the Dispute has arisen.
- 74.2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under the Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 74.2.4 The Parties shall seek to resolve Disputes firstly by consultation (in accordance with **clause 74.3 (Consultation)**), then by Mediation (at the Authority's sole election in accordance with **clause 74.4 (Mediation)**) and lastly by recourse to Arbitration (in accordance with **clause 74.14 (Arbitration)**) noting that either Party may seek urgent injunctive relief at any time in accordance with **clause 74.18 (Urgent Relief)**.

74.3 Consultation

If a Dispute arises in relation to any aspect of this Contract, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter. Where appropriate they shall escalate the matter within each organisation to try to reach an agreement prior to using Mediation or Arbitration.

74.4 Mediation

- 74.4.1 In the event that a Dispute between the Parties cannot be resolved by consultation in accordance with **clause 74.3 (Consultation)** within thirty (30)

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Days of the request by either Party for such consultation, the Authority may, at its sole election, require the Parties to participate in a Mediation in accordance with this **clause 74.4 (Mediation)** and CEDR's model mediation procedure.

74.4.2 If the Parties are unable to agree on the joint appointment of a Mediator within a reasonable time they shall make a joint application to CEDR to nominate the Mediator.

74.4.3 The Parties shall use all reasonable endeavours to ensure that the Mediator, after consultation with the Parties where appropriate, shall:

74.4.3.1 attend any meetings with either or both of the Parties preceding the Mediation, if requested or if the Mediator decides this is appropriate and the Parties agree;

74.4.3.2 read before the Mediation each Case Summary and all the documents sent to him or her;

74.4.3.3 chair, and determine the procedure for the Mediation;

74.4.3.4 assist the Parties in drawing up any written settlement agreement; and

74.4.3.5 abide by the terms of CEDR's model mediation procedure and CEDR's code of conduct for mediators.

74.4.4 The Parties shall ensure that the Mediator (and any member of the Mediator's firm or company) shall not act for either of the Parties individually in connection with the Dispute in any capacity during the Custodial Service Period. The Parties accept that in relation to the Dispute neither the Mediator nor CEDR is an agent of, or acting in any capacity for, any of the Parties. Furthermore, the Parties and the Mediator accept that the Mediator (unless an employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

74.5 CEDR

74.5.1 The Parties shall ensure that CEDR, in conjunction with the Mediator, shall make the necessary arrangements for the Mediation including, as necessary:

74.5.1.1 nominating, and obtaining the agreement of the Parties to the Mediator;

74.5.1.2 organising a suitable venue and dates;

74.5.1.3 organising exchange of the Case Summaries and documents;

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74.5.1.4 meeting with either or both of the Parties (and the Mediator if appointed), either together or separately, to discuss any matters or concerns relating to the Mediation; and

74.5.1.5 general administration in relation to the Mediation.

74.5.2 If there is any issue about the conduct of the Mediation upon which the Parties cannot agree within a reasonable time, CEDR shall, at the request of any Party, decide the issue for the Parties, having consulted with them.

74.6 Participants

74.6.1 Each Party shall state the names of:

74.6.1.1 the person(s) who shall be the lead negotiator(s) for that Party, who must have full authority to settle the Dispute for the purpose of the Mediation; and

74.6.1.2 any other person(s) (such as professional advisers, colleagues or sub-contractors) who shall also be present at, and/or participating in, the Mediation on that Party's behalf.

74.7 Exchange of Information

74.7.1 Each Party shall send to CEDR at least two (2) Weeks before the Mediation, or such other date as may be agreed between the Parties and CEDR, sufficient copies of:

74.7.1.1 its Case Summary; and

74.7.1.2 all the documents to which the Case Summary refers and any others to which it may want to refer in the Mediation.

74.7.2 In addition, each Party may send to the Mediator (through CEDR) and/or bring to the Mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator and CEDR.

74.7.3 The Parties shall procure that the Mediator shall be responsible for sending a copy of each Party's Case Summary and supporting documents (pursuant to **clause 74.7.1 (Exchange of Information)**) to the other simultaneously.

74.7.4 The Parties should seek to agree:

74.7.4.1 the maximum number of pages of each Case Summary; and

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74.7.4.2 a joint set of supporting documents or the maximum length of each set of supporting documents.

74.8 The Mediation

74.8.1 The Mediation shall take place at the time and place arranged by CEDR. The Parties agree to request that CEDR arrange the time and place for the Mediation.

74.8.2 The Parties shall procure that the Mediator shall chair, and determine the procedure at, the Mediation.

74.8.3 No recording or transcript of the Mediation shall be made.

74.9 Settlement Agreement

74.9.1 Any settlement reached in the Mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties and in accordance with **Schedule 8 (Change Protocol)** where changes are required to this Contract.

74.10 Termination of Mediation

74.10.1 The Mediation shall terminate when:

74.10.1.1 a Party withdraws from the Mediation;

74.10.1.2 a written settlement agreement is concluded;

74.10.1.3 the Mediator decides that continuing the Mediation is unlikely to result in a settlement; or

74.10.1.4 the Mediator decides he or she should retire for any of the reasons in CEDR's code of conduct.

74.11 Confidentiality

74.11.1 Each of the Parties shall use all their respective reasonable endeavours to ensure that every person involved in the Mediation shall keep confidential and not use for any collateral or ulterior purpose:

74.11.1.1 information that the Mediation is to take place or has taken place, other than to inform a court or tribunal dealing with any litigation relating to the Dispute of that information; and

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74.11.1.2 all information (whether given orally, in writing or otherwise) arising out of, or in connection with, the Mediation including the fact of any settlement and its terms.

74.11.2 All information (whether oral or documentary and on any media) arising out of, or in connection with, the Mediation shall be without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever. This does not apply to any information, which would have been admissible or disclosable in any such proceedings but for its use in the Mediation.

74.11.3 **Clause 74.11.1 and 74.11.2 (Confidentiality)** shall not apply insofar as any such information is necessary to implement and enforce any settlement agreement arising out of the Mediation.

74.11.4 None of the Parties to the Mediation shall call the Mediator or CEDR (or any employee, consultant, officer or representative of CEDR) as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever. The Mediator and CEDR shall not voluntarily act in any such capacity without the written agreement of the Parties.

74.12 Mediator's fees and expenses

74.12.1 CEDR's fees (which include the Mediator's fees) and the other expenses of the Mediation shall be borne equally by the Parties. Payment of these fees and expenses shall be made to CEDR in accordance with its fee schedule and terms and conditions of business.

74.12.2 Each Party shall bear its own costs and expenses of its participation in the Mediation.

74.13 Exclusion of Liability

74.13.1 Neither the Mediator nor CEDR shall be liable to the Parties for any act or omission in connection with the services provided by them in, or in relation to, the Mediation, unless the act or omission is shown to have been in bad faith.

74.14 Arbitration

74.14.1 Either Party may notify the other Party of its intention to refer a Dispute to Arbitration (the "**Notice of Arbitration**"). The Notice of Arbitration shall include a brief statement of the issue being referred and the redress sought provided that, if the Authority has elected to commence the Mediation process, the Contractor may not commence Arbitration until the Mediation has concluded.

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- 74.14.2 The Arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules in force at the Commencement Date shall be applied.
- 74.14.3 The decision of the Arbitrator shall be binding on the Parties (in the absence of any material failure by the Arbitrator to comply with the LCIA procedural rules).
- 74.14.4 Subject to **clause 74.14.5 (Arbitration)**, the tribunal shall consist of a sole Arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the Arbitrator within ten (10) Business Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA.
- 74.14.5 If the Dispute is of a complex nature, the Parties may agree, or the Authority at its sole discretion may direct, that the tribunal shall consist of three (3) Arbitrators, to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the Arbitrators within ten (10) Business Days or, if the persons appointed are unable or unwilling to act, as appointed by the LCIA.
- 74.14.6 The seat of the Arbitration shall be England.
- 74.14.7 The language of the Arbitration shall be English and the Arbitration proceedings shall take place in London unless otherwise agreed between the Parties.

74.15 Arbitrator's Powers

The Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract and, where appropriate, to order financial compensation to be paid by one Party to the other.

74.16 Arbitrator's Decision

The Arbitrator shall deliver his or her decision on any matter referred to him or her within three (3) Months (or such other period as the Parties may agree) after concluding any hearings which may have been held in connection with the matter. The Arbitrator's decision shall be in writing and shall state his or her reasons for his or her decision. The decision of the Arbitrator shall be final and binding on both Parties. The costs of the Arbitration will be at the discretion of the Arbitrator.

74.17 Parties' Obligations

The Parties shall continue to comply with, observe and perform all their obligations under this Contract regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this **clause 74 (Dispute Resolution)** and shall give effect, as soon as reasonably practicable, to every decision of the Arbitrator, if the matter is referred to

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Arbitration under this **clause 74 (Dispute Resolution)**.

74.18 Urgent Relief

Nothing in this **Part XVII (Disputes)** shall prevent either Party from seeking injunctive relief at any time.

74.19 Consolidation of Guarantee Disputes

74.19.1 If any Dispute arises under this Contract regarding whether the Contractor has failed to perform or has breached this Contract or is otherwise in Default (a "**Contract Dispute**") and a dispute exists regarding whether the Guarantor's obligation to guarantee performance of the Contractor under this Contract has arisen or which relates to whether the Guarantor has failed to perform or has breached any of the Guaranteed Obligations (a "Guarantee Dispute"), then the Contract Dispute and the Guarantee Dispute shall at the Authority's sole discretion be referred to and finally determined together in a single, combined procedure in accordance with this **Part XVII (Disputes)** as modified and/or supplemented below.

74.19.2 The Contractor and the Guarantor shall agree between themselves as to which one of them shall be deemed the lead party in any such combined dispute and that lead party shall thereafter have the authority to conduct and resolve such a dispute on behalf of the other party.

74.19.3 For the purpose of this **clause 74.19, Part XVII (Disputes)** shall be modified and/or supplemented below.

74.19.3.1 the Notice of Dispute referred to in **clause 74.2** shall also specify whether the dispute involves a Guarantee Dispute under a Parent Company Guarantee;

74.19.3.2 the Mediator or Arbitrator, as the case may be, appointed or to be appointed in respect of a Contract Dispute shall also be appointed as the Mediator or Arbitrator in respect of the Guarantee Dispute.

74.19.4 Without limiting **clause 74.19.2** where the Contract Dispute and the Guarantee Dispute are referred to arbitration:

74.19.4.1 the Arbitrator may order that the whole or part of the matters at issue shall be heard together upon such terms or conditions as he or she thinks fit;

74.19.4.2 the Arbitrator shall have power to make such directions and any interim, partial or final awards as he or she considers just and

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desirable;

74.19.4.3 the Arbitrator may join either Party to this Contract to proceedings under a Parent Company Guarantee (and vice versa); and

74.19.4.4 each of the Parties to this Contract consents to such joinder.

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PART XVIII - INTELLECTUAL PROPERTY

75. INTELLECTUAL PROPERTY RIGHTS

75.1 Custodial Service Data

The Contractor shall, subject to **clause 75.2.1.2 (Licence in Respect of Intellectual Property Rights)**, make available to the Authority free of charge (and hereby irrevocably licenses the Authority to use) all Custodial Service Data that might reasonably be required by the Authority and the Contractor shall ensure that it obtains all necessary licences, permissions and consents to ensure that it can make the Custodial Service Data available to the Authority on these terms, for the purposes of:

75.1.1 the Authority exercising its rights or complying with its duties under this Contract and/or any statutory duties which the Authority may have; and

75.1.2 following termination of this Contract, the operation, maintenance or improvement of the STC and/or the provision of services for youth custody,

(together, the "**Approved Purposes**"), and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

75.2 Licence in Respect of Intellectual Property Rights

75.2.1 Subject to **clause 75.2.2 (Licence in Respect of Intellectual Property Rights)**, the Contractor:

75.2.1.1 hereby grants to the Authority, free of charge, an irrevocable, non exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Contract or upon or, subject to **clause 75.2.2**, at any time following termination of this Contract) licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights used within the Custodial Service which are or become vested in the Contractor; and

75.2.1.2 shall, where any Intellectual Property Rights are or become vested in a third party, use all reasonable endeavours to procure the grant of a like licence to that referred to in **clause 75.2.1.1 (Licence in Respect of Intellectual Property Rights)** to the Authority but shall in any event procure the grant of a licence with such scope as is required to enable the Authority to enjoy the benefit of the Custodial Service and otherwise exercise its rights under this Contract during the Custodial Service Period and, subject to **clause 75.2.2**, for a reasonable period following the Expiry Date or

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Termination Date (as the case may be),

in both cases, solely for the Approved Purposes.

75.2.2 The licence referred to in **clause 75.2.1 (Licence in Respect of Intellectual Property Rights)** shall subsist during the period of this Contract and for a period of twenty four (24) months following the Termination Date or Expiry Date (as applicable).

75.2.3 The Contractor hereby grants, and shall procure that its Sub-Contractors grant, to the Authority an irrevocable, royalty-free, non-exclusive licence to use for any purposes whatsoever, including further use in connection with other contracts by the Authority or third parties authorised by the Authority, all rights, titles and interest in any Intellectual Property Rights which the Contractor or its Sub-Contractors have created and/or developed for the purposes of performing the Contractor's obligations under the Contract (which shall be deemed to include all such rights, titles and interest in the Young Person Data) provided that the Contractor shall have no liability for any use of such Intellectual Property Rights other than for the purposes for which it was supplied. The Authority may assign and grant sub-licences out of the said licence to any persons.

75.3 **Vesting of Intellectual Property Rights**

The Contractor shall:

75.3.1 use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Contract vest, and remain vested throughout the term of this Contract, in the Contractor; and

75.3.2 enter into appropriate agreements with any Contractor Related Party (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

75.4 **Maintenance of Data**

To the extent that any of the data, materials and documents referred to in this **clause 75 (Intellectual Property Rights)** are generated by or maintained on a computer or similar system, the Contractor shall:

75.4.1 use all reasonable endeavours to procure for the benefit of the Authority, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Authority or its nominee to access and otherwise use (subject to the payment by the Authority of the relevant fee, if any) such data for the Approved Purposes. As an alternative, the Contractor may provide such data, materials or documents in a format which may be read by

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software generally available in the market at the relevant time or in hard copy format; and

- 75.4.2 enter into the National Computing Centre's then current multi licence escrow deposit agreement or standard single licence escrow deposit agreement as appropriate in each case.

75.5 Back Up and Storage

The Contractor shall:

- 75.5.1 ensure the back up and storage in safe custody of the data, materials and Documents referred to in **clause 75.4 (Maintenance of Data)** in accordance with Good Industry Practice;
- 75.5.2 without prejudice to **clause 75.5 (Back Up and Storage)**, submit to the Authority for approval its proposals for the back up and storage in safe custody of such data, materials and documents and the Authority shall be entitled to object if the same is not in accordance with Good Industry Practice;
- 75.5.3 comply, and shall ensure that all Contractor Related Parties comply with all procedures to which the Authority has given its approval pursuant to **clause 75.5.2 (Back Up and Storage)**; and
- 75.5.4 not change its procedures for such back-up and storage without the Authority's prior written approval and the Authority shall be entitled to withhold its approval if such proposed change is not in accordance with Good Industry Practice.

75.6 Indemnity

- 75.6.1 Where a claim or proceeding is made or brought against the Authority which arises out of the infringement of any intellectual property rights or because the receipt of the Custodial Service (including the use of any data, software, materials, plant, machinery or equipment in connection with the Contract) infringes any intellectual property rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with this Contract, the Contractor shall indemnify and keep indemnified in full the Authority, its employees, agents and contractors at all times from and against all Losses arising as a result of such claims and proceedings and the provisions of **clause 70 (Indemnities and Liabilities)** shall apply.
- 75.6.2 Where a claim or proceeding is made or brought against the Contractor which arises out of the infringement of any intellectual property rights or because the use of any materials, plant, machinery or equipment in connection with the

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Contract infringes any rights in or to any intellectual property rights of a third party then, if such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Authority otherwise than in accordance with this Contract and otherwise than as a result of a breach of this **clause 75 (Intellectual Property Rights)** by the Contractor then the Authority shall indemnify and keep indemnified in full the Contractor at all times from and against all Losses arising as a result of such claims and proceedings.

75.7 Licence to Contractor

The Authority hereby grants to the Contractor a non-transferable, non-exclusive, royalty free licence (carrying the right to grant sub-licences to its Sub-Contractors) to use for the term of this Contract only and only for purposes directly relating to the Custodial Service any Intellectual Property Rights relating to the Custodial Service which are or become vested in the Authority.

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PART XIX - SUB-CONTRACTING, ASSIGNMENT AND CHANGE IN OWNERSHIP**76. SUB-CONTRACTING AND ASSIGNMENT****76.1 Restrictions on Transfer of this Contract by the Authority**

The rights and obligations of the Authority under this Contract shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of this Contract and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Contract being:

76.1.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

76.1.2 any other public body whose obligations under this Contract are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Contract.

76.2 Restrictions on Transfer of this Contract by the Contractor

Subject to **clauses 76.3 (Exception)**, the Contractor shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with this Contract, in whole or in part, except with the prior written consent of the Authority.

76.3 Exception

The provisions of **clause 76.2 (Restrictions on Transfer of this Contract by the Contractor)** do not apply to the entry into by the Contractor or relevant Sub-Contractor of the Approved Sub-Contracts.

76.4 Sub-Contractors

76.4.1 Subject to **clause 76.2 (Restrictions on Transfer of this Contract by the Contractor)**, nothing in this Contract shall prohibit the Contractor from providing or procuring provision of the Custodial Service from a Sub-Contractor having the legal capacity, power and authority to become a party to and perform the obligations of the relevant Sub-Contract and employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the Sub-Contractor under the relevant Sub-Contract provided that:

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- 76.4.1.1 the Contractor has notified the Authority of the identity of such Sub-Contractor and the proposed terms of such Sub-Contract and has provided the Authority with such other information as may be required by the Authority; and
- 76.4.1.2 the Contractor shall remain primarily and directly liable for the Contractor's obligations.
- 76.4.2 In relation to Sub-Contractors and the procurement of Sub-Contractors, the Contractor:
 - 76.4.2.1 warrants and represents to the Authority that it will follow ethical procurement practices;
 - 76.4.2.2 shall provide the Authority with reasonable notice of any appointments of new Sub-Contractors and any material developments or changes in relation to Sub-Contractors including:
 - 76.4.2.2.1 the amounts the Contractor is paying the Sub-Contractors;
 - 76.4.2.2.2 activities that could give rise to material risk, including operational risk and commercial risk, for the Authority or the Contractor;
 - 76.4.2.2.3 activities relating to any aspect of security;
 - 76.4.2.2.4 activities relating to construction and works;
 - 76.4.2.2.5 activities relating to ICT infrastructure.
- 76.4.3 By entering into this Contract, the Authority:
 - 76.4.3.1 approves the Sub-Contractors who are party to the Approved Sub-Contracts; and
 - 76.4.3.2 for the purposes of the calculation of any Contractor Breakage Costs only, confirms that it considers the Approved Sub-Contracts provided to it by the Contractor at the date of this Contract are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms.
- 76.4.4 The Authority shall be deemed to have approved any amendment to any Sub-Contract which is required as a result of any change made to this Contract (provided that any changes made correspond exactly in each of the Sub-

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Contracts and this Contract).

76.5 Contractor's Obligations

The Contractor shall:

- 76.5.1 perform its obligations under and observe all the provisions of any Sub-Contract with a Sub-Contractor;
- 76.5.2 be directly responsible for the management and supervision of all Sub-Contractors and Sub-Contractors; and
- 76.5.3 ensure that its Sub-Contractors are fully informed as to the Expiry Date (as may be extended) or any early Termination Date that may be applicable to this Contract.

76.6 Employment of Sub-Contractors by the Authority

Nothing in this Contract shall prohibit or prevent any Sub-Contractor employed by the Contractor from being employed by the Authority.

76.7 Flow Down and Payment Terms in Sub-Contracts

- 76.7.1 Where the Contractor enters into a Sub-Contract with a Sub-Contractor, it shall include such provisions in the Sub-Contract as are necessary to enable the Contractor to fulfil its obligations under this Contract and shall ensure that the Sub-Contract:
 - 76.7.1.1 includes the right for the Contractor or, as appropriate, Sub-Contractor to terminate the Sub-Contract voluntarily on terms no more onerous than the Authority's right to terminate this Contract voluntarily;
 - 76.7.1.2 restricts the ability of the Sub-Contractor from sub-contracting all or any part of the services provided to the Contractor under the Sub-Contract without the written consent of the Authority;
 - 76.7.1.3 includes the right for the Authority (acting by itself or with or through a third party) to take Required Action as contemplated by **clause 64 (Authority Step-In)**;
 - 76.7.1.4 includes a right to enable the Contractor or, as appropriate, Sub-Contractor to assign or novate its rights and obligations under the Sub-Contract to the Authority or any New Contractor free of charge in connection with the termination or expiry of this Contract

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pursuant to an Authority request in accordance with **Schedule 28 (Exit Management)**;

76.7.1.5 requires payment by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) Days from receipt of a valid and undisputed invoice in respect of any amount which has fallen due and payable as required by the provisions of such Sub-Contract, and a period not exceeding thirty (30) Days from determination or agreement of any disputed invoice; and

76.7.1.6 requires a provision to be included in the contracts between the Sub-Contractor and its contractors which requires payment by the Sub-Contractor to its contractors within a specified period not exceeding thirty (30) Days from receipt of a valid and undisputed invoice in respect of any amount which has fallen due and payable as required by the provisions of such contract, and a period not exceeding thirty (30) Days from determination or agreement of any disputed invoice.

76.8 Authority Third Party Contracts

The Authority has in place contracts for the supply of utilities and uniforms and the Contractor is not required to supply these. In relation to such supply the Contractor shall comply with the provisions of **Schedule 25 (Authority Third Party Contracts)**.

76.9 Government Buying Standards and Energy Efficiency Requirements

The Contractor shall, and shall procure that its Sub-Contractors shall:

76.9.1 apply the Government Buying Standards when providing or procuring goods or services as part of this Contract; and

76.9.2 in delivering the Custodial Service, only use newly purchased products that comply with the energy efficiency standards set out in the Appendix to **Part 2 of Schedule 1 (Authority's Requirements (Property Specification))** unless it has the prior written approval of the Authority not to do so in relation to any particular product.

77. CHANGE OF CONTROL**77.1 Restriction on Change of Control**

77.1.1 A Change of Control may only occur with the prior written consent of the Authority which consent shall not be unreasonably withheld in the event that such Change of Control is to a Suitable Third Party. The Contractor shall within

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fourteen (14) Days of receipt of request provide the Authority with all such information as it may reasonably require with regard to the Change of Control and/or the proposed acquirer(s) of Control in order for it to decide whether or not to give such consent. The Authority shall not be unreasonably withholding consent pursuant to this **clause 77.1 (Restriction on Change of Control)** inter alia for so long as any information reasonably requested by it is outstanding or in any event for a period of not less than thirty (30) Days following any such request.

- 77.1.2 Without prejudice to **clause 77.1 (Restriction on Change of Control)**, the Contractor shall inform the Authority as soon as reasonably practicable that it becomes aware that there may be or will be a Change of Control and shall, in any event, inform the Authority within fourteen (14) Days of any Change of Control occurring and provide the Authority with all such information as it may request with regard to the Change of Control and the proposed acquirer(s) of Control.
- 77.1.3 The Authority may, not more than twice in any Contract Year, or at any time when a Contractor Default is outstanding, require the Contractor to inform it, as soon as reasonably practicable and in any event within thirty (30) Days of receipt of the Authority's request for details, of any Change of Control.

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PART XX - GENERAL**78. ORDERING OF GOODS AND SERVICES**

- 78.1 Subject to the provisions of **Schedule 25 (Authority Third Party Contracts)**, neither Party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of the other Party or any representative of the other Party.

79. AUDIT ACCESS**79.1 Provision of Information**

The Contractor shall provide to the Authority all information, documents, records and the like in the possession of, or available to, the Contractor and to this end the Contractor shall procure that all such items in the possession of the Contractor or any Sub-Contractor shall be available to it and the Contractor shall (and shall procure that the Sub-Contractors shall) include appropriate terms in contracts with all Sub-Contractors to this effect as may be reasonably requested by the Authority for any purpose in connection with this Contract.

79.2 Internal and External Audits and Inspections

The Contractor shall (and shall procure that its Sub-Contractors shall):

- 79.2.1 facilitate both internal and external audits which shall include inspections by Ofsted, HM Inspectorate of Prisons, Care Quality Commission, Prisons and Probation Ombudsman, Local Safeguarding Children Boards, NHS Area Teams or relevant bodies, together with the Authority's own audit and assurance requirements (including with respect to compliance with the data protection obligations set out in **clause 69 (Data Protection)**);
- 79.2.2 discharge all of its obligations to comply with the recommendations of internal and external audits, including Ofsted, HM Inspectorate of Prisons, Care Quality Commission, Prisons and Probation Ombudsman, Local Safeguarding Children Boards, NHS Area Teams or other relevant bodies within a timescale agreed with the Authority, which shall include the provision of regular progress reports; and
- 79.2.3 provide Ofsted, HM Inspectorate of Prisons, Care Quality Commission, Prisons and Probation Ombudsman, Local Safeguarding Children Boards, NHS Area Teams or relevant bodies with administrative support so as to enable it to carry out its duties at the STC and such support shall include the provision of a clerk at the STC to provide administrative support.

80. NO AGENCY

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80.1 No Partnership or Employment

Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Authority and the Contractor.

80.2 Power to Bind

Save as expressly provided otherwise in this Contract, the Contractor shall not be, or be deemed to be, an agent of the Authority and the Contractor shall not hold itself out as having authority or power to bind the Authority in any way.

80.3 Deemed Knowledge

Without limitation to its actual knowledge, the Contractor shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Contract as is held (or ought reasonably to be held) by any Contractor Related Party.

81. ENTIRE AGREEMENT**81.1 Prior Representations etc Superseded**

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

81.2 Acknowledgements

Each of the Parties acknowledges that:

81.2.1 subject to **clause 5.1 (Contractor Warranties)**, it does not enter into this Contract on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this Contract or not) except those expressly repeated or referred to in this Contract and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be any remedy under this Contract; and

81.2.2 this **clause 81 (Entire Agreement)** shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Contract.

82. THIRD PARTY RIGHTS

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- 82.1 The Police and Crime Commissioners and The Mayor's Office for Policing and Crime have the right to enforce **clause 72.14 (Riot (Damages) Act 1886)** only of this Contract, subject to and in accordance with **clause 72.14 (Riot (Damages) Act 1886)** and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999.
- 82.2 Save as expressly stated in **clause 82.1 (Third Party Rights)** or as otherwise expressly provided in this Contract, no term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party to this Contract.
- 82.3 Any losses suffered by the Youth Justice Board in connection with the provision of the Custodial Service shall be deemed to be Losses suffered by the Authority and, to the extent they would be recoverable by the Authority from the Contractor under this Contract had they been Losses suffered by the Authority, shall be recoverable by the Authority from the Contractor. Any right expressed to be granted pursuant to this Contract to the Contractor shall be enforceable by the Authority.
83. **REPRESENTATIVES**
- 83.1 **Representatives of the Authority**
- 83.1.1 The Authority's Representative(s) shall be Vincent Godfrey on behalf of the Secretary of State for Justice, or such other person appointed pursuant to this **clause 83.1 (Representatives of the Authority)**.
- 83.1.2 The Authority's Representative shall exercise the functions and powers of the Authority in relation to the Contract which are identified in this Contract as functions or powers to be carried out by the Authority's Representative. The Authority's Representative shall also exercise such other functions and powers of the Authority under this Contract as may be notified to the Contractor from time to time.
- 83.1.3 The Authority's Representative shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the Authority delegated to him or her pursuant to this clause, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Authority's Representative and all references to the "Authority's Representative" in this Contract (apart from this **clause 83.1.3 (Representatives of the Authority)**) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.
- 83.1.4 The Authority may by notice to the Contractor change the Authority's Representative. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such

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date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Contract).

- 83.1.5 During any period when no Authority's Representative has been appointed (or when the Authority's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his or her functions under this Contract) the Authority shall carry out the functions which would otherwise be performed by the Authority's Representative.
- 83.1.6 Except where notified in writing by the Authority before such act or instruction, the Contractor and Contractor's Representative shall be entitled to treat any act or instruction of the Authority's Representative which is authorised by this Contract as being expressly authorised by the Authority and the Contractor and the Contractor's Representative shall not be required to determine whether authority has in fact been given.
- 83.1.7 Except where notified in writing by the Authority before such act or instruction, the Contractor and Contractor's Representative shall not be entitled to treat any act or instruction of the Authority's Representative or any other officer, employee or other person engaged by the Authority which is not authorised by this Contract as being authorised by the Authority and shall be required to determine by notice to the Authority whether an express authority has in fact been given.

83.2 Representatives of the Contractor

- 83.2.1 The Contractor's Representative(s) shall be:

Richard Gansheimer (Chief Executive, MTCnovo)

or such other persons appointed pursuant to this **clause 83.2 (Representatives of the Contractor)**.

- 83.2.2 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Contract. Except as previously notified in writing before such act by the Contractor to the Authority, the Authority and the Authority's Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Contract as being expressly authorised by the Contractor and the Authority and the Authority's Representative shall not be required to determine whether any express authority has in fact been given.
- 83.2.3 The Contractor may by notice to the Authority, change the Contractor's Representative. Where the Contractor wishes to do so it shall, by written notice to the Authority, propose a substitute representative, taking account of the need for liaison and continuity in respect of the Contract. Such appointment shall be

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subject to the approval of the Authority (not to be unreasonably withheld or delayed).

83.3 Appointment of Representatives

At any time the Authority may appoint more than one Authority's Representative and the Contractor may appoint more than one Contractor's Representative provided in each case the appointer provides written confirmation to the Contractor or Authority as appropriate of the extent of its representative's authority.

84. NOTICES

All notices required to be issued under this Contract shall be served in accordance with the provisions of **Schedule 22 (Notices)**.

85. SEVERABILITY

If any term, condition, clause or provision contained in this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition, clause or provision shall, to that extent be omitted from this Contract and not affect the validity, legality or enforceability of the remaining parts of this Contract.

86. WAIVER**86.1 Waiver to be Written**

No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

86.2 Extent of Waiver

No waiver under **clause 86.1 (Waiver to be Written)** shall be a waiver of a past or future default or breach nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

87. GOVERNING LAW AND JURISDICTION

This Contract and any contractual or non-contractual obligations arising from or connected with it shall be governed by English law and this Contract shall be construed in accordance with English law. In relation to any legal action or proceedings arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure (whether arising out of or in connection with any contractual or non-contractual obligations)(**the "Proceedings"**), each of the Parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to Proceedings in such courts on the grounds of venue or on the grounds that Proceedings have been brought in an inappropriate forum.

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88. SOLE REMEDY**88.1 Common Law Rights for the Contractor**

Without prejudice to any entitlement of the Contractor:

88.1.1 to specific performance of any obligation under this Contract;

88.1.2 to injunctive relief; or

88.1.3 to any other express right of the Contractor pursuant to this Contract,

the Contractor's sole remedy in relation to any Compensation Event shall be the operation of **clause 15 (Compensation Events)**.

88.2 No Breach

The Contractor shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is a result of the Authority's breach of its obligations under this Contract.

88.3 Indirect Losses

Save where stated to the contrary, neither Party shall have any liability to the other (whether pursuant to an express indemnity or otherwise) in respect of any Indirect Loss.

88.4 Right to Terminate

Neither Party may terminate this Contract, except as expressly set out in this Contract.

89. NO DOUBLE RECOVERY

Notwithstanding any other provision of this Contract, neither Party shall be entitled to recover compensation or make a claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

90. CUMULATIVE REMEDIES

Save as expressly provided in this Contract, the rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

91. COUNTERPARTS

This Contract may be executed in any number of counterparts, all of which when taken

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together shall constitute one and the same instrument.

92. CAPACITY

Without prejudice to the remedies and contractual rights of the Contractor in respect of a risk or liability or obligation expressly provided in this Contract as being a risk, liability or obligation of the Authority:

- 92.1 nothing in this Contract shall operate as an obligation upon, or in any other way fetter or constrain, the Authority in any capacity other than in its capacity as a contracting counterparty; and
- 92.2 the exercise by the Authority of its duties powers and functions in any capacity other than in its capacity as a contracting counterparty shall not lead to any liability under this Contract on the part of the Authority to the Contractor.

93. FURTHER ASSURANCE

- 93.1 Each Party agrees to do all further acts and things and execute and deliver all instruments as shall be necessary or expedient for the carrying out of the provisions of this Contract.



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THIS AGREEMENT has been signed on behalf of the parties by their duly authorised representatives on the date which first appears

SIGNED by)
a duly authorised signatory for and on behalf of)
The Secretary of State)
for Justice acting as part of the Crown)
)

Authorised Signatory

in the presence of:

Signature of witness:

Name of witness:

Address:

Occupation:

SIGNED by)
for and on behalf of)
MTCnovo Limited)
acting by a Director)

Director